

The Consumer Guarantees Act and a Third Party Repairer

The Consumer Guarantees Act 1993 governs the supply of goods and services to consumers. It contains a set of statutory guarantees and gives consumers a right of redress against both suppliers and manufacturers.

The rights of a consumer against a supplier where goods fail to comply with the guarantees are set out in s18 of the Act. The interpretation of this provision was recently considered in the case of *Acquired Holdings Limited v Turvey* where the consumer had used a third party repairer instead of taking the goods back to the supplier.

Acquired Holdings Limited, which is a registered motor vehicle dealer, sold a Skyline GTR motor vehicle to Mr Turvey. Mr Turvey intended to race the vehicle. In the course of making the sale a representative of Acquired Holdings made representations that the engine gauges and computer in the vehicle were in good working order and on that basis Mr Turvey bought the car. About six months later Mr Turvey had to have repairs carried out on the gauges and computer which repairs he had done by a third party.

The case came about due to Acquired Holdings issuing proceedings in the District Court for the balance of the purchase price of the vehicle owed by Mr Turvey. Mr Turvey filed a counterclaim under s18 of the Consumer Guarantees Act, seeking the costs incurred in repairing the car.

Section 18(1) provides that where a consumer has a right of redress against the supplier in respect of failure of any goods to comply with a guarantee, the consumer may exercise the following remedies. Under s18(2)(a) where the failure can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time. Under s18(2)(b)(i) where a supplier who has been required to remedy a failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time, the consumer may have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having the failure remedied. Section 18(4) provides that in addition to the remedies set out in s18(2), the consumer may obtain from the supplier damages for any loss or damage to the consumer resulting from the failure (other than loss or damage through reduction in value of the goods) which was reasonably foreseeable and liable to result from the failure.

In the District Court, Acquired Holdings had argued that by having the repair work done by a third party, Mr Turvey had not given Acquired Holdings the opportunity to remedy the defects and therefore had failed to exercise his rights under s18(2) and could not make a claim under the Act.

The District Court disagreed. It said that giving notice to Acquired Holdings under s18(2) was optional and that Mr Turvey retained the additional remedy under s18(4) of obtaining reasonable foreseeable damages. The District Court entered judgement in favour of Acquired Holdings for the outstanding purchase price and in favour of Mr Turvey for the counterclaim relating to the cost of repairs.

Acquired Holdings appealed to the High Court. Acquired Holdings argued that the District Court judge had erred in his interpretation of s18.

The High Court judge agreed. He considered that on a plain reading of s18 where a defect can be remedied and is not of a substantial character, the purchaser must follow the requirement in s18(2), which is to allow the supplier an opportunity to remedy the failure within a reasonable time. The fact that s18(2) uses the word "may" does not make the procedure in s18(2) optional. Rather the word "may" was used because two alternative remedies are set out in s18(2), with the second self-help remedy in s18(2)(b) exercisable

only if the supplier refuses or fails to remedy the failure under s18(2)(a). Section 18(4) provides additional rather than alternative relief to the purchaser enabling the recovery of consequential rather than direct loss.

Further, the policy of the Act places the risk of defective goods on suppliers. The judge reasoned that given the burden this places on suppliers, it is only reasonable that the legislation gives the supplier the first opportunity to remedy any defects. Therefore in the High Court Mr Turvey's judgement for repair costs was overturned.

This judgement confirms that when a consumer receives defective goods in breach of the Consumer Guarantees Act 1993, the consumer must first give the supplier the opportunity to remedy the defect. The consumer cannot in the first instance have repairs done by a third party and then claim the cost of those repairs from the supplier.

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