

BETWEEN

GO
APPLICANT

AND

SSL Ltd
RESPONDENT

Date of Order:

12 October 2017

Referee:

Referee: Wilson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] In about 2012 GO had her entire house carpeted by SSL Limited as the result of an insurance claim. In about 2016, she noticed that there was a worn area in the carpet under the leg of a stool she used daily and which rested on the carpet. There were several carpet squares left over from the time when the carpet had been laid and Ms GO and SSL agreed that SSL would repair the damage with the left over pieces. One or two other minor repairs would be done at the same time.

[2] Just before the repairs were to be completed Ms GO noticed a number of small bald patches in the carpet at different places in the house. She notified SSL that she believed the carpet was defective. The company inspected the site and took away a patch of carpet to test it. After testing SSL decided that the carpet was not at fault. It refused to replace the carpet as Ms GO wanted, because, with respect to the stool, it considered the damage was caused by excessive wear; and with respect to the other bald patches, that these were most likely to have been caused by Ms GO's dog. Ms GO then filed proceedings in the Disputes Tribunal claiming the cost of replacing the carpet which she believed was defective.

Issues

[3] The issues to be determined were as follows:

- a. Has there been a breach of the guarantee of acceptable quality under the Consumer Guarantees Act?
- b. If yes, what remedies are available?

Has there been a breach of the guarantee of acceptable quality under the Consumer Guarantees Act?

[4] The guarantee of acceptable quality under the Consumer Guarantees Act 1993 provides that a consumer shall have a remedy where goods supplied by a supplier are not of acceptable quality. "Acceptable quality" is relevantly defined in section 7 of the Act as follows:

...goods are of acceptable quality if they are as—

- (a) fit for all the purposes for which goods of the type in question are commonly supplied; and

- (b) acceptable in appearance and finish; and
- (c) free from minor defects; and...

...

- (e) durable, -

...

as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to—

- (f) the nature of the goods:
- (g) the price (where relevant)...

...

- (i) any representation made about the goods by the supplier or the manufacturer:
- (j) all other relevant circumstances of the supply of the goods.

[5] Ms GO claimed that because the carpet was only 4 years old, it cannot have been of acceptable quality if a stool that she used daily resting on the carpet caused a hole to wear in the carpet. Further she disputed that her dog, which is a Maltese puppy, did or could have caused the other bald patches in the carpet. Ms GO claimed that she had been informed that “bonding delamination” was probably the cause of the patches, therefore the carpet was defective.

[6] However I am unable to find that there has been a breach of the guarantee of acceptable quality in this case for reasons which include the following:

- a. SSL had had a sample of the carpet tested by the New Zealand Wool Testing Authority (NZWTA), at SSL’s expense. The results of the tests showed that the carpet tufts could withstand a force twice the minimum standard required for carpets in New Zealand. The minimum standard is 10 Newtons of force to pull a tuft from the carpet; the carpet sample taken from Ms GO’s property could withstand 21.4 Newtons of force before tufts were pulled out of the carpet. This test only established the strength of the carpet tufts, and was not intended to establish exactly what had caused the bald patches, such as bonding delamination or other cause.
- b. Mr LS from SSL NZ Limited was very clear in the hearing, and I accepted his evidence, that if the results of the testing of the carpet by NZWTA had been below or even slightly above the minimum standard, he would have replaced the carpet without the need for further discussion. In other words, it was clear to me that he was not trying to evade his responsibilities in any way. However

he indicated that the testing showed that the carpet was relatively strong and was not likely to have been defective, and as a result, while willing to do repairs as a matter of goodwill, he was not prepared to replace the whole carpet.

- c. Mr LS and Mr DS both gave evidence (the latter by telephone) about “bonding delamination”. Their evidence was consistent, matter of fact, and aligned with their written reports. They both were clear too that if bonding delamination was found, the carpet would have been replaced. However Mr DS in particular indicated that in his more than 20 years of experience in the flooring industry, he had never seen bonding delamination in small patches before. He described how bonding delamination arises, usually as a result of insufficient or low quality latex having been used to bond two layers of a carpet together. As a result it was a problem that would tend to affect a whole carpet or a whole batch of carpet, and was not likely to occur in small patches because of the way carpet is manufactured. He also described how it would usually become apparent quite promptly after installation, and that bonding delamination was unlikely to have gone unnoticed for four years before problems arose.
- d. Mr DS described how rubbing on one spot without respite for four years by a chair leg was likely to cause wear in any carpet. He also described how in his experience it was very common for dogs to have torn, dug, or bitten carpets, creating small bald patches. He indicated that he and SSL had often been involved in successful insurance claims to repair or replace carpet in cases of these kinds of damage.
- e. As a result Mr DS and Mr LS had reached the conclusion that it was more likely than not that the causes of the damage were, respectively, excessive wear and tear, and the dog. I agree with their conclusions. While both are employees of SSL I was left with little doubt that they were speaking from a detached and professional (even “expert”) perspective, though I also note that their evidence was not contradicted by contrary “expert” evidence at the hearing.

[7] As a result of my findings there is no need to consider the second issue. The claim is dismissed.