

**IN THE DISPUTES TRIBUNAL**

**[2017] NZDT 1015**

**BETWEEN**

**EV  
APPLICANT**

**AND**

**UE Ltd  
RESPONDENT**

Date of Order:

1 June 2017

Referee:

Referee: Perfect

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the respondent, UE Ltd, is to pay the sum of \$2799.00 directly to EV on or before 22 June 2017; and EV is to make the lounge suite available for collection by UE Ltd within four weeks of the above payment being made (if it is not collected within this timeframe upon being made reasonably available, EV may dispose of it as she wishes).**

## **Facts**

[1] On xx date EV purchased a leather lounge suite, consisting of a 2-seater and a 3-seater couch, from UE Ltd trading as UE Furniture ('UE') for \$2700.00. The suite had been discounted from an original retail price of \$6000.00 to \$3000.00 and was reduced further to \$2700.00 for EV because it was a floor model and was sold "as is – no return available". The sales invoice also stated "sold as is – customer aware of scratches and marks. No refund available – checked over and photos taken". EV paid an additional \$99.00 for a waxed leather cleaning product that she used on the new suite.

[2] EV said when they unwrapped the suite at home they noticed a new large scratch that had not been there before and that one foot was missing and one foot was broken on the 3-seater. Approximately three months later they were sitting on the couch when they heard a loud crack and it transpires that one of the supporting pine beams inside the 3-seater had cracked.

[3] When UE Ltd was notified of the crack in late November, they sent a repair technician to inspect the suite (this occurred on xx date). In xx, UE Ltd offered a "one-off frame repair, at no charge out of goodwill" – its email stating that this was in spite of the fact that the suite was sold "as is, no return available". EV had already told UE Ltd in November that she did not believe the frame was of sufficiently solid construction for a repair to remedy the issue UE Ltd with the suite and the offer was therefore declined.

[4] EV claims a full refund, stating she and her family have no confidence in the proposed repair given the materials used in the construction of the suite and the break in the frame that they have already experienced.

## **Issues**

- Does the Consumer Guarantees Act 1993 ('CGA') apply?

- Does the lounge suite meet the guarantee of acceptable quality provided for in sections 6 and 7 of the CGA?
- Is any failure of guarantee a failure of substantial character?
- Is EV entitled to the remedy of a refund?
- What manner of rejecting the goods is appropriate under section 22 of the CGA?

*Does the lounge suite meet the guarantee of acceptable quality provided for in sections 6 and 7 of the CGA?*

[5] I find that the suite is not of acceptable quality as it is not free from minor defects and is not durable. UE Ltd has not disputed that the cracked beam is a problem with the 3-seater, saying that where this sort of failure occurs, it is often in the location of a knot in the particular piece of wood used. The dispute centres around the terms of the sale (addressed above), the extent of the failure and the appropriate remedy.

*Is any failure of guarantee a failure of substantial character?*

[6] I find that the cracked support beam is a failure of substantial character as it has occurred within a few months of EV taking possession of the suite and indicates a broader issue with the construction of the suite. Based on these factors, I consider that a reasonable consumer fully acquainted with the nature of the failure would not have purchased this suite.

[7] EV has presented a report from a cabinetmaker, Mr YY of XY Ltd, to the effect that the materials used in the suite's construction are lightweight and the workmanship is poor, with nails protruding and missing the pieces that are intended to hold it together.

[8] Mr YY appeared as a witness at the hearing and after questions from UE Ltd acknowledged that he has little experience with the manufacture of soft furnishings and could not offer expert opinion on what is 'normal' construction with a couch (UE Ltd says that the suite is constructed using normal industry methods, including the use of cardboard for holding down backing material).

## **Conclusion**

[9] Based on the above, I do not regard Mr YY's evidence as expert opinion on the manufacturing standards of lounge suites. However, I do consider that his opinion as to the strength of wood materials used in the construction of the suite is relevant and carries some

weight as he is familiar with the relative strength of different kinds of wood from his cabinet-making experience. EV has also provided many photographs of the underside of the couch/es which are consistent with Mr YY's views on the quality of the materials and construction.

[10] UE Ltd has argued that the cracked beam can be easily fixed and that this is what its repair technician recommended, estimating that the repair would cost them about \$600.00 and involve completely stripping down and repairing the frame. However, it has provided no evidence of this recommendation, or of its contention that the suite is constructed using normal industry methods and to a high standard. In my view, EV was justifiably wary of the offer to repair both because it was made as a "one-off, good-will" offer and also based on the wider quality issues in evidence. In any event, because of the finding that the failure is one of substantial character, EV can elect to reject the goods and this is the basis of her claim.

*Is EV entitled to the remedy of a refund?*

[11] I find that EV is entitled to reject the goods in accordance with section 18(3)(a), section 22 and section 23 of the CGA. Section 23 enables EV to choose between refund or replacement and she has elected and claims a refund, which means a full refund of the amount paid for the suite, being \$2700.00. As the leather cleaner was used on the suite and its benefit has now been lost, the \$99.00 paid for the cleaner is awarded as a loss that was foreseeable as resulting from the failure of guarantee.

*What manner of rejecting the goods is appropriate under section 22 of the CGA?*

[12] As the goods are of a size and bulk that would make them difficult for EV to return without significant cost, I order that the suite be collected at UE Ltd.'s expense.