

BETWEEN

ADX

APPLICANT

AND

ADY

SECOND APPLICANT

AND

ZWB

RESPONDENT

AND

ZWA

SECOND RESPONDENT

Date of Order:

23 September 2010

Referee:

Referee A Davidson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that pursuant to s 6(1) of the Minors' Contracts Act 1969, the First and Second Applicants, ADX and ADY, cannot enforce the contract to purchase the horse from the Second Respondent, ZWA. Pursuant to s 7(1) of the Minors' Contracts Act 1969, ZWA must pay ADX and ADY \$1,000.00 within seven days of today's date in compensation for their travel costs, time and emotional upset.

Facts

[1] ZWA is a minor and owns a horse, LJ. ZWA decided to sell his horse and listed it on Trade Me for \$6,000.00 or nearest offer. The Applicants and their daughter wished to buy the horse. They drove to [B] from [A] to inspect it, and offered \$6,000.00 for it, which was accepted. All parties agreed that the horse was for sale and that the Applicants had purchased it, and that throughout discussions the First Respondent, ZWB, had acted as her son's agent and had the authority to sell the horse. ADX paid the agreed sum on Friday 30 July 2010. On Monday 2 August 2010, ZWB called ADY to say that ZWA had changed his mind and no longer wished to sell his horse.

Law

[2] The law governing this claim is the law of contract and section 6(1) of the Minors' Contracts Act 1969.

Decision

[3] The facts of this matter are not in dispute. What is in dispute is whether or not the contract between ZWA and ADX and ADY should be enforced.

[4] Section 6(1) of the Minors' Contracts Act 1969 provides:

Subject to the provisions of this section, every contract (other than a contract to which paragraph (b) or paragraph (c) of subsection 5(1) applies) entered into by a minor is unenforceable against the minor but otherwise has effect as if the minor were of full age.

[5] While the presumption is that contracts with minors are unenforceable against the minor, the Tribunal has the discretion to partially or fully enforce such contracts, cancel the contracts or order compensation pursuant to s 6(2) of the Act. However, in exercising its discretion under s 6(2), the Tribunal is required to have regard to the factors specified in s 6(3), which provides:

(3) In exercising its discretion under subsection (2) of this section the Court shall have regard to—

- (a) The circumstances surrounding the making of the contract:
- (b) The subject-matter and nature of the contract:
- (c) In the case of a contract relating to property, the nature and the value of the property:
- (d) The age and the means (if any) of the minor:
- (e) All other relevant circumstances.

[6] ZWA provided ADX and ADY with various excuses for wanting to cancel the contract. On the balance of probabilities, I find that ZWA's underlying reason for wanting to cancel the contract was simply that over the three years of owning his horse he had developed a deep attachment to it. In the days following the sale, he came to appreciate the depth of his attachment and to regret the sale. In the ordinary course, such seller's remorse would be irrelevant and the Tribunal would simply enforce the contract and order that the horse be delivered up to ADX and ADY. However, ZWA is a minor and the Minors' Contracts Act 1969 requires the Tribunal to approach arrangements from a wider perspective and to take into account "the subject matter and nature of the contract" amongst other things.

[7] Having regard to the factors specified in s 6(3) of the Act, I find that the Tribunal must take into account the fact the subject matter of this contract is an animal not an inanimate object. It is for a horse and not a tractor, if you will. Horses are the type of animal with which people can and do frequently develop close relationships. In this case, both ZWA and the Applicant's daughter, FH, have in fact developed an attachment to the horse.

[8] Minors are prone to being taken advantage of and making ill-considered decisions. In the present claim, I am satisfied that the contract agreed between the parties was a fair one

and that ZWA was not being taken advantage of. However, the fact the contract was fair and reasonable does not mean that the Tribunal must exercise its discretion under s 6(2)(a)(i) of the Minors' Contracts Act 1969 and enforce the agreement between the parties. Such an order is discretionary and the exercise of that discretion subject to the factors set out in s 6(3) of the Act.

[9] On the balance of probabilities, I find that ZWA has entered into an ill-considered contract, which he has come to regret. Having regard to the subject matter and nature of the contract, it would not be appropriate for the Tribunal to enforce what would otherwise be a fair and reasonable contract against him. On this basis, ADX and ADY's claim for enforcement of the contract must fail.

[10] However, making an ill-considered contract is not without its consequences. ADX and ADY invested considerable effort in talking with ZWA and his mother and driving to [B] to inspect the horse. Aside from these purely practical considerations, there is also the not inconsiderable emotional impact that ZWA's decision has had on ADX, ADY and their daughter, FH.

[11] Section 7(1) of the Minors' Contracts Act 1969 provides that the Tribunal may order "such relief by way of compensation or restitution of property as the Court in its discretion thinks just". Considering the inconvenience, expense and emotional impact that ZWA has caused ADX and ADY, I find that it would be just compensation for ZWA to pay them \$1,000.00, an amount which relative to the amount of the contract, ZWA's age and the costs incurred by ADX and ADY seems fair.

[12] I note that during the hearing there were numerous discussions regarding ADX and ADY's care of animals arising out of concerns expressed by an anonymous third party. As noted to ZWB in a prehearing direction and to the parties during today's hearing, the Tribunal cannot consider "anonymous" evidence. Its credibility must be completely suspect as there is no way that the opposing party can challenge it and ultimately, in the absence of any corroborating evidence, no way to distinguish between actual anonymous evidence and a

complete fabrication. For this reason, the Tribunal was not able to put any weight on the anonymous allegations raised during the hearing by ZWB.