[brief cases]

Two legal cases from our files

At loggerheads

Nigel and Coldseal became locked in a battle of wills

When double-glazing company Coldseal charged Nigel Harper £9,100 for a damp conservatory, and ruined his driveway to boot, he withheld £400. There then ensued a battle of wills, with Coldseal refusing to make good until it had got the money, and Nigel refusing to hand it over until the matter of his damaged drive had been resolved.

Things got off to a bad start when Coldseal drove a heavy vehicle up Nigel's driveway, leaving a deep rut on one side and causing the flagstones to crack and move. It was agreed verbally that Nigel would withhold £400 pending agreement on how the drive should be repaired.

Almost immediately after the conservatory was built, Nigel noticed some damp on the plasterboard that was fitted to the wall of his house inside the conservatory. He reported the fault, and reminded Coldseal about the damage to his drive. Coldseal said it wasn't liable for the fact that his driveway wasn't up to the job and claimed that Nigel had given permission to use it. It refused to rectify the damp until it had got its £400. Nigel argued that he wasn't obliged to come up with the final payment until the work had been satisfactorily completed.

Exasperated by this stalemate, Nigel asked us to intervene. We suggested that both parties should get a joint expert report. Coldseal ignored the invitation, leaving Nigel to get his own report. The report concluded that damp was penetrating from the rear of the main frame attached to the wall of the house.

In the meantime, Coldseal contacted Nigel to say it wanted to finish the job, but it again insisted on having the £400 first. We reminded Coldseal that, under the Supply of Goods and Services Act 1982, it had a legal duty to carry out its work with reasonable skill and care. We added that if it didn't put everything right, Nigel would get another builder to complete things.

Coldseal then sent two fitters to make good. They admitted that the plasterboard had been fitted the wrong way round but suggested that the damp could have been due to some holes in the wall of the house. Coldseal again demanded the £400.

To avoid going to court, we asked Coldseal to waive the £400 as compensation for the damaged drive. Coldseal agreed. It repaired the conservatory and Nigel put the money towards a new driveway.

POINT OF LAW

A supplier must provide its service with reasonable skill and care, using materials of satisfactory quality. If this isn't the case, and the supplier can't sort things out, you can claim the cost of having a third party complete the job.

The case of the flawed refusal

Bali's claim was rejected, even though she was never told why

Insurance company BIAS Services Ltd rejected Bali Saluja's claim on the strength of the terms in a warranty she never received.

Bali and her husband bought £26,000 worth of carpets from their local branch of Allied Carpets. They also signed up to a five-year Master Shield warranty, assured by the assistant that it would cover them for replacements should the carpets get stained. The warranty

Bali Saluja

cost an extra £1,750. The Salujas never received a copy of it.

A couple of years on, two carpets became stained, so Bali put in a claim. BIAS Services Ltd, which had taken over Master Shield, offered part of the cost of replacing just one of the carpets, pointing to the warranty's terms and conditions. Bali wasn't prepared to accept the offer and came to us.

We told BIAS it couldn't rely on terms which the Salujas knew nothing about. We requested a copy of the warranty and asked BIAS to justify its decision. We didn't get an explanation. BIAS simply told us that it had referred the matter to one of its complaints investigators.

Then we heard that BIAS was prepared to accept the claim for both carpets after all. It was offering £2,047 towards the cost of replacing them. Bali and her husband asked for cash. BIAS then offered £1,800, which the Salujas accepted.

POINT OF LAW

If you take out a warranty on the strength of what a supplier tells you it covers, and the terms and conditions turn out to contradict what you were told, you may have a claim for misrepresentation. This is the case even if you don't receive a copy of the terms and conditions.

PHOTOGRAPHY DOUGLAS ROBERTSON, JOHN TRENHOLM

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