



Tyrone Williams v Golyn & Sons

Case No.: 06102021-A-10

Hearing Date: 14th January 2022, 28th February 2022

Commissioners Present: Chairman Dhaneshwar Deonarine, Nalinie Singh, Allizen Welch-Critchlow and Jason Allicock

Parties: Complainant: Tyrone Williams, Supplier: Poorandatt Boodhoo

Facts:

1. The complainant purchased a gold Samsung Galaxy Note 8 cellphone valued at ninety thousand dollars (GY \$90,000) from the supplier on 15th April 2021 with one (1) year warranty. The complainant purchased the said cellphone at the supplier's stall in Stabroek market and he received a receipt as proof of purchase. After one (1) month of using the said cellphone, the display of the cellphone began to overheat and blank out sporadically. The complainant returned the said cellphone to the supplier and reported the issue to the supplier. The complainant claimed that the supplier instructed him to rest the said cellphone down for a couple of weeks. The supplier subsequently instructed the complainant to lodge the said cellphone with a technician at a stall nearby.
2. The technician collected the said cellphone and took it to his stall to inspect it on the said day. According to the complainant, he waited at the supplier's stall for about twenty minutes while the said cellphone was being inspected. The technician then returned the said cellphone to the supplier in the presence of the complainant. The complainant claimed that when the technician returned the said cellphone, he observed a golden spot on the mid-left portion of the screen. There was no physical damage to the phone before handing the phone over to the supplier. The complainant alleged that the supplier offered to pay him ten thousand dollars (GY \$10,000) towards repairing the said cellphone but the complainant refused. The supplier subsequently refused to repair or replace the device free of charge or return the receipted payment for the goods.

Investigation:

3. On 09th June 2021, the complainant lodged a complaint with the Commission. According to the Investigator employed by the Commission, Ganesh Rampersaud, he received the cellphone from the complainant on 10th June 2021. On 21st June 2021, Mr. Rampersaud took the said cellphone to an independent technician, Sherwin Bristol, to examine the cellphone. On 06th July 2021, Mr. Bristol provided a written report of his examination of the said cellphone to Mr. Rampersaud. The said report was shared with the supplier on the same day.

4. We had the benefit of oral evidence from Mr. Bristol and we received in evidence copies of his written report. We were satisfied with his experience as a mobile technician in the technology industry and accepted his report.
5. At the hearing, Bristol provided evidence that upon receiving the said cellphone, he examined it for physical damage and observed a blotted spot on the mid-left side of the screen. He opined that the blotted spot was caused as a result of excessive heat, excess pressure or mishandling of the cellphone screen and not from a fall. He further opined that a physical fall would cause cracks to appear on the cellphone screen but he did not observe any cracks on the screen. Moreover, if the cellphone did fall, the excessive heat would have produced a rainbow pattern spot and not a gold spot, which is an indication of a burn mark.
6. According to Mr. Bristol, he did not see any signs of consumer negligence but more of a mishandling from the technician's standpoint as there was a possibility that the technician caused damage to the pins in the said cellphone. He noted that the LCD ribbon connector is a sensitive part of the cellphone with minute contacts such as gold pins with different functions. Mr. Bristol claimed that the said gold pins were so sensitive that if the right tools were not used to open the said cellphone or if too much force was used, it could dislodge the contacts and cause them to shift or damage. Mr. Bristol contended that the said contacts would not sustain damage unless someone attempted to disassemble it. He further contended that it was highly unlikely that a fall would cause the contacts to damage.
7. Mr. Bristol claimed that the overheating of the said cellphone could have been as a result of a defective battery, short circuit from components or an overworked processor. He stated that pins being damaged were not the sole cause of the display not working, the display might have malfunctioned for a number of reasons.

Respondent's claim:

8. The Commission caused a summons to be delivered to the supplier for the hearing. At the hearing, the supplier alleged that approximately one (1) month after the complainant purchased the said cellphone, the complainant visited his stall and informed him that the said cellphone was blanking out sporadically. According to the supplier, he advised the complainant that it was likely a battery problem and he experienced similar issues with his cellphone.
9. The supplier claimed that the complainant returned with the said cellphone after two or three days and he observed that the display screen was not working. As a result, the supplier decided to have the said cellphone examined by a technician at a nearby stall. The supplier stated that he was not present when the technician examined the said cellphone. However, the technician sent him pictures of the inside of the said cellphone and relayed his findings to him.

10. The supplier alleged that the technician found that there were two components in the cellphone that touched each other and it was likely that the components were damaged due to a fall, squeezing or an impact. The supplier contended that if the two components were damaged since the day of purchase, the display screen would not have worked. He further contended that the issue was not the manufacturer's fault but the consumer's negligence. The supplier claimed that the overheating of the said cellphone was a result of the cells in the battery being damaged.
11. The supplier accepted that the technician caused a gold spot to appear on the display screen. He claimed that the technician tried to rectify the issue with the components and in the process, the technician caused further damage to the display screen. The supplier stated that he did not examine the said cellphone for any signs of tampering when it was brought to him.

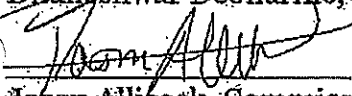
Findings:

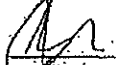
12. Based on the evidence of the complainant, the independent technician and the supplier, we were satisfied that the said cellphone failed to provide the complainant the benefit and uninterrupted enjoyment for which it was intended. The cellphone blanked out sporadically, mere weeks after the complainant purchased it, and as a result, the said cellphone was returned to the supplier. However, further damage was caused to the said cellphone while in the supplier's care and the supplier did not dispute this fact.
13. We find that the supplier did not successfully establish that the said cellphone was damaged as a direct result of neglect or abuse by the complainant as he did not examine the cellphone when he received it. Further, the independent expert opined that there was no evidence that the said cellphone was damaged by a fall.
14. The complainant gave evidence that the supplier did not replace the said cellphone, successfully repair the cellphone or return the receipted payment for the said cellphone. We find that the supplier's failure to replace, repair or return the receipted payment for the said cellphone to the complainant was a breach of his obligations under sections 22(2)(a) and 22(2)(b) of the Consumer Affairs Act No. 13 of 2011. Pursuant to section 22(6) of the Consumer Affairs Act, a supplier who fails to comply with subsection (2) commits an offence.
15. We, therefore, find that the supplier should refund the receipted payment for the said cellphone to the complainant being the sum of **ninety thousand dollars (GY \$90,000) within twenty-eight (28) days of this Order**. In accordance with sections 96 and 98 of the Consumer Affairs Act No. 13 of 2011, the Commission advises that if the sum of \$90,000 is paid, further proceedings be stayed, otherwise the supplier should be sued for compensation.

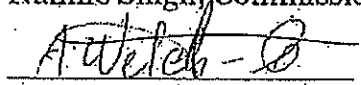
16. We further advise that pursuant to section 105 of the Consumer Affairs Act No. 13 of 2011, if the supplier is aggrieved by the Commission's written decision, he may appeal to a judge of the Court within fifteen (15) days after the date of the decision.

Dated 7th March 2022


Dhanshiwar Deonarine, Chairman


Jason Allicock, Commissioner


Nalinie Singh, Commissioner


Allizen Welch-Critchlow, Commissioner