



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2019] NZDT 1520

**APPLICANT**      RL Limited

**RESPONDENT**    ZL

**The Tribunal hereby orders:**

The claim is dismissed.

**Reasons:**

1. Late last year, ZL engaged RL Limited to supply and install kitchen cabinetry and a benchtop in his daughter's home at [address]. He has refused to pay the \$1,750.00 balance of the contract price because the benchtop does not have a hole for a tap and RL says there is no room to put a hole for a tap in the benchtop.
2. RL now claims \$1,750.00 from ZL.
3. The issues to be determined are:
  - a) Did the benchtop correspond with its description?
  - b) What sum, if any, must ZL pay to RL?

**Did the benchtop correspond with its description?**

4. Under s 9 of the Consumer Guarantees Act 1993 (CGA), where goods are supplied by description to a consumer, there is a guarantee that the goods correspond with the description. ZL said that he asked for a top-mounted basin and for the tap to be on the benchtop. Although RL argued today that those items would be incompatible due to the measurements, the plan approved by ZL showed a top-mounted basin and a tap on the benchtop. RL argued that the plan was only a draft, but ZL did not approve any changes to the plan, so I find that the plan contained the description of what was to be supplied. It follows that the benchtop did not correspond with its description.

**What sum, if any, must ZL pay to RL?**

5. The failure to match the description is of a substantial character, since the benchtop departs in a significant respect from the description (CGA s 21(b)). Under CGA s 20(1)(d), the option of rejecting the benchtop is not available to ZL because it has been attached to the house and cannot be detached without damaging it. Accordingly, ZL's remedy under CGA s 18 is to obtain

damages in compensation for any reduction in value of the product below the price paid, together with damages for any reasonably foreseeable consequential losses.

6. ZL said that mounting the tap on the basin would not be stable since the tap is heavy and the basin is thin. I have considered whether ZL's damages should be measured by the cost of getting a hole made in the basin (a reasonably foreseeable consequential loss) together with damages for loss of amenity (reduction in value) since he would need to install a more lightweight tap on the basin.
7. However, ZL is not happy with installing a tap on the basin. He produced a quotation of \$1,932.00 for the cost of removing and replacing the part of the benchtop around the basin to allow for a hole in the benchtop. The cost of remedy could be viewed as a measure of the reduction in value, or as a reasonably foreseeable consequential cost. In any case, s 4 of the CGA clarifies that CGA remedies are additional to common law remedies, so a consumer's common law right to full contractual damages is preserved. The general rule when assessing contractual damages is that people are entitled to receive what they have contracted for. The courts have pointed out that parties enter into contracts with the expectation of performance, not with the expectation of compensation for breach, so they are generally entitled to the full cost of remedy.
8. Although the cost of remedy is high, I consider that the cost is not totally disproportionate to the benefit, and ZL will bear the extra cost above \$1,750.00 himself since he has not filed a counterclaim. Therefore I accept that ZL is entitled to a set-off of \$1,750.00 against the balance of his account, with the result that RL is not entitled to any further payment and the claim must be dismissed.

**Referee: E Paton-Simpson**

**Date: 5 September 2019**