

BETWEEN

DJ
APPLICANT

AND

VQ LIMITED
RESPONDENT

Date of Order:

12 February 2016

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] DJ engaged VQ Limited ('VQ') to hydro-seed his lawn after seeing VQ's advertisement on Trade Me. They negotiated a price of \$1,300.00 and the work was carried out in two stages, with site preparation on 28 October 2015 and spraying with hydro-seed mix several days later. DJ paid the full price once the spraying was done.

[2] Several weeks later the grass was not growing well, being patchy with weeds coming through. DJ says attempts at contacting VQ re the problems yielded no response. DJ also claims his fence has been marked during the spraying and he claims a refund of the full price paid (\$1,300).

[3] The relevant law is the Consumer Guarantees Act 1993 (CGA).

Issues

[4] Was the patchy lawn caused by any failure on the part of VQ to provide their hydro-seeding service with reasonable care and skill?

[5] What remedy, if any, is available?

Was the patchy lawn caused by any failure on the part of VQ to provide their hydro-seeding service with reasonable care and skill?

[6] I find that DJ has failed to establish through evidence that VQ's service was not carried out with reasonable care and skill. There is some dispute as to the quality of the mix they contracted to provide, with VQ saying that they offered DJ the choice of a 50mm layer of topsoil (not guaranteed to be weed-free) or a 100mm layer of weed-free lawn mix, but as the second option added approximately \$650 to the total price, DJ opted for the topsoil option. DJ denies he was offered any such choice. This aspect of the dispute is not resolvable, but of relevance is the fact that there is no evidence of VQ ever guaranteeing or contracting to provide a weed-free mix.

[7] VQ carried out the ground preparation with a digger and sprayed with hydro-seeding mix as agreed. Apart from the quality of the mix, DJ has not presented any particular aspect of their work that he believes fell below an acceptable standard - it is really the result he is

understandably not happy with. However, VQ did not undertake to provide any ongoing maintenance of the lawn once the seed was sprayed - this was entirely up to DJ and of course, how well a lawn grows once grass seed has been applied is largely down to the care it receives in terms of watering.

[8] DJ has provided evidence to show that he watered the lawn in the form of a letter from a friend from whom he borrowed a hose, water bills for three months, weather information from the internet (to show no unusual weather patterns during this period) and a time sheet from his employer showing his start time in the weeks following the hydro-seeding (he says he was late to work because he had to spend time watering the lawn each morning).

[9] Although DJ has said he had no contact with VQ after the spraying, AA for VQ says DJ called him a week later to report on slow progress and he told DJ to keep watering it and he could come and have a look. AA says he inspected the lawn shortly after (not while DJ was there) and it was very dry. He also points out that it is 'bone dry' in the photographs presented by DJ (except for a corner that is lower than the rest of the lawn), and notes that if the lawn dries out in the first week or so after application, the grass seed will die and is not recoverable. AA notes that the small amount of water used as evidenced by DJ's water bills is not consistent with DJ saying that he watered the lawn for half an hour every day.

[10] Even if I accept that DJ's water bills show an increase in water usage in the month following the spraying (and this is not clear, because he hasn't provided the actual bill for the previous month, merely the record that he paid \$9 the previous month) the actual volumes of water used are very low, and I cannot conclude that any difference is due to watering the lawn. Similarly the employment records do not assist because they do not prove the reason DJ was late to work. The best evidence with respect to watering is the photographic evidence and as AA points out, that shows very dry ground which is inconsistent with adequate watering.

[11] With respect to the alleged marks on the fence, I cannot tell from the blurry photographs provided that there are marks, let alone that they are caused by VQ's spraying. Even if they were, AA says that spray would simply wash off.

[12] For all the reasons above, I find that there is no failure on the part of VQ to meet the guarantees in the CGA - the service itself was provided with no apparent failures or defects and it is the type of contract where the service provided by the supplier is not the only, or

even the main factor, in what sort of outcome will be achieved because of the need for significant and regular watering of the lawn by the consumer.

What remedy, if any, is available?

[13] For the reasons above, I find that VQ is not liable for the problems with the lawn and the claim is therefore dismissed.