

SOUTH AFRICA / JUDGMENT

Compensation for Damaged Goods (201505-0153) [2015]

ZACGSO 2 (3 March 2015)

[2015] ZACGSO 2

COURT

Consumer Goods and Services Ombud

BEFORE

Bonita Hughes

CASE / FILE NUMBER

201505-0153

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03 June 2015

ASSESSMENT: COMPENSATION FOR DAMAGED GOODS

Summary of complaint

The complainant sold his CD player to V who resides in Dubai at a price of R24 000.00. The complainant decided to courier it via the supplier and paid it R4 653.92.

The CD player was placed in an extremely sturdy flight case for protection and was working perfectly before it was couriered.

V was to pay the complainant on receipt of the CD player after he was satisfied that it was in a working condition - hence the complainant

would not have sent a broken player.

When it arrived in Dubai one of the locks on the flight case was cracked. When V connected the CD player to his hi-fi it was no longer working. He was not willing to pay for the broken player.

The complainant submitted a claim to the supplier for the cost of the player and courier fees. After a lot of communication between the complainant and the supplier, it send the complainant a rejection letter- stating that the case was not damaged and it would therefore not take responsibility.

It ignored the fact that the lock was cracked or that the package was mishandled on delivery.

V contacted the manufacturer in the UK who advised that they would most likely not be able to repair the player.

The complainant would like the supplier to refund the complainant R24 000.00 for the player and R4 653.92

for the courier costs.

Summary of TNT's response

The supplier denies all the allegations and averments made as the consignment of the complainant is not damaged and was delivered in a good condition, as per the proof of delivery.

The supplier also advised that the carriage of consignment for the complainant, as well as other customers, is subject to their Terms and Conditions of Carriage. The Terms and Conditions are printed on the reverse of the consignment note issued to the customers.

The Terms and Conditions of Carriage govern the entire transaction and the claims if any, shall be dealt with in accordance with same and as per the limits set forth therein.

Assessment

We have considered all the evidence presented by both parties and advise as follows:

The supplier advised that the consignment was delivered in a good condition and not damaged.

The complainant on the other hand advised that the CD player was in a working condition before he couriered it and that the supplier

mishandled the package which caused damage to the CD player.

In this instance one can think of numerous scenarios of how and when the CD player got broken / damaged.

In light of the above, it appears that there is a dispute of fact between the complainant's version of events and that of the supplier.

In trying to reach a decision in cases where there is clearly a dispute of fact we need to look at all the evidence in support of each version and weigh this up against each other to establish which is correct, alternatively which is more probable.

If we cannot reach a decision on the evidence or on a balance of probabilities, we must dismiss the matter in accordance with our

terms of reference.

The supplier provided us with the delivery documentation, kindly see attached. As per this documentation, the goods were delivered in a good condition and there were no remarks or notes made to indicate otherwise.

We take note that the complainant believes the supplier mishandled the goods but as per the documentation there is no indication or proof of this.

The container the goods were couriered in was also not damaged. The cracked lock can by no means prove that the goods in the container was also damaged as, as mentioned above the container was not damaged.

It would serve no purpose to speculate as to what actually happened, however our assessment can only be based on the evidence furnished to us by both parties. From this evidence it is however not clear that the supplier caused the damage to the system.

The delivery note however indicates that the goods were delivered in a good condition.

On a balance of probabilities we can therefore not conclude how exactly the damage was caused and if it was caused before sending, while being couriered or by the recipient.

Based on the facts of this case, the information and evidence furnished to this office and on the principles of reasonableness and fairness, there is no reasonable prospect of this office making a recommendation in the complainant's favour.

Bonita Hughes

Complaints Officer

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