

**IN THE CONSUMER CLAIMS TRIBUNAL MALAYSIA
AT KUCHING, SARAWAK**

CLAIM NO.: TTPM-Q-(B)-16-2023

BETWEEN

CHANG MEI SING

CLAIMANT

AND

OSIM (M) SDN BHD

RESPONDENT

GROUND OF JUDGMENT

Brief background

1. The Claimant bought a massage chair (R888X2-03-D04 uLove 2 Blieue D and A888XA-16-X00 uLove 2 Entertainment Stand White) (the said chair) from the Respondent on the 14.03.2021.
2. The price of the said chair including the delivery of the same is RM19,586.00 (per Sales Order marked Exhibit C1).

Claimant's claim

3. According to the Claimant after using the said chair for 109 days (07.07.2021) broken part dropped from the said chair.
4. The Claimant reported the matter to the Respondent's sales representative.

5. According to the Claimant the Respondent's staff only came to repair the said chair on the 08.12.2021.
6. However, after 10 days of the repair the said chair reported error suspected due to failure spare parts installed.
7. The matter was reported to the Respondent's sales representative by phone and subsequent reminder by whatapp on the 12.01.2022.
8. The Claimant had to push for follow up for service appointment every time.
9. The Respondent's staff came on the 15.06.2021 and 19.08.2022 but repair was not done on the said chair merely checking and promising that they will order the spare part.
10. Subsequently nothing was done and the Claimant have to again follow up on the repair of the said chair and was inform that the technician that last came to the Claimant's house had resigned. Numerous follow up was done by the Claimant but nothing was done.
11. On the 03-04.01.2023 the Respondent's technician called to arrange to check the said chair and to verified the previous technician report as the Claimant's warranty will expire on 19.03.2023.
12. In the Respondent's Defence (Form 2) and during hearing the Respondent wants the Claimant to wait further from 28.03.2023 to 04.04.2023 for them to repair the said chair.
13. The Claimant does not want to wait any longer as according to the Claimant he is tired of waiting and demand full refund immediately.

Respondent's Defence

14. The Respondent did not dispute the Claimant's claim and the Claimant's testimony during the hearing.
15. The only statement in the Respondent's Defence (Form 2) was - "*Our Osim Customer Service will arrange the technician go to customer house to repair within 28/03/2023 – 04/04/2023. Will complete the all parts service in this period.*"
16. Also, during hearing the Respondent's representative repeated what was stated in their Defence and states that the Respondent will arrange for technician to go to the Claimant's house to repair the chair between 28.03.2023 – 04.04.2023.
17. From the Respondent's Defence and testimony during hearing what was clear and admitted by the Respondent was the said chair needed repair.

Section 32 Consumer Protection Act 1999

18. **Section 32 (1) and (2) Consumer Protection Act 1999** states:

"32. (1) "Where goods are supplied to a consumer there shall be implied a guarantee that the goods are of acceptable quality.

(2) For the purposes of subsection (1), goods shall be deemed to be of acceptable quality –

- (a) if they are –
- (i) fit for all the purpose for which goods of the type in question are commonly supplied;
 - (ii) acceptable in appearance and finish;
 - (iii) free from minor defects;
 - (iv) safe;
 - (v) durable; and
- (b) a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard the goods as acceptable having regards to –
- (i) the nature of the goods;
 - (ii) the price;
 - (iii) any statements made about the goods on any packing or label on the goods;
 - (iv) any representation made about the goods by the supplier or the manufacturer; and
 - (v) all other relevant circumstances of the supply of the goods.”

19. As the massage chair supplied to the Claimant only lasted for 109 days after being used and required repair thereafter, the said chair clearly:

- a. Was not fit for the purpose that it was commonly supplied for;
- b. Was not free from defects; and
- c. Was not durable.

20. Having regard to the price of the said chair which cost more than RM18,000.00 I am of the view that said chair was not of acceptable

quality per Section 32 (1) and (2) of the Consumer Protection Act 1999.

The words “Goods sold are not exchangeable nor refundable. Deposits paid/payments made to reserve products are not refundable” on the Invoice (Exhibit C1)

21. With regards to the words “*Goods sold are not exchangeable nor refundable. Deposits paid/payments made to reserve products are not refundable*” on the Sales Order (Exhibit C1) – especially the word “*Goods sold are not exchangeable nor refundable.*”

22. I am of the view that it is a non-issue because:

- a. The Sales Order (Exhibit C1) was never signed by the Claimant.
- b. Exhibit C1 was dated 18.03.2021 after the purchase/order/contract was concluded between the parties on the 14.03.2021.

A party (Respondent) cannot unilaterally add new terms to contract already concluded. See *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* (2015) 2 MLJ 441 (FC) and *Mintye Properties Sdn Bhd v. Yayasan Melaka* (2006) 6 MLJ 420 (COA) referred to in *TY Auto Car Dealer Sdn Bhd v. Tribunal Tuntutan Pengguna & Anor.* (2020) 1 LNS 1944 para 39

- c. There is also no evidence adduced by the Respondent that the Respondent had ever explained and gave notice to the Claimant of the said words in Exhibit C1 before the same was given to the Claimant.

Pronouncement and Order

23. For the reasons I have given, as the massage chair supplied to the Claimant only lasted for 109 days after being used, it is not fit for the purpose that it was commonly supplied for. The said chair was neither free from defect nor durable. Having regard to the price of the said chair which cost more than RM18,000.00 said chair was not of acceptable quality per Section 32 of Consumer Protection Act 1999.
24. As the Respondent has also failed to repair the said chair to date despite knowing of the condition of the said chair and the Claimant's various complaints, it is ordered that:
- a. The Respondent is to refund RM19,586.00 to the Claimant within 14 days from the date of the award.
 - b. The Claimant is to return the said chair within 14 days of the refund and the Respondent is to bear the cost of the same.

Joseph Kahell Baleng
President of Consumer Tribunal
Kuching

28.03.2023