

**BETWEEN**

**FQQ Ltd TA FQF Auto Parts  
APPLICANT**

**AND**

**TJ  
RESPONDENT**

**YN  
SECOND RESPONDENT**

Date of Order:

11 April 2017

Referee:

Referee Wilson

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders:**

- (a) YN is to pay FQQ Ltd trading as FQF Auto Parts \$2,013.03 by 4pm on 26 April 2017.**
- (b) FQQ Ltd trading as FQF Auto Parts' claim against TJ is dismissed.**

### **Facts**

[1] FQQ Ltd trading as FQF Auto Parts (FQF), had given a credit account to TJJ Services Ltd (TJJ), which was guaranteed by TJJ's sole director TJ. YN was an employee of TJJ. He purchased a number of items on TJJ's account for himself for his own cars without telling Mr TJ, nor paying him for the items. When Mr TJ received a reminder about his overdue account from FQF, he was surprised at the size of it and queried it with FQF, who provided him with a detailed breakdown of the parts provided. Mr TJ paid the invoices where he had placed the orders himself but refused to pay for the invoices Mr TJ had incurred because he said he had never authorised the purchases. FQF made a claim against Mr TJ personally under his guarantee of TJJ's liability in the sum of \$2,013.03, as well as \$550.92 for the costs of recovery. FQF also sought recovery in the alternative from YN, who is now no longer in TJJ's employ.

### **Issues**

[2] The issues to be determined were as follows:

- (a) Did Mr YN have actual or apparent authority to purchase from FQF on behalf of TJJ?
- (b) If not, can FQF claim from Mr TJ pursuant to his personal guarantee of TJJ's account for invoices Mr YN incurred for himself but in the name of TJJ?
- (c) If not, can FQF successfully claim payment from Mr YN, including the cost of recovery?

### **Did Mr YN have actual or apparent authority to purchase from FQF on behalf of TJJ?**

[3] For an agent to act on behalf of a principal, and to bind the principal in law, the agent must have actual or apparent authority. Apparent authority can arise where the principal makes a representation, or fails to correct a misinterpretation, that the agent has the appropriate authority.

[4] It is not usually sufficient, in law, for an agent to hold themselves out as an agent for a principal, except to the extent that such an act by an agent is known about by the principal and the principal does not correct the impression given.

[5] If Mr YN had actual or apparent authority to purchase the items, TJJ would be bound to pay for them. Mr QF who represented FQF at the hearing said that it was known by most of the staff at FQF that Mr YN worked for TJJ at the time. Mr QF also said that Mr YN had said he was authorised to purchase on behalf of FQF and to place items on the account. Mr QF indicated that Mr TJ must have known about the invoices, because he had not queried any of the invoices or monthly statements that had been sent out over the two months that the events in question took place.

[6] Mr YN said at the hearing that he had been authorised by Mr TJ to make purchases on the account.

[7] I am satisfied however that TJJ and Mr TJ did not at any point give Mr YN either actual or apparent authority on the account for a number of reasons, including the following.

- (a) Mr TJ gave evidence that he does not authorise his employees to make purchases on his behalf. He explained this by saying that because his business is a small garage, whenever parts need to be ordered and purchased he always goes himself to place the orders and make the purchases. He said this was because he was the one who did the office work and so would not need to clean up to go and make the purchases, unlike Mr YN who had been the mechanic. Also it would have interrupted the flow of the work for Mr YN, one of only two employees of the business, to go to get the parts when needed.
- (b) Mr TJ said that when he placed individual parts orders he always asked FQF to place a reference on the invoice of the relevant car's registration plate, so when it came time for billing and payment he could easily trace which part was for

which job. None of the disputed invoices were referenced in this way, and in fact a number of them bore the reference “YN”, in reference to Mr YN.

