

Our ref: 201504-0027

## **ASSESSMENT: Defective Gazebo**

### **Summary of your complaint**

You bought a Gazebo in December 2014. In January 2015 when you returned home after working night shift, you discovered that 3 poles of the frame had broken at the same spot.

You returned the goods to the store who advised that they cannot assist you.

### **Summary of House & Homes response**

The supplier advised that it was not willing to do anything as the Gazebo did not break due to a manufacture's fault but as a result of an act of nature.

### **Assessment**

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

You discovered your broken Gazebo after returning from night shift and returned it to the store. The store is not willing to assist as according to them the damages were caused by an act of nature.

The supplier provided our office with a report indicating that the Gazebo has been damaged by an act of God, kindly see attached report.

We take note that you were not at home and do not know how the damage was caused.

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 yourself and the supplier. From this evidence it is clear that the Gazebo is damaged but how it was caused we will not know.

In terms of section 56 of the Consumer Protection Act in any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

In this regard it is the consumer's responsibility to ensure that goods are kept safe and protected against all harmful elements once it leaves the control of the supplier. If the goods get damaged in possession of the consumer due to no fault of the supplier the supplier cannot be held liable.

On a balance of probabilities we can therefore not conclude how exactly the damage was caused and if the goods were altered contrary to the instructions. We are therefore unable to instruct the supplier to replace the phone in terms of Section 56 of the Consumer Protection Act.

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.

“Decline to deal with or discontinue dealing with those matters:

In which there does not appear to be a reasonable prospect of the matter settling or of the CGSO eventually making a recommendation in favour of the complainant for whatever reason;”

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 your favour.

We regret that we cannot be of assistance and confirm that our file has been closed.

You are advised that you may now take such other steps as you wish or refer the complaint to the National Consumer Commission in accordance with section 71:

71. (1) Any person may file a complaint concerning a matter contemplated in section

69 (1)(c)(ii) or (2)(b) with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act.

The Commission may be contacted at:

Tel: 012 940 4500

Email: [complaints@thencc.org.za](mailto:complaints@thencc.org.za)

Yours faithfully

Bonita Hughes

Complaints Office