

THE CONSUMER CLAIMS TRIBUNAL

**GODFREY ST. HILL**

**Complainant**

AND

**BUILDERS VALUE MART**

**Respondent**

**Godfrey St Hill**

**Represented by Mr Barry Carrington  
Public Counsel**

**Builders Mart**

**Represented by Mr Satcha Kissoon  
Attorney-at-Law**

**Date of hearing:**

**23<sup>rd</sup> September 2005  
30<sup>th</sup> September 2005 (Decision)**

**Tribunal:**

**Mr Ian C.A. Bishop (Chairman)  
Mr Jeff Cumberbatch  
Mr Antoine Williams**

DECISION

IAN C.A. BISHOP (CHAIRMAN)

Godfrey St Hill, the Complainant, resides at Roebuck in the parish of St Peter. His job is that of a truck driver.

On the 23<sup>rd</sup> December 2004, Mr. St. Hill purchased from Builders Value Mart one (1) BT Angle Grinder for \$59.95. He required the grinder to effect certain work to the engine of his Nisan March. Mr. St. Hill stated that at the time of purchase there was no discussion with the attending sales staff relative to any instructions or indeed restrictions on the use of the grinder. He merely paid the money and in return received a receipt.

Mr. St. Hill went on to testify that he first used the grinder on the 26<sup>th</sup> December 2004, the Bank Holiday after Christmas. On that occasion the grinder worked well at varying intervals not exceeding 15 minutes each, over a 2 hour period. The second occasion on

which the grinder was used was about the middle of the next week. Mr. St. Hill reported that on this occasion the grinder worked well. On the third occasion of its use, which was within the space of a little less than a week, the grinder started working well (at top speed) but later started to work slowly. It slowed down to the point where it could no longer grind and started to "smoke".

The grinder had been supplied with two extra brushes and so in an attempt to remedy the problem, Mr. St. Hill stated that he unscrewed that part of the grinder where the brushes are located and proceeded to change the brushes. The process of changing the brushes was fairly straightforward and something which he said he could do quite easily. The grinder however continued to work slowly and also continued to smoke.

On the 31<sup>st</sup> January 2005, Mr. St. Hill returned the grinder to Builders Value Mart. He spoke to Mr. Ravi Merchandani and reported to him that he had bought the machine on the 23<sup>rd</sup> December and that it was not working properly. Mr. St. Hill stated that Mr. Merchandani's first response was that the grinder was "disposable" which he (Mr. St. Hill) took to mean that, "when it is not working, he would have to throw it away". Mr. Merchandani then went on to advise Mr. St. Hill that the cost of repairing the grinder would exceed or cost the same as to purchase a new grinder.

Mr. St. Hill then testified that he departed the store but not before he had an opportunity to return to the same shelf at the location from which he had taken the same angle grinder that he had purchased. He noted that on the sealed plastic packaging of an angle grinder identical to that which he had purchased, was a two year manufacturer's warranty highlighted on a "yellow paper". He stated that he remembered seeing a similar warranty attached to the packaging of the same angle grinder which he had purchased, but that he had thrown the yellow paper away with the packaging.

Mr. St. Hill concluded his evidence by stating that he was not invited by Mr. Merchandani to leave the grinder to be examined, fixed or repaired, and so never

returned to Builders Value Mart. He later visited the office of the Public Counsel where he filed a complaint against Builders Value Mart.

Mr. St. Hill concluded his evidence by indicating to the Tribunal that even though he became frustrated he just wanted a refund of his money.

Under cross examination by Mr. Satcha Kissoon, Counsel for Builders Value Mart, Mr. St. Hill stated that the grinder was used only to smoothen that part of the engine which he had previously cut with a cold chisel and that the particular type of grinder which he had purchased was the best and sufficient for the job which he had in mind. In further response to Counsel, Mr. St. Hill said that he had previously used angle grinders for grinding metal and therefore he had a basic knowledge of their use and purpose. With respect to the angle grinder which he had purchased for \$59.95, said he did not require or force it to do more than what that machine was capable of performing and that he did not use it for a sufficiently long period for it to give that sort of trouble.

Finally, Mr. St. Hill denied the possibility that the reason why the grinder worked badly was because the brushes were replaced or re-installed incorrectly. He reiterated that the problem existed prior to him changing the bushes.