- (c) Mr TJ also pointed out that the items purchased were parts that either he would never use in his business, or had not had a need for at that time. The invoices were for sound system parts, which Mr TJ's business does not work on, and car parts for Nissans. At the hearing this was tested, and Mr QF of FQF was able to confirm, by checking with his office during the hearing, that the car parts purchased on the invoices were for use in a Nissan. Mr TJ noted that because it was a small business he was very aware of the cars that had been passing through the business and none had been Nissans for which the car parts could have been used. When asked about this at the hearing Mr YN was unable to dispute it. On the other hand at the time he worked for TJJ Mr YN owned and was repairing for himself a Nissan Laurel for which the parts appeared to be suitable.
- (d) When approached by Mr TJ about the purchases, Mr YN admitted they were his and said he would pay for them, but to date no payment has been made. Mr YN was prepared to accept responsibility for only some of the invoices. At the hearing he also said that he had told Mr TJ from the beginning that he was purchasing things for himself on the TJJ account at FQF, but Mr TJ was clear that this had not occurred, because as he pointed out, this was not something he would be likely to forget. Mr YN said at the hearing that he could not see anything wrong with making the purchases because he would be happy to pay off the amounts owing that he agreed were his at \$50 a week.
- (e) Mr YN had only worked for TJJ for a month when the first purchases were made. Mr TJ said he would not have allowed Mr YN to make significant personal purchases on his TJJ' account with FQF because he knew Mr YN had no money. Mr TJ, in giving an example, said he had noticed that when Mr YN first started he had not had any lunch to eat, because he said he had no money. Mr TJ also said he had given Mr YN an advance on his wages in the form of groceries in his first fortnight.
- (f) Mr QF of FQF gave evidence that when he approached Mr YN, after Mr QF had discussed the invoices with Mr TJ, Mr YN assured him that he accepted the invoices were his, and that he had paid Mr TJ in full. However Mr TJ gave

evidence that no such payment has been received by him or TJJ. Mr YN did not dispute this at the hearing.

- (g) There is no evidence Mr TJ or TJJ held out Mr YN as TJJ's agent at any stage. It was Mr YN's and Mr QF's evidence that Mr YN held himself out as agent of TJJ. Mr TJ did not find out about Mr YN's actions until Mr YN had resigned and was serving out his notice (he worked for TJJ for a total of only three months). Mr QF indicated that monthly statements had been sent out, and Mr TJ should have seen them. Mr TJ said he had not received the statements, though he did not know why. Mr QF indicated that when Mr YN had purchased the items he had been given an invoice each time, but Mr TJ indicated that he had not seen the invoices either, because Mr YN had not given them to him. Mr TJ said he took immediate steps to correct FQF's impression that Mr YN was authorised, when he discovered the mistake, after two months. Mr QF of FQF also conceded that in such a large and busy parts department as FQF ran, it was not practical to check what people said about their authority to purchase, and that FQF just took people at their word, especially people they knew. Several of FQF's staff knew Mr YN personally. It is therefore unlikely that any checks were done with Mr TJ. On the balance of probabilities I accept that Mr TJ informed FQF as soon as he knew Mr YN had been placing items on TJJ's account.

**If not, can FQF claim from Mr TJ pursuant to his personal guarantee of TJJ's account for invoices Mr YN incurred for himself but in the name of TJJ?**

[8] Before a personal guarantee can hold a guarantor liable, it must be shown that the party whose debts are guaranteed owed the money to the third party in the first instance.

[9] In this case, Mr TJ had guaranteed the debts of TJJ to FQF. A copy of the guarantee was not produced at the hearing, but Mr TJ and Mr QF from FQF were in agreement that the guarantee was intended to allow FQF to pursue Mr TJ in his personal capacity should TJJ not pay its account.

[10] The debts incurred by YN were not authorised by Mr TJ nor by TJJ. I have found there was no actual authority nor was there any appearance of authority which bound TJJ. As a result TJJ is not liable to FQF for the actions of YN in incurring the disputed debts, and therefore neither is Mr TJ under the guarantee.

**If not, can FQF successfully claim payment from Mr YN, including the costs of recovery?**

[11] An agent is personally liable to a third party when they have not acted within the scope of their authority; or where they have no authority, and the principal has not held them out as having the required authority. An agent who cannot show that they are acting as a “mere instrument” of the principal is acting in their own (the agent’s) personal capacity.

[12] I have already found that Mr YN was not an agent for TJJ and Mr TJ, either by virtue of actual or apparent authority. As a result I find that Mr YN was acting in his own personal capacity by ordering the parts, which were for his own car. Mr YN is therefore liable to pay FQF for all the disputed invoices. Mr YN had also indicated to both Mr TJ and Mr QF that he accepted he was liable for the purchases for his own vehicles, though he disputed the amounts. He did not advance any reason for his dispute and chose to leave the hearing after a short period.

[13] FQF also claimed the cost of recovery of the debt, as set out in an invoice from MKK Ltd for \$550.92. FQF’s ability to recover such costs arises because of its contractual terms with its customers, who agree to pay the costs incurred when debts are unpaid by the due date. Because Mr YN and FQF had not signed the standard terms under which FQF would advance credit, FQF has no contractual right to recover the costs of recovery of the debt from Mr YN. FQF cannot seek general costs in the Disputes Tribunal either, because of the operation of section 43 of the Disputes Tribunal Act 1988. This section prevents the Tribunal from making an order for costs except in the circumstances specified in the section, none of which apply in this case.