

**BETWEEN**

**AH**  
APPLICANT

**AND**

**ZS Ltd**  
RESPONDENT

Date of Order:

11 July 2014

Referee:

Referee Perfect

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**ORDER OF THE DISPUTES TRIBUNAL**

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## **The Tribunal hereby orders that the claim is dismissed**

### **Facts**

[1] AH purchased a second-hand windscreen from ZS Ltd, ordering a window regulator at the same time. ZS Ltd quoted \$100 for the windscreen and \$60 for the regulator. AH paid \$160.00 but was later refunded \$60.00 when the regulator was not provided.

[2] AH engaged a third party, recommended by ZS Ltd, to install the windscreen but the installer advised that he was concerned about damage in the driver's screen. AH therefore took the windscreen to a WOF centre and was advised there that the chip marks were acceptable.

[3] The next day, in the process of installation, the installer discovered a crack which has now extended significantly from the edge towards the middle of the screen. The installation was ceased but AH had to pay \$80.00 for the installer's services.

[4] AH claims \$100 refund for the screen plus \$80 for the installer's fee and \$45 for the Disputes Tribunal filing fee.

### **Issues**

[5] The issues to determine are:

- (a) Whether or not there was a crack in the windscreen when it was sold to AH.
- (b) Whether AH is entitled to a remedy under the Consumer Guarantees Act 1993.

### **Law and Decision**

*Was there a crack in the windscreen when AH bought it from ZS Ltd?*

[6] I find that there is insufficient evidence to establish that the crack was likely to have been already existing at the edge of the screen when it was sold to AH. AH contends that he did not remove the screen from the back of his car until it was to be installed, the WOF centre being able to inspect it in place in his car. AA for ZS Ltd disputes that this would have been possible and argues that AH did not handle or store the windscreen carefully.

[7] AH also presented evidence to show that the process of removing a windscreen from another car can cause damage to the edge of the screen consistent with the damage that has increased to a crack in the screen itself. AA disputed this and noted that AH checked the windscreen before taking it away and that the installer and WOF centre identified no crack (the installer raised concerns about chip/s in the middle of the driver's screen – a different issue which was cleared). This appears to be because it was only when the installer scraped away the resin around the edge of the windscreen that a crack became visible.

[8] By definition, this means that it is impossible to tell when the crack occurred. It is possible that it occurred when the windscreen was being removed by ZS Ltd. However it is equally possible that it sustained damage while being moved and/or transported by AH, or handled by the installer (AH demonstrated the process of removing the resin in the hearing to show that, in his view, it is unlikely that the box-cutter used could cause a crack – AA disputed both that this is the method used and his conclusion). There is not enough evidence to satisfy the burden of proof for AH's claim that he was sold a faulty windscreen.

[9] AH further argued that, even if the crack had not been present when the windscreen was sold to him, the Consumer Guarantees Act provides a guarantee that the goods will be durable. In my view, this cannot be stretched to mean that an item made of glass will not crack or break. Clearly the crack must have been caused by some kind of force at some point, however minor, and the guarantee does not apply in that situation.

[10] For all the above reasons, no remedy is available to AH and the claim must be dismissed.