

BETWEEN

AGS

APPLICANT

AND

ZTW

RESPONDENT

Date of Order: 15 January 2014

Referee: Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the respondent, ZTW, is to pay the sum of \$988.00 directly to AGS within ten days of the date of this order; and AGS are to deliver the hover mower to ZTW's shop within seven days of receiving the above amount.

[1] AGS purchased a hover mower from ZTW for \$988.00 on 25 January 2013. They had ordered the mower after reading a brochure for Phoenix mowers given to them by ZTW.

[2] AGS say that on their first use, some three weeks after the purchase, the mower was running unevenly and was difficult to start. They returned it to the shop at the end of February for repairs (ZTW said it ran fine after a throttle adjustment). When they received it back in mid-March, AGS say it was running no better and they returned it again. At this time they say the brackets attaching the handle to the mower had also started to buckle and deform and they were concerned about their strength.

[3] After the second return, the mower was in the shop for 6-8 weeks and ZTW strengthened the handles and put on a longer cable. He says he discovered a damaged blade during this time but replaced it at no cost to AGS.

[4] When ZTW attempted to return the mower to AGS in June, they rejected it and requested a full refund. In the meantime, they had spent \$120.00 on repairs to their old Flymo and claim this amount, the purchase price of the Phoenix hover mower of \$988.00 and the filing fee of \$45.00.

[5] During the adjournment period, AGS collected the mower from the shop and took it to another mower shop for inspection. It was again hard to start, although the mower shop owner got it going after applying CRC. AGS report trying it at home twice since then and say that it is not starting again and they have not been able to use it for more than 10 minutes at a time.

[6] The relevant law is the general law of contract and the Consumer Guarantees Act 1993 (CGA).

Is the mower of acceptable quality as per sections 6 and 7 of the CGA?

[7] I find that the mower is not of acceptable quality as it is not free from minor defects, durable or fit for the purpose for which hover mowers are commonly supplied. There have been ongoing problems with the starting and running of the mower, to the extent that AGS have had little use of it. ZTW contends that these problems were remedied by him. However the brackets replaced by ZTW have also buckled and I accept that the mower still has intermittent starting problems.

[8] This is supported by the evidence of XY, a lawnmower shop owner, who inspected the mower in January 2014. He stated by phone at the hearing that the mower would not start when he first tried it. Although he did get it going after applying CRC, this is consistent with AGS's reported experience over many months.

[9] ZTW has offered possible explanations for each reported failure (to start) but these are not proven and they do not change the fact that there have been issues since AGS purchased the mower. ZTW has also stated that he told AGS (around the time he gave him the Phoenix brochure) that he would not recommend buying that type of mower because of performance issues. However it is not possible to contract out of the Consumer Guarantees Act and ZTW, as the supplier in trade and the person who introduced AGS to the product, is still liable where the product has not met the statutory guarantees.

[10] ZTW has further stated that he discovered a broken blade, presumably caused by contact with a solid object, when the mower was returned to him the second time. He produced a part at the hearing but as AGS said they have never been told of a broken blade until the hearing, I cannot accept that as an established cause of any problems with the mower.

[11] With respect to the brackets, ZTW contends that these are strong enough, as they do not bear any weight and are not subject to any pressure when the mower is in use because of the direction of the handle. He suggests that the buckling has been caused by undue force and/or use of the handle in the wrong position. This is speculative and AGS deny much use

of the mower at all. XY states in his letter that the brackets “are not made of heavy duty/industrial quality” (as stated in the brochure).

[12] While I accept ZTW’s point that the brackets will not be subject to pressure if the handle is used in the correct direction while mowing, I also accept XY’s and AGS’ view that the brackets are not heavy duty and industrial quality in terms of strength. While I cannot conclude that they make the mower actually unsafe, as argued by AGS, I am of the view that AGS’ concerns about safety, arising from the buckling of the brackets, are reasonable given the nature of the goods (safety being an important consideration).

Are the failures of substantial character as per section 21 of the CGA?

[13] I find that the combination of the above issues, together with the length of time over which they have occurred mean that the failures are of a substantial character in that a “reasonable consumer, fully acquainted with the extent and nature of the failure, would not have acquired the goods” (section 21, CGA).

What remedies are available to AGS?

[14] For all the above reasons, AGS are entitled to reject the mower under section 22, CGA, and are entitled to a refund of the purchase price of \$988.00 (section 23(2)). Although I accept that some alternative for mowing their lawns was necessary since the AGS purchased the Phoenix mower, I do not consider to be the \$120.00 spent repairing their old Flymo, a consequential ‘loss’ now that a refund has been awarded – awarding that amount would be putting AGS into a better position than they were prior to purchasing the Phoenix mower and therefore no ‘loss’ has been suffered through that expense. The filing fee is not able to be awarded under section 43 of the Disputes Tribunals Act 1988.