

[brief cases]

Two legal cases from our files

Out on all counts

Everest failed to meet conditions agreed with David

David Howson was forced to cancel a holiday that had been planned a year in advance and to ask his elderly neighbours to demolish nearly half their fence – all because Everest didn't meet its promises when building his conservatory.

David told the Everest sales representative that he would use Everest to build the £26,081 conservatory only if it could meet three conditions. The first was a guarantee that the work would be completed in time for a Royal Navy reunion and a two-month holiday he had booked and didn't want to miss. The second condition was that the conservatory was to be built with enough room left between it and his neighbour's garden to give David sufficient access to maintain the conservatory. The third condition was that none of the work was to be sub-contracted. The sales representative said Everest could meet all three conditions so David signed the contract.

In the event, Everest met none of the conditions. Despite numerous reminders from David that the completion date was crucial, the work overran – and, although he made the reunion, David missed out on his holiday. Luckily, there

were no cancellation charges. Then, because its own contractor fell ill, Everest handed over the building of the base and a wall to a local contractor. Although the standard of work was good, David felt there was a distinct lack of proper supervision and that it was a 'lottery' as to who, if anyone, would turn up from one day to the next. Finally, when the conservatory was finished, there wasn't enough room between it and his neighbour's property.

David complained to Everest, but it disputed the fact that he had ever asked for the conditions to be made part of the contract, claiming instead that he had merely said that he 'would like' the work to be finished by a particular date. So David approached us.

We suggested that David ask his neighbours to agree to a formal right of way across their land so that he could maintain the conservatory. They'd already had to remove half their fence while the conservatory was being built but, fortunately, they obliged. We asked Everest to refund the cost of getting the right of way (£411.25) and of taking down the fence (£80). Everest at first disputed the claim but finally agreed to settle in full.

POINT OF LAW

A contract can be part written, part verbal, but it is best to make sure that any specific requirements that the supplier has agreed to beforehand are put in writing. This will avoid any suggestions to the contrary should a dispute arise.

Going into meltdown

Barry was given wrong advice about where to put a fridge-freezer

Barry Hubbard lost £85 worth of food when his Beko fridge-freezer stopped working just before Christmas. He'd been assured by the Currys' sales assistant that the appliance would work in a garage. But that turned out to be wrong.

Garages tend to get too cold for fridges and fridge-freezers to work properly – which was why Barry checked it would be OK before paying out £210. And



Barry Hubbard

things were fine for the first ten months. But then, a few days before Christmas, the fridge-freezer stopped, leaving

Barry with £85 worth of food that had melted.

The Currys' engineer told Barry it had gone wrong because his garage was too cold and that the model was suitable only for indoor use. When Beko's own engineers confirmed this, Barry went back to Currys. It claimed the assistant knew nothing about any garage. So Barry came to us.

We argued that Barry had bought the fridge-freezer relying on what

the assistant had said. As this had proved to be incorrect, Barry could cancel the contract and claim damages.

Currys said it was Barry's 'responsibility as a consumer to read the instructions before use' and it was 'unable to assist him further'.

Barry wasn't satisfied. With our help, he prepared to take Currys to court, but before the case was heard, Currys agreed to pay £404. Barry accepted its offer.

POINT OF LAW

If you sign a contract on the strength of a statement that turns out to be false, you may be able to claim for damages under the Misrepresentation Act 1967. Alternatively, you may have a claim under the Sale of Goods Act 1979 if goods prove unfit for any specific purpose you brought to the attention of the seller.

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