DRN-4648375

The complaint

Mr G complains about how American Express Services Europe Limited (AESEL) dealt with his chargeback dispute and his section 75 claim about a damaged marble statue.

What happened

In March 2023 Mr G bought a marble statue from a merchant while he was visiting another country. In sterling, it cost £1,292:92. He paid for it with his American Express credit card.

Unfortunately, when the statue arrived he discovered that it had been damaged. Mr G attributed this to it having been packaged incorrectly by the merchant. He asked AESEL for a refund. AESEL raised a chargeback dispute, but the merchant successfully defended it by saying that it was not responsible for goods once they have left their warehouse.

Mr G then raised a claim with AESEL under section 75 of the Consumer Credit Act 1974. However, AESEL concluded that section 75 did not apply, because his payment had been made to the merchant via a third party. AESEL therefore did not refund him. Being dissatisfied with that outcome, Mr G brought this complaint to our service.

Our investigator did not uphold this complaint. He said that AESEL had taken the chargeback dispute as far as it could. He did not agree with AESEL that section 75 did not apply to Mr G's purchase, notwithstanding the involvement of a third party. But he did not think that there had been a breach of contract by the merchant, because he did not think that the statutory implied terms under the Consumer Rights Act 2015 applied to a contract that had been entered into in another country.

Mr G did not accept that decision. He asked for an ombudsman's decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I do not uphold it, for broadly the same reasons as the investigator.

Chargeback

In its defence of the chargeback, the merchant provided its terms and conditions, which stated that it is not responsible for goods after they leave its warehouse. I think that is a sufficient defence to a chargeback claim. (In the next section, about section 75, I have said more about why I think the sale was subject to the law of the merchant's own country.)

Mr G has also complained that AESEL tried a second time to get his money back by chargeback, and failed again. While I understand that this might have got his hopes up only to eventually dash them again, I don't think it would be right to uphold a complaint against AESEL on the basis that it persevered in trying to get its customer a refund.

Section 75

Section 75 is a law which, in certain circumstances, makes a bank jointly liable with the supplier of goods for any breach of contract by the supplier in relation to goods which were paid for with a credit card issued by the bank.

In the case of a contract entered into in the United Kingdom to supply goods to a consumer, the Consumer Rights Act 2015 imposes certain implied terms into the contract. These include terms that the goods must be of satisfactory quality (in section 9), and that the goods remain at the supplier's risk until they come into the physical possession of the consumer (in section 29).

However, Mr G's contract was entered into in another country. The merchant's terms and conditions stated that any disputes shall be governed by the law of that country. The only connection to the UK was that the delivery address was in the UK.

In these circumstances, section 32(1) of the Consumer Rights Act says that the Act only applies to the contract if the contract "has a close connection with the United Kingdom." And even if it has, section 32(2) says that section 29 still does not apply.

I have also considered the Rome I regulation,[1] as it is mentioned in section 32(3) as a potential exception to subsection (2). But I can find nothing in that regulation which would lead to a conclusion that UK law should apply instead of the law of the other country.

Mr G says he never saw or signed the merchant's terms and conditions, and so he is not bound by them. That doesn't necessarily follow; but even if I took a different view about that, and I found that the parties to the contract had not agreed on a choice of which country's law should apply to the contract, Article 4.1(a) of Rome I would have still led me to the conclusion that it is the law of the merchant's country that applies.

For these reasons, I am satisfied that section 29 of the Consumer Rights Act does not apply to Mr G's contract, whether the contract has a close connection with the UK or not (although section 9 might).

It is not in dispute that the statue was damaged in transit to the UK, which Mr G says only happened because it had not been placed in suitable packaging. There is a dispute about whether the statue was packaged in front of Mr G, or whether that was done after he left the shop, but I don't think I need to get to the bottom of that, because the statue was in satisfactory condition when it was in the shop, and it was damaged on the way. Since section 29 does not apply to this contract, I am unable to find that the contract contained a term that the merchant was responsible for any damage that happened to the statue while it was in transit.

I am therefore not persuaded that there has been a breach of contract for which AESEL is liable under section 75.

My final decision

My decision is that I do not uphold this complaint.

[1] That is, Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 November 2024.

Richard Wood
Ombudsman