

SOUTH AFRICA / JUDGMENT

Bed replaced 3 times: Supplier's offer to replace base endorsed (2013613250)

[2013] ZACGSO 5 (16 September 2013)

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COURT

Consumer Goods and Services Ombud

BEFORE

Bonita Hughes

CASE / FILE NUMBER

2013613250

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Time period of automatic warrantee expired (Multiple replacements)

Bed replaced 3 times: Supplier's offer to replace base endorsed.

Complaint ref : 2013613250

Adjudicator : Bonita Hughes

Date : 09 September 2013

1. Summary of the complaint

In July 2011, the consumer purchased a bed set. In September 2011 he requested that the bed be exchanged due to the bed making a noise. The supplier agreed and the consumer selected a new bed he wanted. This bed was more expensive and the consumer agreed to pay in the difference.

A month after the consumer received the new bed he complained that the bed was again making a noise. The supplier agreed to exchange the bed.

In August 2012 the supplier exchanged the mattress and everything appeared to be in order until May 2013 when the consumer complained

about a noise the bed is making.

The supplier advised that due to the time lapsed the bed is no longer under warranty and the consumer will have to pay R355.00 to get the base replaced.

The consumer wants a completely new bed and a refund for the R1 150.00 that he paid in on the second bed.

2. Summary of outcome

The six month period in which the consumer could have returned the item has since lapsed and the store warranty has also since lapsed and is no longer applicable. The supplier's offer to replace the base of the bed set endorsed.

3. The response of the supplier

The supplier has replaced the bed on three different occasions. The supplier advised that the bed is no longer under warranty and the consumer needs to pay R355.00 to get the base replaced.

4. Attempts to resolve the complaint

A mediation was held on the 28th of August 2013 and the supplier agreed to replace the base of the bed at no charge to the consumer.

The customer did not accept this offer and wants a new bed and the R1 150.00 refunded that he paid in on the second bed.

5. Investigating findings

No investigation has been undertaken.

6. Legal considerations/ Applicable provisions of the Code of Conduct

Code:

a. The criteria to be used in resolving disputes includes:

8.5.1 the law, especially the Act and the Code (in cases where there is conflict between the interpretation of the Code or the Act, the Act will always prevail);

8.5.2 applicable industry codes or guidelines;

i. Fairness in all the circumstances.

Applicable provisions of the CPA:

Section 55 of the Consumer Protection Act provides consumers with the right to safe and good-quality goods.

This section lists the requirements goods should comply with, namely:

- (a) They are reasonably suitable for the purposes for which they are generally intended;
- (b) They are of good quality, in good working order and free of any defects[1];
- (c) They will be useable and durable (will last) for a reasonable period of time;
- (d) They comply with the Standards Act/ other public regulations; and

The section also provides that the goods must be reasonably suitable for the specific purpose that the consumer has informed the supplier that the consumer wants to use them for.

Section of the 56 Consumer Protection Act (CPA) imposes a built-in or automatic warranty (commonly known as a guaranty) that all goods sold comply with the requirements listed in Section 55.

If the goods are not suitable for the purposes for which they are intended or otherwise fail to comply with the requirements listed in Section 55, the consumer is entitled to return them within six months of being delivered, at the supplier's risk and expense and without penalty, and:

- (a) Have the item(s) repaired; or
- (a) Have the item(s) replaced; or
- (b) Get a full refund of the price paid.

It is important to note that the choice is the consumer's: the supplier cannot force a consumer to opt to have the goods repaired if the consumer wants a refund or replacement. The consumer can insist on a cash refund instead of a store credit or vouchers, or on a replacement with something similar at no additional cost. The supplier must bear the costs of collecting and/ or replacing the the supplier

The above rules regarding refunds do not apply if:

- (a) The consumer was specifically told that the particular goods were offered in a specific condition (e.g. that they were in some way defective)(section 55 (6)); or
- (b) The goods were altered contrary to the instructions, or after leaving the control, of the supplier (tampered with by the consumer)(section

56 (1).

The above rules regarding refunds apply irrespective of the store's refund policy or the terms of the manufacturer's guaranty/ warranty. In other words, the store's refund policy or the terms of the manufacturer's guaranty / warranty cannot override the CPA requirements, but they can go further than or offer more rights to the customer than the Act does.

Law:

It is permissible under the CPA to look to foreign law for guidance. According to 15 USCS § 6602 (4), [Title 15. Commerce and Trade; Chapter

92. Year 2000] the term material defect means "a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term "material defect" does not include a defect that--[2]

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.”

7. Consideration of facts and law

The consumer would like the following:

1.) To be refunded the R1 150.00 he paid in on the second bed.

2.) To exchange his bed set with a new one.

Refund of R1 150.00

The consumer informed the supplier that there is a problem with the bed set and it was agreed that the bed set will be replaced.

A supplier must provide goods of the same type and similar value.

The consumer opted for a more expensive bed set and the supplier cannot be held responsible for the difference in the pricing between the two bed sets.

At the time the consumer elected the new bed set he also agreed to pay the difference between the two bed sets.

There are thus no reasonable grounds on which we can instruct the supplier to refund the difference paid in on the second bed.

New bed set

The consumer would like his bed set to be replaced with a new one.

We noticed that the bed was initially purchased in July 2011. In terms of section 56 of the CPA a consumer has six months in which they can return goods and elect, to repair, replace or to get a refund.

The six month period in which the consumer could have returned the item has since lapsed.

The store warranty has also since lapsed and is no longer applicable.

In terms of Section 55 of the CPA goods should however be useable and durable for a reasonable period of time.

The durability for goods will depend on the type of goods and the circumstances of each matter.

We have however noticed that the supplier has agreed to replace the base at no charge to the consumer.

We consider this offer to be fair and reasonable. As there is nothing wrong with the mattress we cannot instruct the supplier to replace the full bed set.

8.

Conclusion

Based on the information provided by the parties, the consumer can no longer return the goods in terms of Section 56.

The supplier has agreed to replace the base of the bed set.

9. Suggested resolution

The supplier should replace the base of the bed set.

[1]

53. (1)

- (a) “defect” means— (i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or (ii) any

characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances.

[1]

53. (1)

- (a) “defect” means—

- (i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or (ii) any

characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances.

[2] See: <http://definitions.uslegal.com/m/material-defect/>.

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