

## Defective goods- right to tinker

Complaint No. : 201509-11123409565

Adjudicator : N Melville

Date : 18 February 2016

### 4. Summary of the complaint

On 2 December 2014 the complainant bought a Model B Block Making Machine from the supplier. The machine was eventually delivered on 13 March 2015, in three pieces. It did not work after assembly.

After the complainant contacted the supplier, it sent out technicians on three occasions. They were unable to get the machine to work properly. It emerged that there were parts missing and that the machine had not been tested before it was delivered. The complainant requests a refund as he has since bought a machine elsewhere.

### 5. The response of the supplier

Through its attorneys, the supplier queried the specific section numbers of the Consumer Protection Act which apply and subsequently indicated it was desirous of resolving the complaint but required access to the machine in order to do so.

### 6. Information supplied to supplier

In responding to the supplier's query about the law applicable, CGSO quoted sections 55 and 56 of the Consumer Protection Act (CPA):

#### 55. Consumer's rights to safe, good quality goods.

(1) This section does not apply to goods bought at an auction, as contemplated in section 45.

(2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—

(a) are reasonably suitable for the purposes for which they are generally intended;

(b) are of good quality, in good working order and free of any defects;

(c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and

(d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.

(3) In addition to the right set out in subsection (2) (a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier—

(a) ordinarily offers to supply such goods; or

(b) acts in a manner consistent with being knowledgeable about the use of those goods,

the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

(4) In determining whether any particular goods satisfied the requirements of subsection (2) or (3), all of the circumstances of the supply of those goods must be considered, including but not limited to—

(a) the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;

(b) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and

(c) the time when the goods were produced and supplied.

(5) For greater certainty in applying subsection (4)—

(a) it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods; and

(b) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.

(6) Subsection (2) (a) and (b) do not apply to a transaction if the consumer—

(a) has been expressly informed that particular goods were offered in a specific condition; and

(b) has expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

## 56. Implied warranty of quality

(1) 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.

(2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—

(a) repair or replace the failed, unsafe or defective goods; or

(b) refund to the consumer the price paid by the consumer, for the goods.

(3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must—

(a) replace the goods; or

(b) refund to the consumer the price paid by the consumer for the goods.

(4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to—

(a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and

(b) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.

#### 7. Considering the issues

As the supplier has not disputed the complainant's version, specifically that the machine was defective, it will be accepted that this is common cause between the parties.

One need not even consider the provisions of the CPA quoted above as there is long standing authority in the common law to the effect that a purchaser of goods is not obliged to give a supplier the opportunity to tinker (put the article in order).

In the case of *Holz v Thurston & Co* 1908 TS 158 it was held (at 162) that there is nothing in our law which compels a purchaser, who has made a contract to purchase a particular article, to allow the seller to put that article in a state of repair after the date of the contract.

Accordingly, the complainant is entitled to cancel the transaction and claim a refund without permitting the supplier any further opportunities to rectify the defect.

#### 6. Conclusion

The supplier is in breach of contract and should forthwith refund the consumer the full purchase price paid. It may collect the machine from the complainant at its own risk and expense.