

SOUTH AFRICA / JUDGMENT

Price binding (2014423899)

[2014] ZACGSO 15 (9 May 2014)

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COURT

Consumer Goods and Services Ombud

BEFORE

Bonita Hughes

CASE / FILE NUMBER

2014423899

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Mistake in price quoted

Price binding

Complaint ref : 2014423899

Adjudicator : Bonita

Hughes

Date : 9

May 2014

1. Summary of complaint

The complainant, Mr D, wanted material for decking and phoned the supplier. A verbal quote of R6 600.00 was given to Mr D.

On 13 March 2014 a quote was e-mailed to Mr D totalling R6 601.51. Mr D phoned the supplier to confirm the price quoted. The supplier

confirmed the amount and Mr D advised that he will go to the factory to view the product. After viewing the product on 14 March 2014, the amount quoted was paid, as it was in fact what the complainant was looking for.

On 18 March 2014 Mr D received a call from the supplier to advise him that there has been an error on the invoice. Mr D was advised that he needed to pay an additional amount of R12 000.00 before the goods can be delivered.

The complainant wants the wood to be delivered without paying more than what he was quoted for.

2. Supplier's response

The supplier advised that this case amounts to 'snatching at a bargain' and consider the contract invalid.

Section 23 of the Consumer Protection Act does not apply to the transaction as it does not involve a displayed price and section 15, which relates to quotes, only applies where the quote pertains to any service, or goods and services, and not goods alone. Accordingly, we must look to the common law.

3. Assessment

We have considered all the evidence presented by the supplier and the complainant and advise as follows:

The main issue in this matter concerns the question whether or not the agreement of sale entered into between the parties was void on the grounds of mistake.

The supplier The supplier contended that they are not bound by the sale, as it had made a calculation error on the quotation, and that the complainant knew of the mistake or, alternatively, ought reasonably to have known thereof.

In order to be released from your contractual bond the mistaken party must prove that the other party knew or ought to have known of the mistake. Therefore if the mistaken party acted in a manner to give the other party reason to believe that he was contracting with him on certain terms he is bound to the contract.

In this instance a verbal quotation of R6 600.00 was given to the complainant. The complainant requested that a written quotation be send to him. Again a quote of approximately R6 600.00 was send to the complainant. Thereafter he visited the store after which he bought the goods and an invoice totalling R6 600.00 was given to the complainant.

While the low price might have been indicative of a mistake, it does not necessarily follow that Mr D must have known that a mistake had been made. There is nothing to indicate that he was knowledgeable about the price of hardwood.

Even if it was contented that Mr D ought to have known that there was an error in the price quoted, the same price was given to him on three different occasions. This surely would have removed any doubt from his mind as to the correctness of the price.

Even if it can be shown that Mr D appreciated that he was striking a bargain it does not mean that he "snatched" at one in the legal sense. The latter concept denotes an unconscionable act in deliberately seeking to take advantage of another's known mistake.

The law requires “[i]f he realised (or should have realised as a reasonable man) that there was a real possibility of a mistake in the offer, he would have had a duty to speak and to enquire whether the expressed offer was the intended offer. Only thereafter could he accept.” (Sonap Petroleum (South Africa) (Pty) Ltd v Pappadogianis (483/90) [1992] ZASCA 56; 1992 (3) SA 234 (AD) at paras 20-21).

The actions of Mr D also do not appear to be consistent with a person who is trying to ‘snatch up an offer’. He didn’t

immediately accept the quotations given. He on the contrary confirmed the price with the supplier on more than once occasion. In so doing, he spoke out as required by the above quoted passage and was thus entitled to accept.

4.

Conclusion

There is thus no evidence to justify the inference that Mr D knew or should consequently have realised that the prices had been wrongly quoted.

It therefore appears, without any proof to the contrary, that Mr D did not know of the mistake and therefore did not try to ‘snatch up an offer’. A valid contract therefore came into being and the supplier will therefore have to deliver the goods as ordered and paid for.

Based on the facts of this case, the information and evidence furnished to this office and on the principles of reasonableness and fairness, this office cannot make a finding that the contract is invalid. It is accordingly recommended that the supplier honours the price quoted.

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