

In the London Arbitration Centre

LAC Case No.IC5421

The seat of Arbitration is in England & Wales

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award; 30th December 2022



Between;-



Consumer

And

The Tiny Housing Company Limited

The 'trader'

Final Decision

The dispute concerns an order placed by the consumer for a custom built *tiny* house. This was not delivered to the consumer before the order was cancelled by the consumer. The home was manufactured off site as opposed to built-up from the ground. This distinction is only relevant in so far as this concerns the application of the Consumer Rights Act 2015 ('the Act'). The purchase of immovable property is not subject to the Act.

I have set out below brief details of the case including the procedural chronology.

Relevant chronology

5th February 2021

Contract executed. The contract price is shown as £53,000.00 with payment being spread over instalments; first payment representing 40% of the contract price after execution, the second payment representing 40% of the contract price payable on the 3rd March and then 20% of the purchase price being paid prior to delivery.

It is not clear from the contract when is '*prior to delivery*'. Whether this is immediately before release of the *tiny* house to the consumer or sometime later it is not clear. I understand this did become a source of confusion although not by way of legal disagreement.

In the contract, under '*Description of Goods*' the order is described as *1 x Tiny House (7m x 2.45m x 3.6m - 23m²) with an estimated delivery date of 1st April.*

The year of payment and the delivery year is not stated but I have assumed from the subsequent dealings between the parties that performance and payment was intended by both parties to be 2021.

17th September 2021

Final payment requested by trader *'to begin final finish process on 17th October'*.

17th November 2021

Dispute referred to resolution using ADR. Initially the parties were asked to see if a resolution could be found using mediation.

14th December 2021

Dispute referred to LAC for adjudication. The consumer alleging that she had lost faith in the trader in being able to deliver the *tiny* house.

19th January 2022

The trader offers to repay sums paid by the consumer in the sum of £43,200.00 over four months.

27th January 2022

Interim order- the trader is required to repay the consumer in full within 4 months (and 2 weeks).

8th September 2022

The trader repays the consumer in full.

19th September 2022

The consumer indicates additional claims against the trader as allowed by the terms of the interim order;-

(a) Lunos air filtration system in the sum of £2,036.00; and

(b) 'personal damages' in the sum of £16,250.00.

The latter representing additional costs incurred by the consumer by way of substitute accommodation for the period of the delay in the manufacture and also for the period the consumer was without return of her funds.

18th October 2022

Lunos air filtration system is returned to the consumer following my direction dated 9th October 2022.

The issues

I was able to advise the consumer on the law relating to remoteness of damages quite early after the above claims were intimated by the consumer¹. On 2nd October 2022 the consumer was advised that she would *need to show that the trader knew the consequences of the loss for the filtering air system and the short-term rental accommodation before the contract was agreed with the trader.*

¹ *Hadley v Baxendale 1854*

It was following this exchange of communications that I was provided by the consumer with the contract signed the parties dated 5th February 2021. I note the contract is signed by the consumer and [REDACTED].

The contract is an important document which governs the relationship between the parties. The contract will often set out the rights and remedies of the parties subject to the general law as may be applicable in the circumstances of the case. The terms of the contract in this case are significant in this dispute. I am only able to enforce the contract terms agreed between the parties at the outset not replace them with what I or the parties might think what is fair after relations have broken down.

By email dated 3rd October 2022, the consumer informed me, quite openly, that she had only purchased the Lunos air filtration system after the contract had been agreed between the parties. She had become aware of the safety risks in not having such an air filtration system. The consumer stating it was negligent of the trader not to provide one. Whether the trader is also negligent in Tort is not relevant to this contractual dispute not least because the *tiny* home was never delivered. No damage was caused and nor loss was incurred. If the *tiny* home had been delivered and the damage was caused, the consumer may have difficulty proving negligence because the risk was clearly foreseeable to her before making the purchase.

It was on the basis that the consumer did not have any basis in law to claim the expenses incurred on the air filtration system as a loss that I directed the trader to return the system back to the consumer. The consumer confirmed receipt of the system on 18th October 2022 but with issues about the condition on return. The video file provided by the consumer was useful in that I was able to make my own assessment on the condition of the system returned by the trader. I do not find that the system has been used, damaged or rendered useless by the trader. Clearly, the system appears to have been opened from the original manufacturers packaging but beyond this, the consumer has had returned an unused new system.

The substantial issue for determination is the claim for £16,250.00 in personal damages. I should add here that the original claim notified to the LAC under this head was £7,000.00 being for personal expenses due to delay in delivery.

The contract

My attention is drawn to the relevant clauses in the contract which I have copied below;-

16. Times for delivery or performance by the Supplier are estimates only and, except by operation of law or as otherwise agreed, time shall not be of the essence.

