

**BETWEEN**

**ABL**

APPLICANT

**ABM**

SECOND APPLICANT

**AND**

**ZYS Ltd**

RESPONDENT

Date of Order:

16 May 2013

Referee:

Referee Edwards

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the correct respondent in this matter is ZYS Ltd. LI accepts notice on behalf of the company. LI had originally been named as a respondent in this matter. LI is struck out as he is not personally liable for the debts of the company. ZYS Ltd is to pay the amount of \$2,565.00 to ABL & ABM by no later than 24 May 2013. ZYS Ltd, at its own expense, is to arrange for the Pulse settee to be uplifted from ABL & ABM, at a time convenient for both parties, by no later than 1 June 2013.**

## **Facts**

[1] ABL and ABM viewed furniture online sold at ZYS Ltd. They were interested in two models, the X and the Y settings. They then viewed the pieces in store and took measurements to ensure that sizing was correct. They returned to the store on 3 February 2013 and placed an order with LI. When ordering, they stated they wanted two 2.5-seater X sofas and one Y setting. The parties agreed on a price of \$5,900 for the pieces chosen.

[2] On delivery, ABL queried why they did not have the full Y setting. He was advised by LI that he had been supplied pieces in accordance with the order and that, as per the invoice, they had only ordered the Y settee, not the full setting. There were no issues with the X order.

[3] As the parties have been unable to resolve the matter, ABL and ABM claim for a refund of the price paid for the Y settee and for the contract for sale and purchase of that item to be cancelled.

## **Issues**

[4] The issues to be determined by the Tribunal are as follows:

- (i) Did the goods supplied by ZYS Ltd correspond with the sample or demonstration model?

- (ii) If not, are ABL and ABM entitled to cancel the contract and obtain a refund of the purchase price?

## **Decision**

*Did the goods supplied by ZYS Ltd correspond with the sample or demonstration model?*

[5] LI states that ZYS Ltd is a furniture manufacturer and as such can manufacture any of the pieces in a suite individually to order. He states that when ABL and ABM placed the order they pointed to the 2.5-seater part of the Y setting and said they wanted the “Y couch”. LI therefore assumed they only required the 2.5-seater portion. ABL and ABM agree they may have referred to the setting as a couch, as to them it is a corner unit couch, however they were unaware that the pieces to the Y setting could be purchased individually as it was not marked as such. At the time of purchase, there was no mention on the price tag or on the website that pieces could be sold separately. The price tag simply states “Y setting \$3,850”. LI has since amended his price tag and website to show that pieces can be purchased separately. As the Y was not marked as a suite where the pieces could be sold separately, I find it was not reasonable for LI to assume that his customers were aware that it could be sold separately without specifically discussing it or marking it clearly on the price tag. It would therefore have been prudent for LI to clarify which pieces ABL and ABM wanted.

[6] LI states he confirmed what ABL and ABM wanted by writing on the invoice the words “Y settee”. ABL and ABM claim they did not notice that LI had written “settee” on the invoice, and if they had, they were not familiar with the term and would not have realised that it meant they were only getting the 2.5-seater part of the suite. LI stated that ABL and ABM as well as other members of the public, often used the wrong terms when referring to items of furniture. It would therefore have been prudent to clarify what ABL and ABM meant by the use of the word “couch” to ensure that the correct pieces were ordered. I also note that the word “settee” on the invoice is written in the same handwriting as the price tag, which states “setting”, and that at first glance, as the words are similar, purchasers may not have picked up that there was a difference.

[7] LI also states that the price he gave for the Y indicates that only one piece was being purchased. The full setting price was \$3,850. The amount stated on the invoice is only \$2,565. ABL and ABM however believed they were getting a discount for purchasing several pieces at one time. As customers are not aware of the retailer's margins, it is not reasonable to expect that a customer would be aware of a potential problem by way of the price, as discounts on retail purchases are common in today's market.

[8] I have considered the points put forward by LI, however I find he had a responsibility to ensure that the intentions of his customers were clear and that he would be able to provide them with exactly the product that they wanted. Under s 10 of the Consumer Guarantees Act 1993, ZYS Ltd has an obligation to ensure that goods supplied by reference to a sample or demonstration model correspond with the sample or demonstration model. In this case, I find the Y suite was being sold as a full setting as per the demonstration model on the shop floor, and that there was nothing to alert customers to the fact that they could purchase pieces separately. It was therefore reasonable for the purchasers to believe that, when they indicated they wanted the "Y couch", that they would be receiving the full setting. As ZYS Ltd failed to ensure that the intentions of their customers were clear, and as they failed to supply them with a suite that corresponds with the demonstration model, I find them in breach of a guarantee under the Act.

*If not, are ABL and ABM entitled to cancel the contract and obtain a refund of the purchase price?*

[9] Under s 18 of the Act, when a supplier is in breach of a guarantee, the consumer may require the supplier to remedy any defects within a reasonable period of time. However, if the supplier fails to do so, the consumer may reject the goods, cancel the contract and obtain a refund of the purchase price. As ZYS Ltd have failed to remedy the defect noted above within a reasonable period of time, I find ABL and ABM are entitled to cancel the contract and obtain a full refund of the purchase price. The goods are to be returned to ZYS Ltd at the expense of ZYS Ltd.