Mr. Ravi Merchandani, a director of Builders Value Mart, testified on behalf of The Respondent. His evidence, summarised, was to the effect that:-

- 1) a) At the time of purchase, the sales staff would have advised Mr. St. Hill as to the effectiveness of the particular grinder that he had purchased in relation to the task it was required to perform, and if necessary would have recommended to him the appropriate quality machine.
- b) There is in effect a policy employed at Builders Value Mart in relation to power tools which required the staff to test the tools before customers

take delivery. The packing would have to be cut open by the sales staff and the machine tested in order to confirm that it was in sound and proper working order. In short, it was just not true that Mr. St. Hill could merely have taken the grinder off the shelf and proceed straight to the cashier.

- ii) The first time he saw the grinder which is the subject matter of this hearing was on the date of the hearing itself. Indeed he could not recall having a conversation with Mr. St. Hill on 31<sup>st</sup> January 2005 about the malfunctioning of the grinder.
- 2) There was however an admission that it was entirely possible that he did in fact tell Mr. St. Hill that the grinder was disposable and that the cost of repairs would be equal to or exceed the original purchase price. There was a further admission that, notwithstanding its cost, the grinder could nevertheless have been repaired even after 6-7 hours usage.
  - 3) The cost of the grinder being \$59.95 was cheap and therefore a cheap price implied that it was disposable and therefore could not be reasonably anticipated to endure beyond 6-7 hours usage.
  - 4) Mr. St. Hill did not use the grinder in the prescribed manner. He had put the tool through tremendous stress and usage in such a manner that the motor had heated to a point where it started to smoke. If however the grinder had been used carefully, he, Mr. Merchandani, would have expect it to be fit for its intended use.

### **THE FINDINGS OF THE TRIBUNAL**

The Tribunal has made the following findings:-

- 1) On 23<sup>rd</sup> December 2004, Mr Godfrey St Hill purchased one BT Angle Grinder from Builders Value Mart for \$59.95.
- 2) On the third occasion on which the grinder was used, after an accumulation of approximately 6-7 hours usage, the grinder failed to perform to the expected level required for its purpose. Whatever was the reason or cause, the malfunction could not be described as being as a result of fair wear and tear since the malfunction started only after 6-7 hours usage.
- 3) The Tribunal accepts the evidence of Mr St. Hill that:
  - i) Mr. Ravi Merchandani failed to repair the grinder on the grounds that:-
    - a) The grinder was considered by Mr. Merchandani to be a disposable item and
    - b) The cost of repairs would have exceeded or equalled the original value of the grinder (i.e. \$59.95).
- 4) There was no denial by the parties hereto that a two year warranty was attached to the use of the grinder. Much as the existence of a two year warranty may have been persuasive in determining that the grinder was not contemplated by the manufacturer to be disposable only after 6-7 hours usage (subject to it not being used in a manner and to an extent which is inconsistent with the manner or extent of use by a reasonable consumer), not having had the opportunity to examine the specific terms and wording of the warranty and therefore to determine the context and scope in which it was intended to be apply, the Tribunal declined to give the warranty any weight in its deliberations in this matter.

- 5) Save and except for his evidence that the angle grinder's primary purpose was for grinding metal the Tribunal rejects the testimony of Mr. Merchandani in almost its entirety and finds as fact that the grinder, having been supplied with two extra brushes and three blades, was not and could not be considered to be "disposable" or "consumable" and more particularly so, only after 6-7 hours usage.
- 6) The fact that the cost of the grinder was "only" \$59.95 and this price was considered by Mr. Merchandani to be 'cheap' did not automatically relieve Builders Value Mart from the obligation to comply with any Guarantee in respect of the supply of that grinder or any other good or item under the Consumer Guarantees Act, and more specifically, the guarantees as to:-
- a) acceptable quality (Section 6 & 7)
  - b) fitness for the purpose (for which the particular grinder in question is commonly supplied ) (Section 8)
  - c) repairs and spare parts (Section 13)
- 7) The allegation that Mr. St. Hill had not used the grinder in the prescribed manner was mere speculation and remained unsubstantiated. There was no evidence that the grinder was used by Mr. St. Hill in a manner, or to an extent which was inconsistent with the manner or the extent of use that a reasonable consumer would expect to obtain from the grinder.

It is the Order of the Tribunal that Builders Value Mart forthwith refund Mr. Godfrey St. Hill the sum of \$59.95. No order is made as to damages for distress, inconvenience disappointment or vexation.

Dated 30<sup>th</sup> September 2005

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CHAIRMAN