

**BETWEEN**

**EW Ltd**  
APPLICANT

**AND**

**UD**  
RESPONDENT

**AND**

**UDD Ltd**  
RESPONDENT

Date of Order:

17 May 2017

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 against both the first and second respondents.**

## **Facts**

[1] EWW's company, EW Ltd runs a pet beauty salon, pet accessories shop and pet boarding facilities, initially from two shop locations, and currently from one shop. In April 2016, EW Ltd purchased computer software and associated hardware from UDD Ltd to run an accounting and POS system for its first shop. EW Ltd also purchased eight CCTV cameras for the shop from UDD Ltd at that time.

[2] EW Ltd used these goods in its first shop for a few months, having some issues with the operation of the software system for which UDD Ltd provided technical support and training.

[3] In June 2016, EW Ltd purchased the same software and hardware system from UDD Ltd for its second shop that was just opening. Sixteen additional CCTV cameras were purchased from UDD Ltd for the second shop.

[4] Once the second shop was opened, EWW decided to close the first shop and she wished to move the first 8 CCTV cameras to the second shop. However, UDD Ltd's technician advised there was no need/room for further cameras at the second shop and she used another technician to uninstall them from the shop and reinstall them at her house. The cameras did not work properly once installed at EWW's house and she says both sets of cameras have, and have always had, issues with recording and playback function.

[5] In April 2016 EW Ltd paid \$2000.00 for the CCTV cameras and \$2875.00 for the POS system, and in June paid \$3500.00 for the CCTV cameras and \$2702.50 for the POS system, as invoiced by UDD Ltd. EWW of EW Ltd claims a full refund, on the basis that the functionality of all the goods is not satisfactory and is not what she expected and/or UDD Ltd promised.

[6] As the goods were invoiced separately on each occasion, the transactions have been treated separately and it was discussed with the parties at the first hearing, that while EW Ltd is a 'consumer' for the purposes of the Consumer Guarantees Act 1993 (CGA) in relation to the CCTV cameras (because CCTV cameras are goods which are 'personal, domestic and household in nature' and the parties did not contract out of the CGA), a POS system does not meet the definition of 'goods' in the CGA, so the Sale of Goods Act 1908 ('SOGA') applies with respect to the POS system.

## Issues

- What is the cause of issues with the first set of cameras that were moved from EWW Ltd.'s first shop to EWW's house, and do those issues constitute a breach of statutory guarantee under the CGA?
- Are both sets of cameras of acceptable quality and fit for the purpose for which they were sold, as per sections 6, 7 and 8 of the CGA?
- Did the contract for purchase of the POS system include UDD Ltd providing ongoing support and/or customisation of the software for EW Ltd.'s business?
- Is the POS system of merchantable quality as per section 16 of the Sale of Goods Act?
- What CGA or SOGA remedies, if any, are available to EW Ltd?

*What is the cause of issues with the first set of cameras that were moved from EW Ltd.'s first shop to EWW's house, and do those issues constitute a breach of statutory guarantee under the CGA?*

[7] I find that there is insufficient evidence to prove that the issues with the cameras experienced by EWW after they were moved were caused by some inherent defect with the cameras as opposed to the uninstalling and reinstalling operations. As they were moved by a supplier other than UDD Ltd or its technician, UDD Ltd cannot be liable for any problems associated with the move. The sensitivity of the alarm system has not been shown to be more than the expected occasional occurrence and/or an issue with the settings rather than an inherent fault with the system.

[8] The recording and playback issues, which EWW says pre-dated the move and occurred with both sets of CCTV cameras, not just the ones that were moved, are addressed below.

*Are both sets of cameras of acceptable quality and fit for the purpose for which they were sold, as per sections 6, 7 and 8 of the CGA?*

[9] I find that EW Ltd has not proven any breach of guarantee on the part of UDD Ltd with respect to the CCTV cameras. The parties dispute whether or not the playback issues with the software used to view the camera content had been notified to UDD Ltd prior to the Tribunal proceedings, with EWW saying she had previously discussed it with UDD Ltd's

technician, Mr XX. However, Mr XX appeared as a witness at the hearing and said that the first he heard of this issue was at the first hearing, and UDD Ltd's, Mr UD similarly says that he first heard about this issue as part of the Tribunal proceedings.

[10] The playback and 'real-time' issues were discussed at length between the parties and with the witness, Mr XX, at the third and final hearing. Mr XX was able to demonstrate the cameras' display working in real-time on his own phone and stated that this showed that the issue was to do with the software technology EWW was using and/or her phone and network. He stated that her phone was using 3G technology and that the software required 4G technology. He also pointed out that the phone software used for viewing the CCTV cameras remotely was not sold to EWW by UDD Ltd, rather is downloaded separately by the user, and like all technology must be kept up-to-date with upgrades and/or patches as required.

