

BETWEEN

**DI
APPLICANT**

AND

**VR LIMITED
RESPONDENT**

Date of Order:

10 December 2015

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the respondent VR Limited is to pay the sum of \$697.32 directly to DI on or before 8 January 2016.

Facts

[1] DI took a pair of velvet boots and a pair of shoes to VR Limited trading as AA's Footwear ('AA') in September to have stick-on protector soles put on.

[2] She collected them on September 22nd and after she left the shop she notified AA by phone that she had noticed damage on the top side of each velvet boot.

[3] AA undertook to repair the damage but when DI collected the boots after the attempt she says they were in an even worse state.

[4] DI therefore claims a refund for the re-soling service of \$35.00 and consequential losses, being the replacement cost of the velvet boots of \$700.00, under the Consumer Guarantees Act (CGA). She also claims the Tribunal filing fee.

Issues

[5] The issues to determine are:

- a. Was the damage to the boots caused by AA and if so, have they breached the CGA guarantee of carrying out services with reasonable care and skill?
- b. What remedy is available to DI, if any?
- c. What is the reduction in value of the service and what are DI's reasonably foreseeable losses, if any?

Was the damage to the boots caused by AA's and if so, have they breached the CGA guarantee of carrying out services with reasonable care and skill?

[6] I find that the damage was caused during the course of the service provided by AA's. No representative from AA's attended the hearing but they did send in a letter outlining their position. In that, it states that DI did not notify AA's of the damage to her boots until the day after she collected the boots from them initially.

[7] They therefore suggest that the damage was most likely caused sometime between her collecting the boots and her contacting them the next day. In cases like this timing is very important and where there is some time gap between contact with the supplier and notification of a problem, it becomes less likely that the supplier will be liable for the problem.

[8] However in this case, DI has provided evidence at the hearing that the time delay noted by AA was not accurate. She has provided the EFTPOS receipt from AA showing she paid for the shoe service at 3.11pm. She has also provided a screenshot of her phone log showing that a call was made to AA at 3.20pm the same day, nine minutes after payment.

[9] AA have also noted that DI was shown the repair for approval before leaving the shop. DI acknowledges that she pulled both pairs of shoes from the bag on collection but she says she pulled them out sole first to check the resoling job which she was happy with and it was not until a few minutes later in the car that she looked at the top side of the boots and saw the damage, at which point she immediately rang AA.

[10] The two pieces of evidence she has provided regarding the timing supports DI's version of events and the time delay between contact with AA and notification of the damage was therefore negligible and means that the boots were almost certainly damaged while they were in AA's possession.

[11] For all the above reasons, I find that AA has breached the CGA guarantee of providing a service with reasonable care and skill and DI is entitled to the appropriate statutory remedies.

What remedy is available to DI, if any?

[12] As the failure could not be remedied, DI is entitled to the reduction in value of the service due to the failure below the price paid as well as any reasonably foreseeable consequential losses, under section 32(b) and (c) of the CGA.

[13] I note that AA in their letter, state that the repair was only ever offered on a goodwill basis but DI says that when she was invited to bring the shoes back in, and then when AA agreed to fix them after inspecting them, she was not told at either point that AA was denying liability. In any event, because I have found that AA caused the damage, and DI gave them the opportunity to fix the problem and they were not able to, the above remedies apply.

What is the reduction in value of the service and what are DI's reasonably foreseeable losses, if any?

[14] I find that the reduction in value of the service is its entire value of \$35.00 because of the serious nature and obvious position of the damage on both boots. While they can continue to be used as a functional pair of footwear, as an expensive imported pair of velvet boots, their main aesthetic value has been significantly reduced to the point that I accept that DI will not wear them. The value of the re-soling, given this, is therefore nil.

[15] Further, the only remedy, given the nature and extent of the damage is for the boots to be replaced. They were purchased only months prior to the resoling and appeared to be in as-new condition apart from the damage. DI has provided evidence of their replacement cost from the UK supplier including shipping charges, as being 294 British pounds. At today's exchange rate, that converts to \$662.32.

[16] DI has claimed but not quantified customs tax costs so I offset these against whatever nominal amount she might obtain from selling her now damaged second-hand boots through a site such as Trade Me. The replacement cost of \$662.32 is therefore awarded as the direct and reasonably foreseeable cost of remedying the failure of guarantee of service and the \$35.00 reduction in value of the service is also awarded. The Tribunal filing fee is not able to be awarded.