17. If delivery of any Goods has not been made 30 days after the agreed time, the Customer shall be entitled to rescind the Contract in respect of those Goods and return them, and the liability of the Supplier shall be limited to a cancellation of the price due for those which have not been accepted by the Customer.

It is clear from the contract generally and clause 16 in particular, the delivery date of 1st April 2021 was always an estimate. The parties contracted on this basis and I am therefore not able to find that the trader is in breach of contract in failing to deliver by this date. I have not seen any evidence that time ever became of the essence in this contract or that the delay was caused outside of the matters set out in clause 32 '*circumstances beyond reasonable control*' which includes delays caused by the 'Suppliers' (traders) suppliers. I have read and noted the trader's explanation for the delay but I am

not required to offer any comment, however, it is common knowledge that there have been severe disruptions to the economy and supply chains over the last 2 years.

The Consumer Rights Act 2015 does not apply to goods which are 'immovable' such as houses but in the circumstances of this case, I find that the goods purchased, although described as a home, were movable. This engages section 62 of the Act which allows an assessment to be made of the term (clause 17) on which the trader seeks to limit his liability against the requirement of 'fairness' under the Act.

In carrying out that assessment, I do not find that the limitation of liability in clause 17 is an unfair term. This is because the clause allows the consumer the ability to withdraw from the contract (rescind) and recover the full amount of the money paid by her. This term is actually 'weighted' in favour of the consumer. A more difficult question might be if the term allowed the trader to keep such an amount of money to cover the cost of works completed. In this case, I am informed by the trader that 75% of the works are complete. That said, the trader has refunded the consumer in full and I am not able to find any unfairness in the term. This means that the trader is not liable to the consumer for an amount greater than the amount paid by her.

For the avoidance of doubt, the trader is not in breach of contract for not delivering the *tiny* home by 1st April 2021 and the consumer is not able to maintain any claim for damages based on the alleged breach of contract.

I do find, however, that the trader is in breach of clause 17 of the contract in not returning the money once it became clear that the consumer no longer wished to rescind the contract. For the purpose of calculating the interest payable below, I have taken the date this dispute was referred to LAC for adjudication. It was still possible that the parties might have found middle ground during the mediation process before referral of the dispute for adjudication.

I believe it is necessary to explain to the parties that my decision would have been the same even if the trader had not limited his liability under clause 17. By email dated 19th September 2022 the consumer stated;-

".....For the latter period of 10 months, the withheld funds consisted of mine and my husband's life savings and thus prevented us from moving forward with securing any home and instead, like the initial 7 month period, forced me to incur more personal damages on temporary accommodation."

Impecuniosity can sometimes justify the loss claimed by the consumer but the consumer also has a corresponding duty in law to mitigate her loss. In her situation, reasonable losses might have been increased financial charges representing the additional rental or mortgage charges she had to pay but not the actual rental or mortgage charges themselves. For the purpose of illustration, if the consumer had purchased a static caravan whilst waiting for return of her funds, she could not claim the cost of the static caravan back from the trader because that would represent a double recovery.

The consumer has not been put forward additional financial charges as a head of claim for the loss incurred. I am therefore not able to make the award for the alleged personal damages because firstly the trader's liability is limited under contract and secondly because the loss claimed is not allowable, in any event.

Conclusions

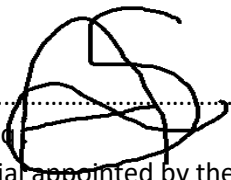
The order I make is that the trader pay the consumer interest for not returning her funds. The date from which interest shall be calculated is the date when the dispute was referred to LAC for

adjudication namely 14th December 2021. The amount of interest shall be 8% per annum which is the same rate applied by the Courts on Judgement orders. I also order the trader to repay the fee paid by the consumer on an application by the trader for time to pay the interim order in the sum of £150.00.

I have calculated the interest on the dates and amounts the trader repaid the money to the consumer under the table below.

Date of payment	Amount paid	balance	No. of days interest	Amount of interest	Total interest
		43,200	27	255.65	
10.2.22	10,800	32,400	18	127.82	
14.4.22	1300	31,100	90	613.48	
28.4.22	9500	21,600	67	317.19	
4.07.22	2725	18,875	11	45.51	
15.07.22	2725	16,150	7	24.79	
22.07.22	2725	13,425	7	20.60	
29.07.22	2725	10,700	7	16.42	
5.08.22	2725	7975	7	12.23	
12.08.22	2725	5250	7	8.05	
19.08.22	2725	2525	7	6.64	
8.09.22	2525	0	0	0	1448.38

The trader shall pay the consumer the sum of £1598.38 by 4.00pm on 14th January 2023.

Signed.....

 Ayub Sadiq
 ADR Official appointed by the London Arbitration Centre Limited

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