[11] All the issues related to recording and playback functions that EWW has raised as part of this process relate to the functionality of the software she uses on her phone to operate the CCTV cameras remotely. I am satisfied from all the evidence received from both parties that these issues are not CGA issues of acceptable quality or fitness of purpose of the camera systems purchased from UDD Ltd but are more to do with the technology on her phone. Mr XX's demonstration of her shop cameras operating in real-time on his phone was without any problems of the kinds EWW is experiencing on her phone and this is compelling evidence that the issues are not with the cameras themselves.

*Did the contract for purchase of the POS system include UDD Ltd providing ongoing support and/or customisation of the software for EW Ltd.'s business?*

[12] I find that the contract did not include formal ongoing technical support or customisation of the software for EW Ltd business, although UDD Ltd undertakes in its written terms and conditions to fix any program errors found in the POS system. The only paperwork provided at the time of sale of all the goods were the four invoices and EWW says she did not receive a copy of any terms and conditions at the time. She also says that she asked for a written contract because she had been told that Mr UD would change the POS system functions to better suit her shop's needs. He denies that this was the case – he says the POS software was designed by his company some years ago and is used 'as is' in many restaurant and retail operations.

[13] Because of this disagreement and the absence of a written record of any agreements additional to the straightforward sale/purchase of the goods, UDD Ltd had no ongoing

obligations except for statutory guarantees and obligations and their standard maintenance support.

*Is the POS system fit for the purpose for which it was supplied and of merchantable quality as per section 16 of the Sale of Goods Act?*

[14] I find that the POS system does not breach the implied warranties contained in section 16 of the SOGA in relation to either fitness for purpose or merchantable quality. Mr UD demonstrated the POS software system to EWW prior to her first purchase of it in April 2016 and on that basis, she decided to purchase it for her shop (although she says above, she expected some changes, but this has not been established as a condition of the contract). This means that she examined the goods as per section 16(b) and the implied condition as to merchantable quality therefore does not apply. However, even if it did, EW Ltd used the POS system in its first shop from April 2016, and then, in June 2016, decided to purchase a second copy of exactly the same system from UDD Ltd for its new shop.

[15] EWW says this was because she was still relying on Mr UD's promises to solve the problems they were having and discounts for the second lot of CCTV cameras were based on purchasing them jointly with the software system. However, Mr UD says there were no more than minor teething issues with the software in the first few months before the second purchase, and I note there is no written correspondence at all that shows a history of complaints or notification of problematic software issues by EWW. Mr UD attended EW Ltd premises to show its staff how to use the system and says there were training problems to do with the users of the system rather than the system itself. Mr UD says EW Ltd did not seek to reject the software system or raise major problems with it until after the dispute about the CCTV cameras arose when UDD Ltd declined to repair the reinstalled cameras for free (after they had been moved by another supplier).

## **Conclusion**

[16] Given the above, I find that there were no more than minor operation/training issues with the software system from the outset because it does not make sense that EW Ltd would spend a further \$2702.50 in June on the same system if they were experiencing the degree of issues with it that EWW says they were, even if they would receive a discount on cameras.

[17] EW Ltd also produced a report from an IT company she engaged during the hearing process to inspect and report on UDD Ltd.'s RRMS POS system. That report is strongly

worded in its condemnation of the POS system on many fronts, stating that “there are bugs, random error messages, and design problems across all software components”. It says that the key component (point of sale) failed to work during their on-site and remote access evaluation of the system.

[18] The report goes into detail about each aspect of the system’s function and this was responded to by Mr UD at the second hearing via a demonstration on his laptop of each of the report’s criticisms. Mr UD was able to demonstrate at the hearing an adequate functionality on each of the points raised in the report to a degree that effectively refuted the report’s findings. He says that the report writers were not sufficiently familiar with the use of the system and was able to show how, when mis-used, error messages would be the result.

[19] For this reason, in spite of the strong findings of the report, and when considered in combination with the issues of timing, lack of written evidence of problems after the first purchase, and EW Ltd.’s purchase of a second system some months after the first, I give little weight to the findings of the report presented by EW Ltd. The findings are however consistent with both parties’ view that user training is important in operating the software correctly.

[20] I find that the system was therefore of merchantable quality and fit for the purpose it was intended because it was decided on after demonstration of its functions and it was purchased again some months after it had been installed and used daily in the first shop.

*What CGA or SOGA remedies, if any, are available to EW Ltd?*

[21] For all the reasons above, I find that no remedies are available to EW Ltd and the claim is dismissed against both respondents.