

BETWEEN

ABO

FIRST APPLICANT

AND

ABP

SECOND APPLICANT

AND

ZYP

RESPONDENT

Date of Order:

2 April 2013

Referee:

Referee Haronga

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the Applicants' claim is dismissed.

Facts

[1] ABO and ABP bought a second-hand washing machine from ZYP on Trade Me for \$150 plus delivery fee of \$40. One month later the machine stopped working. They asked ZYP to either replace or repair the machine which he declined. They now claim \$115 compensation.

Issues

[2] The issues to be decided are:

- (i) Whether ZYP has met his contractual obligations regarding the machine he sold; and
- (ii) If not, whether ABO and ABP are entitled to compensation.

Decision

[3] Firstly, I find that ZYP has met his contractual obligations regarding the washing machine he sold.

[4] ABO and ABP say that while they accept the machine was second hand, they expected it to last longer than one month. I have first considered the relevant law in this matter. As the sale was by auction on Trade Me, the Consumer Guarantees Act 1993 does not apply. ZYP says he is in trade so therefore the Sale of Goods Act 1908 ("SGA") applies. Under s 16 of the SGA, there is a warranty that goods sold are fit for purpose at the time of sale. In this instance, the washing machine was fit for purpose as it worked for the first month of use. I have next looked at merchantable quality under s 16 (b), which provides that goods must be able to be used for normal purposes. Again, the machine was in working order when sold and worked for one month afterwards.

[5] ABO and ABP say that they accept they bought the machine on a “buyer beware” basis but feel that they should have had more than one month’s use out of it. However, I consider that by buying a second hand machine around eight to ten years old on an auction site, they were taking the risk that it would not be durable. While they say it would be unfair if they are not compensated given the short use of the machine, I consider it would be unfair to ZYP to have to repay some of the purchase price when he has met his obligations as the seller.

[6] Given my finding in [3] above, the claim cannot succeed and nothing is to be payable with regard to this claim.