

Our ref: **201612-0011144**

20 February 2017

### **ASSESSMENT: COMPLAINT**

The above matter, as well as the Complaint Form has reference.

#### **Summary of complaint**

The complainant paid the supplier to clean their carpets. The supplier recommended using a chemical call (the product). The complainant advised that they do not want strong chemicals to be used in their house.

After the carpets were cleaned the complainant found it difficult to breath and reported it to the supplier. The supplier advised that they used the wrong product. According to the complainant the product looks toxic and unfit for domestic use.

The supplier went to the complainant's house to investigate the problem. It was agreed that they will do a vinegar rinse on the carpet to try and resolve the problem.

This did not solve the problem. The complainant is not sure what dilution of Superb Blue was used and cannot be sure if the workers rinsed the chemical down the drain which might have affected the waterway.

The complainant is still struggling to breath and has since moved out of their home.

The complainant would like the supplier to pay for all costs removing the contaminated carpet and sanding and sealing the wooden floor underneath where chemical has probably seeped through.

#### **Summary of supplier's response**

According to the supplier they have been in this business for many years and has not had any comebacks on this product from any of their clients.

As there has been no scientific test conducted on the air and the carpet in the complainant's home there is no evidence that the product used could have caused, or is still causing, any ill effects.

The supplier has inspected the carpet and could not find anything wrong it. The cleaning was done in October 2016.

#### **Investigation**

CGSO advised the complainant that our office cannot assist as there is no proof that the product is in fact poisonous and making the complainant sick.

The complainant is not happy with the feedback and requested that we continue with her case. The complainant advised that they have suffered severely financially and health wise.

### **Assessment**

### **The law**

#### **The Consumer Protection Act 68 of 2008 (CPA)**

#### ***Consumer's rights to demand quality service***

- 54.** (1) *When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—*
- (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;*
  - (b) the performance of the services in a manner and quality that persons are generally entitled to expect;*
  - (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and*
  - (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.*
- (2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either—*
- (a) remedy any defect in the quality of the services performed or goods supplied;*
  - or*
  - (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.*

#### ***Liability for damage caused by goods***

- 61.** (1) *Except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection (5), caused wholly or partly as a consequence of—*
- (a) supplying any unsafe goods;*
  - (b) a product failure, defect or hazard in any goods; or*
  - (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer, as the case may be.*
- (2) A supplier of services who, in conjunction with the performance of those services, applies, supplies, installs or provides access to any goods, must be regarded as a supplier of those goods to the consumer, for the purposes of this section.*
- (3) If, in a particular case, more than one person is liable in terms of this section, their liability is joint and several.*
- (4) Liability of a particular person in terms of this section does not arise if—*
- (a) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;*

- (b) *the alleged unsafe product characteristic, failure, defect or hazard—*
  - (i) *did not exist in the goods at the time it was supplied by that person to another person alleged to be liable; or*
  - (ii) *was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case subparagraph (i) does not apply;*
- (c) *it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers; or*
- (d) *the claim for damages is brought more than three years after the—*
  - (i) *death or injury of a person contemplated in subsection (5)(a);*
  - (ii) *earliest time at which a person had knowledge of the material facts about an illness contemplated in subsection (5)(b); or*
  - (iii) *earliest time at which a person with an interest in any property had knowledge of the material facts about the loss or damage to that property contemplated in subsection (5)(c); or*
  - (iv) *the latest date on which a person suffered any economic loss contemplated in subsection (5)(d).*
- (5) *Harm for which a person may be held liable in terms of this section includes—*
  - (a) *the death of, or injury to, any natural person;*
  - (b) *an illness of any natural person;*
  - (c) *any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable; and*
  - (d) *any economic loss that results from harm contemplated in paragraph (a), (b) or (c).*
- (6) *Nothing in this section limits the authority of a court to—*
  - (a) *assess whether any harm has been proven and adequately mitigated;*
  - (b) *determine the extent and monetary value of any damages, including economic loss; or*
  - (c) *apportion*

### **Consideration of Law and Facts**

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

- **Section 54 of the CPA**

Section 54 of the CPA gives consumers the right to goods quality service. This remedies which are available to consumers if the service was of sub- standard quality are that they can demand that the supplier perform the service again or that the supplier refund the consumer a 'reasonable portion of the price paid'.

In this instance the supplier denies rendering sub-standard quality service. The supplier has however attempted to assist by rinsing the carpet. The supplier has also refunded the complainant for the service rendered.

This section does not provide consumers with a remedy in respect of any damage that may flow from substandard quality service delivery.

In terms of Section 54 our office will not be able to assist with your claim for damages suffered.

- **Section 61 of the CPA**

Section 61 enable consumers to obtain redress from the producer, importer, distributor or retailer where they have been injured or have sustained property damage because of a safety defect in a product.

Section 61 further provides that producers, importers, distributors and retailers of goods will be liable for damage caused by these goods irrespective of whether negligence can be established.

This relieves consumer of the onerous burden of proving fault although the consumer must still prove that the product had some kind of flaw that made it unsafe or otherwise defective<sup>1</sup>.

Therefore, a consumer still needs to prove that there is a casual link between the product defect and the harm suffered. This can cause difficulty as the possibility might exist, especially with a medical condition, that it might have been triggered by environmental conditions or another pre-existing medical condition.

Determining whether there is a link between the harm suffered and the defective product can place a heavy evidential burden on a consumer and may involve scrutiny of complex, highly technical evidence.

In order for the supplier to be held liable in terms of Section 61 a consumer must on a balance of probabilities prove causation.

The supplier denies that there is any fault with the product used and never had a complaint regarding this product. They further advised that a representative of the manufacturer, as well as the owner of another reputable cleaning company in the industry, all inspected the carpet at various stages and determined that there was absolutely nothing in the air, nothing smelling and nothing at all wrong with the carpet - no toxic vapours could be detected.

The manufacturer also offered that the complainant have a toxicity test done and if found positive, he would pay for the test. This has not been done.

Our office therefore received no evidence to prove that the complainant suffered harm because of a safety defect in the product.

Without any evidence that the product used by the supplier is unsafe or defective in anyway and the fact that various environmental factors can create a similar risk our office will not be able to conclude that the product used by the supplier where unsafe and caused harm to the complainant.

## **Conclusion**

---

<sup>1</sup> Definition of 'defect' in terms of Section 53 of the CPA: 'defect' means-

- (i) Any material imperfection in the manufacture of the goods or components, or n performance of the service, that renders the goods or results of the service less acceptable that persons generally would be reasonable entitled to expect n 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 reasonable entitled to expect in the circumstances;

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.