

THE BARBADOS CONSUMER CLAIMS TRIBUNAL

In the matter between:

Patricia Williams

COMPLAINANT

AND

Avis Furniture Manufacturing Co. Ltd

RESPONDENT

APPEARANCES

Mr. Roger Barker
Lofti Laabed

Public Counsel for the Complainant
Avis Furniture Manufacturing Co. Ltd; Respondent

QUORUM

Jefferson Cumberbatch
Milton Pierce
Nicole Roachford
Janel McCollin
Deighton Babb

Chairman
Deputy Chairman
Member
Member
Member

HEARING DATE

12th January 2018

Introduction

1. On December 3, 2008, the Complainant agreed with the Respondent for the construction at his workshop of, as they both termed it, a wardrobe (it was actually a frame to be placed over the existing configuration of the Complainant's bedroom wall) and a mirror. This agreement was not reduced to writing but there was an agreed illustration of the proposed structure. It is also not in dispute that it would have been made of mahogany and that the price to be paid by the Complainant would be BDS \$2,600, of which \$1,000 was payable as a deposit, with the outstanding sums to be paid by her on the supply of the finished product by the Respondent.

2. This matter has taken some time to be resolved. When it was first referred to the Tribunal, it was perceived, based on the representations of the parties and the then Public Counsel, that it might be appropriately settled between the parties without a trial and thus assistance was sought from the Office of Public Counsel in having the matter resolved to the satisfaction of all concerned.

3. However, these efforts all came to naught. Consequently, the matter was returned to the Tribunal for its determination and disposal. On January 12, the Tribunal commenced the hearing of this dispute with a visit to the home of the Complainant so as to view the frame that was supplied.

4. The members of the Tribunal were of the unanimous view that the frame was ill fitting and that the Complainant was unable to use it for its intended and agreed purpose or at all.

5. In her sworn evidence during the hearing, the Complainant declared that after the agreement had been made, the Respondent had come to her place of residence on no fewer than four occasions to measure the space allotted for the frame.

6. She also affirmed that when the Respondent eventually delivered the frame, it did not fit the space. Nevertheless, the Complainant paid the balance of the contract price, although she also had the Respondent sign an acknowledgement that the supply of the service was not yet complete and that more work was to be done.

7. In his defence to the Complainant's claim, the Respondent averred that he was responsible for the construction of the frame and he had patently completed that. In his opinion, whether the frame fitted the designated space or not was not

his concern. Given the uncontested evidence of the Claimant as to the number of the Respondent's visits to her home for the purpose of taking measurements, the Tribunal rejects this view of the agreement.

8. He further blamed the misfit of the frame to the wall on the fact that the wall is not flush, an assessment that corresponds precisely with the Tribunal's examination at the Claimant's home, but a fact that should have been patent on any examination by him.

9. In the opinion of the Tribunal, the claim of the Complainant is based squarely on the failure of the Respondent to comply with the guarantee of fitness for purpose as is prescribed in section 30 of the Consumers Guarantees Act and that he would have used reasonable care in performing the service. See section 29 of the same statute.

10. The Tribunal is persuaded that there was a failure to comply with both of these guarantees by the Respondent and that therefore the Complainant is entitled to redress under the Act.

11. In this regard, the relevant rule is to be found in section 33 (b). According to this provision, where relevant:

"Where a service supplied to a consumer fails to comply with a guarantee set out in any of sections 29 to 31, the consumer may, ...where the failure cannot be remedied or is of a substantial character within the meaning of section 37,

- (i) subject to section 36, cancel the contract for the supply of the service in accordance with section 38; or*
- (ii) obtain from the supplier damages in compensation for any reduction in value of the product of the service below the charge paid or payable by the consumer for the service..."*

12. It bears reminder that under the Act a failure to comply with a guarantee may be of two types, depending primarily on the failure's probability of remediation. It is the Tribunal's view that the failure here is not capable of being remedied since, in accordance with the statutory definition, the service *would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure [Section 37(a)]*, is of such a nature or quality that the product of the service cannot be expected to achieve any particular result made known to the supplier and finally, the product cannot easily and within a reasonable time

be remedied to make it fit for the particular purpose or to achieve the particular result..." [Section 37(c)].

13. As a result, we find that the Complainant is entitled to cancel the contract and, in accordance with section 39(1), to recover from the supplier Respondent a refund of any money paid in respect of the service.

14. Finally, insofar as the ultimate disposal of the frame is concerned, we hold that while section 23 (2) stipulates that where the consumer exercises the right to reject goods, it is the consumer that shall return the rejected goods to the supplier, this is to be read subject to subsections (a)(i) and (ii). We hold that that the second provision applies here and that because of the size of the frame, it cannot be returned or removed or transported without significant cost to the consumer and therefore the supplier is obliged to collect the goods at his own expense.

Disposal: The complainant is entitled to a refund of BDS\$2,600 from the Respondent and the Respondent must collect the offending product from the home of the Complainant. We are now prepared to hear discussion between the parties on the mode of refunding the Complainant by the Respondent.

J. Cumberbatch.....

M. Pierce.....

J. McCollin.....

N. Roachford.....

D. Babb.....