

BETWEEN

GL
APPLICANT

AND

SOO Ltd
RESPONDENT

Date of Order:

15 June 2018

Referee:

Referee: Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that:

- a. **SOO Ltd is to pay the sum of \$4850.00 directly to GL on or before 6 July 2018; and**
- b. **Ms GL is to deliver (by making available for collection) the SOO tent to SOO Ltd within two weeks of the above payment being received.**

Facts

[1] Ms GL purchased a tent from SOO Ltd ('SOO') in December 2017. She intended to live in the tent with her two sons while their new house was being built. She received the tent on 11 December 2017 and erected it just prior to Christmas. In early January 2018 she took photos of various minor defects and communicated with a friend about the size of the tent.

[2] In late January she wrote to SOO outlining the defects and the issue with the size of the tent. SOO acknowledged that, at some point, the 400sqft size noted on the website had been incorrect, but did not accept that a refund was warranted.

[3] Ms GL claims a refund of the \$4850.00 purchase price of the tent under the Consumer Guarantees Act 1993 ('CGA').

Issues

[4] The issues to determine are:

- a. Did the SOO tent comply with any description given and was it of acceptable quality?
- b. What remedy, if any, is available to Ms GL?

Did the SOO tent comply with any description given and was it of acceptable quality?

[5] Section 9 of the CGA provides that where goods are supplied by description to a consumer, there is a guarantee that the goods correspond with the description. Ms GL purchased the tent after viewing SOO's New Zealand website and talking briefly with Ms OS from SOO on the phone.

[6] Ms GL said that she took note of the floor area of the tent when she originally looked at the tent on SOO's website and did the conversion to 37sqm which she considered to be a good-sized tent for her and her sons to live in while their new house was being built. After a week or so of living in the tent, it was measured by a friend of Ms GL's and he established that

the tent is actually 28sqm (23% smaller than 37sqm). SOO does not dispute the actual measurement and while Mr OS, appearing for SOO, acknowledges that the incorrect area measurement did appear on SOO's website at some point, he does not accept that it was necessarily incorrectly noted on the website prior to Ms GL's purchase of the tent.

[7] Ms OS for SOO was unable to attend the hearing and Mr OS relayed her version of a telephone conversation she had with Ms GL prior to Ms GL deciding to purchase the tent. According to Ms OS, she told Ms GL that the diameter of the tent was 6m and when Ms GL asked about the size of the tent, Ms OS replied that she did not know. However, Ms GL denies asking Ms OS about the size of the tent because she says she had already read it on the website. Because the content of the phone conversation is disputed, the key issue is whether or not the incorrect floor area appeared on the website at the time Ms GL viewed it prior to purchase.

[8] I accept that the tent floor area was incorrectly described on SOO's website prior to Ms GL's purchase of the tent, for the following reasons:

- a. Written correspondence shows that this was the first time tents this large had been brought into NZ by SOO, that only six in total were brought in, and that five had already been purchased by another buyer – therefore after Ms GL's purchase, SOO had sold out, so was unlikely to have been changing the website description to include an incorrect floor area only after all the tents had been sold
- b. SOO provided no evidence that the website was changed only after Ms GL's purchase
- c. Ms GL has provided written evidence that she was discussing the size of the tent with a friend as early as 6 January, less than a month after receiving the tent and two weeks after she says the tent was erected, even though she did not notify SOO of the problem until the end of January. That email of 6 January contains a link to SOO's website, which as of 6 January was showing the floor area as 400sqft.

[9] The incorrect description of floor area was not ameliorated by the inclusion in the website description of the floor diameter because the tent was referred to as a 6m tent with no reference to diameter, and even if diameter had been mentioned, a consumer should not

be expected to check (by applying the correct mathematical formula) that the floor area given corresponds to the stated diameter.

[10] There has therefore been a breach of the section 9 CGA guarantee and Ms GL is entitled to a remedy.

[11] The issue as to whether or not the defects noted by Ms GL in her initial letter to SOO were pre-existing when she purchased the tent, or were caused after purchase (either while erecting the tent or during a storm) does not need to be addressed in terms of acceptable quality because the breach of guarantee relating to floor area description gives rise to the higher level of redress, as floor area of the tent cannot be remedied.

What remedy is available to Ms GL?

[12] Options against suppliers where goods do not comply with guarantees are laid out in section 18 of the CGA. In this case, as floor area of the tent is not something that can be remedied, Ms GL has the right under section 18(3)(a) to reject the goods so long as she has not lost that right under section 20.

[13] Section 20 of the CGA says that a consumer loses the right to reject goods if the goods were damaged after delivery to the consumer for reasons not related to their state or condition at the time of supply. Notwithstanding that the defects in the tent identified by Ms GL did not need to be addressed in terms of the guarantee of acceptable quality, they are addressed now for the purposes of section 20.

[14] I find that there is insufficient evidence to establish that Ms GL damaged the goods after purchase – the available evidence is Ms GL's photos of the defects which are proven to have been taken on 3 January 2018, days before the severe storm that SOO suggested may have caused the damage. In addition, the rust on a pole does not appear to be the type of defect that would have appeared within weeks of a purchase and the stitching around the ties is something that Mr OS says occurs from time to time straight out of the factory. With respect to the other stitching defect, at the join of a side 'wing' to the main tent, it is impossible to determine on the evidence available whether that is damage or a defect present at purchase. While Ms GL acknowledged that the bent pole could have occurred while putting up or taking down the tent, it is easily replaced and of a minor nature and does not prevent rejection of the tent itself.

[15] As Ms GL has the right to reject the goods, she is entitled to receive a refund, being the purchase price paid of \$4850.00, as per sections 23(1) and 23(2) of the CGA.