

BETWEEN

**DX
APPLICANT**

AND

**VC Ltd
RESPONDENT**

Date of Order:

27 January 2017

Referee:

Referee M A Urquhart

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that VC Ltd is to pay DX \$1,596.00 by 5pm on Wednesday 17 February 2016. DX is to return the 2 piece Chaise natural Abaca L/H lounge suite that was purchased from VC Ltd on the 31st January 2013 to the branch of VC Ltd located at A Town, by 5pm on Wednesday 17th February 2016 at her cost.

Facts

[1] DX bought a 2 piece Chaise natural Abaca L/H lounge suite (“the couch”) from VC Ltd on the 31st January 2013 at the A Town branch. On the bottom of the receipt from that sale are the handwritten words “no returns on furniture”. Since purchase, 3 wooden slats that form the support for the cushions of the couch have broken, and one further slat has pulled away from its nail fastening. DX contacted VC Ltd on the 11th of August 2015 via email asking for a resolution to the broken wood. VC Ltd replied to DX on the 20th of August 2015 stating it would not be taking any further action. DX initiated proceedings with the Disputes Tribunal. VC Ltd offered to repair the couch in November 2015.

[2] DX is claiming \$1,596.00 which is a full refund of what she paid for the couch.

Issues

[3] The issues to be decided are:

- a. Is the couch of an acceptable quality? Has it been used in an inconsistent manner by DX?
- b. If not, is the failure substantial?
- c. If not, was VC Ltd given the chance to remedy? Was this within a reasonable time?
- d. Did the words on the receipt “no returns on furniture” mean that DX could not return the couch?
- e. Does DX have the right to reject the couch and claim a refund?

Is the couch of an acceptable quality? Has it been used in an inconsistent manner by DX?

[4] The relevant law is the Consumer Guarantees Act 1993 (“the Act”). Section 6 of the Act requires that goods supplied to a consumer are of an acceptable quality. Section 7

describes acceptable quality as the goods being (amongst other things) fit for the purpose for which those goods are commonly supplied, and also durable. Subsection 4 of s7 states that any guarantee will not extend to cover any use of the goods that is inconsistent with the use that a reasonable consumer would expect.

[5] DX said that the first wooden slat broken within the first 12 months of use. She said that by the time she contacted VC Ltd's customer service centre in August 2015, the damage had gotten worse with more broken slats and wood that had pulled of its nail fastening. She said that no one had jumped on the couch, and that it had only been used to sit on by normal sized people. DX said that she would not have expected a couch of this type which she had paid nearly \$1,600.00 for to have broken in this way. She said that her father who was a cabinet maker had told her that the wood had knots in it and was always going to fail at the points that it did. She said that this was not obvious when you looked at the couch in the store, or when she looked under the cushions of the couch at the slats.

[6] AA, representing VC Ltd, said that the couch had a 12 month manufacturer's warranty for things like this, and that the couch was well outside that warranty. He said that in any event, the places where the breaks had happened were more consistent with someone jumping or placing excessive weight in the specific areas of the couch where the breaks occurred. He said that this meant that the breaks were due to abnormal wear and tear, not a failure of acceptable quality. He said that a couch like this would not be expected to have broken wood in it after 2 and a half years of normal use, and that this problem had not occurred with any of the other products from this same manufacturer. AA said that this was not a couch that was made by mass manufacturing methods, but was individually hand crafted.

[7] The decision I have to make is whether or not the damage to the wood was by an inconsistent use or not. On the one hand, I accept that the broken pieces are in random places and have snapped naturally rather than along any kind of man made join or cut. I understand the reasoning behind AA's submission that this is evidence of the breaks being caused by someone forcing the wood excessively.

[8] On the other hand, I would expect to see tearing of the black fabric under the slats if that kind of force had been applied. I am also concerned that two of the breaks are very near the wooden edge of the couch where the slats are at their strongest, and that a further slat has pulled out from its one nail which has been hammered in very near one edge of the wooden slat rather than the middle.

[9] I am satisfied that it is more likely than not that the damage was caused by a failure of the wood used because of hidden defects in the wood and construction method, rather than any kind of inconsistent use by DX. By his own admission, AA said that the couch should not be failing like this after 2 and a half years of normal use. AA said this couch was hand crafted rather than mass produced. Therefore I would have expected a better quality of manufacture in both the choice of the wood used and the construction techniques. This means the couch is not durable enough for the time period and usual usage that a couch of this nature should expect to provide.

