

SOUTH AFRICA / JUDGMENT

Replace goods; appointment of damages (2013911265) [2013]

ZACGSO 7 (30 October 2013)

[2013] ZACGSO 7

COURT

Consumer Goods and Services Ombud

BEFORE

Bonita Hughes

CASE / FILE NUMBER

2013911265

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Delivery to unauthorised person:

Replace goods; apportionment of damages

Complaint ref : 2013911265

Adjudicator : Bonita

Hughes

Date : 30

October 2013

1. Summary of complaint

On the 01st of June 2013 the complainant purchased a refrigerator and patio suite to the value of R3 948.00 plus a delivery fee of R250.00. The complainant was not at home when the goods were delivered so she arranged with her neighbour to open the flat for the goods to be delivered.

The delivery agents accepted help from a person who claimed to work as a supervisor for the complex. The goods were delivered into the complainant's flat.

The delivery agents allowed the person from whom they accepted assistance to sign the delivery note. According to the neighbour, he was advised by an unknown third party not to sign for the goods as they were damaged and had to be taken back to the store.

The goods were then removed from the complainant's flat by persons unknown, never to be seen again. It was not possible to establish whether these persons and the "supervisor" were working in cahoots with the delivery agents, the complainant, the complainant's neighbour, the security guard at the flats or if they had independently followed the delivery van or coincidentally witnessed the delivery and ceased upon the opportunity.

2. Assessment

By opening the flat and allowing the furniture to be brought into it, the neighbour accepted delivery and possession on behalf on the complainant and should have acted in a reasonable manner when doing so. The neighbour should have made sure that the person who claimed that the goods must be returned was in fact authorised to take the goods / was employed by the supplier or its delivery agent.

We do however also feel that the delivery agents also acted negligently by allowing an unknown third party to assist and sign for the goods.

By not requesting the complainant's neighbour to sign for the goods, this contributed to the neighbour being duped into believing that the goods must be returned.

In terms of the Apportionment of Damages Act, where a person who suffered damages which are caused partly by his own fault and partly by the fault of any other person, a claim in respect of those damages shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced to an amount deemed just and equitable having regard to the degree in which the claimant was at fault in relation to the damage. In other words, a claim can be reduced in line with the extent to which the conduct of the person claiming contributed to the loss.

3.

Conclusion

We have considered the responsibilities of you as the supplier to minimise the risk as well as the fraudster's chances of success in this regard.

- We believe that if the delivery agent requested the delivery note to be signed by the neighbour, authorized by the complainant to receive the goods on her behalf, it would have minimised the risk of the goods being stolen. The delivery note states that you received the goods in good order and condition.
- We also feel that if the correct procedures were followed by obtaining the signature of the authorised person it would have been very hard, if not impossible to defraud the complainant.

We also considered the responsibilities of the complainant's neighbour, who acted as the Complainant's agent in this matter:

- The neighbor should have taken reasonable care of the goods once they were delivered at the flat and should have made 100% sure that the person claiming that the goods must be returned was in fact employed by House and Home.

We are of the view that both parties acted negligently and feel it would be appropriate if there is an apportionment of damages.

We therefore suggest that you replace the goods as earlier offered by you, at your cost, and that the complainant contributes by paying you R500.00 in order to get the goods replaced. You should also bear the cost of delivering the replacement goods.

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