[10] Whilst there is a 12 month manufacturer's warranty on the couch, this warranty is over and above the rights DX has a consumer under the Act. The warranty on the couch does not mean that after 12 months DX can't claim for a breach of the acceptable quality guarantee under the Act. It means that DX must follow the Act's provisions for any claim rather than using her contractual rights under the express terms of the manufacturer's warranty.

[11] For these reasons I find that the couch is not of an acceptable quality.

If not, is the failure substantial?

[12] The Act states that if the consumer would not have bought the goods had they known the extent of the failure, or the goods are substantially unfit for the purpose they are commonly supplied for, then the failure is substantial (s21).

[13] DX said the failure was substantial because she had had to replace the couch. This was due to the couch breaking all the time and being uncomfortable to sit on.

[14] AA said the failure was not substantial because the couch could still be used, and it was able to be repaired.

[15] I agree with AA. I find that the failure is not substantial.

If not, has VC Ltd been given the chance to remedy?

[16] DX said that she went back the A Town branch after a year and spoke to the person she bought the couch from about the broken wood. DX said that she was told that because of the handwritten words on the receipt and the 12 month warranty from the manufacturer, DX could not return the couch. DX said that after having more slats break and pull apart

over the next 18 months, she decided to approach VC Ltd again. DX said that this is when she sent the email to VC Ltd's customer service centre.

[17] AA said that the staff member at A Town had no recollection of anyone enquiring about returning this kind of couch, and there was no written record of this enquiry. AA agreed that the enquiry to the customer service centre was DX giving VC Ltd the chance to remedy, but that they had not done so because they believed that they were not legally obliged to. He said that in any event they did offer to repair the couch in November 2015.

[18] DX has given VC Ltd at least one chance to remedy via her email request to the customer service centre. That alone is enough. However I am satisfied that she also went into the A Town store to speak to the staff there after the first slat broke, because it is probable for that to have happened. On both occasions VC Ltd refused to do anything about the couch. On the second occasion the offer to fix the couch came 3 months after the initial email from DX. This is only after DX initiated legal proceedings and spoke with VC Ltd's directors. I am not satisfied that this is a reasonable time for DX to have waited for a resolution from VC Ltd.

[19] I find that DX did give VC Ltd the chance to remedy, and that they have refused to do so within a reasonable time.

Did the words on the receipt "no returns on furniture" mean that DX could not return the couch?

[20] The parties agreed that the words on the receipt reflected VC Ltd's policy on change of mind refunds, and was not an attempt to contract out of VC Ltd's obligations under the Act.

[21] DX said that the VC Ltd staff member had told her that because of the words and the 12 month warranty, she was not able to return the couch.

[22] AA said that the staff member did not remember this conversation.

[23] Given that I have already found that this conversation is likely to have taken place, I am satisfied that the staff member did tell DX that she could not return the couch. However, this was an incorrect thing to say. DX was able to return the couch under the Act's provisions, as she had not changed her mind.

[24] I find that the words on the receipt “no returns on furniture” did not mean that DX could not return the couch.

Does DX have the right to reject the couch and claim a refund?

[25] The Act says that a consumer who wants to reject goods and cancel the contract after a refusal to remedy must inform the supplier of that wish and the reasons for it within a reasonable time from the sale of the goods. The goods must be returned to the supplier at the customer’s reasonable cost.

[26] DX said that she asked for a refund on the 7th of October 2015. After VC Ltd’s refusal to remedy she had been to see the Citizen’s Advice Bureau to get further legal advice which lead to this request.

[27] AA said that this was an unreasonable length of time to have taken to ask for a refund as the couch had been with DX for 2 and a half years.

[28] As the wooden slats have broken from hidden defects, rather than visible faults a reasonable consumer could see in the wood, it is acceptable for DX to have asked for a refund at this point because the only way she could have known about the faults was when the wood broke. Given the durable nature of a couch which affects the time limit for acceptable quality claims, the conduct of the staff member at the A Town store, and VC Ltd’s continuing refusal to remedy, I am satisfied that DX has not taken an unreasonable amount of time to ask for a refund.

[29] I find that VC Ltd must give DX her money back for the couch.

[30] As the couch is movable in two pieces, I find that it is not unreasonable for DX to return this couch at her cost as the Act requires.