

complaint

Ms G complains that Bank of Scotland plc (trading as Halifax) will not refund the cost of jewellery she bought, using her credit card, while on holiday in Turkey, and which she says was misrepresented to her. She brings this complaint under section 75 of the Consumer Credit Act 1974.

background

In April 2014, Ms G went on an escorted holiday tour in Turkey, which included a trip to a jewellery factory. While there, she bought a gold chain, for which she paid £1,450, and a dress ring, for which she paid £2,350. She says she was told by the sales staff at the factory that all their products were hand made by skilled Turkish craftsmen, and their low labour costs made their products less expensive than comparable products in the UK.

When Ms G returned to the UK she had the goods valued for insurance purposes. She was told that the chain was made in Italy, and both items were worth considerably less than she had paid for them. She contacted the seller and said she wanted to cancel the contract, but it refused to do so. She therefore claimed a refund from Halifax under section 75.

Halifax required her to obtain another valuation from a specialist jewellery valuation firm. In its report, it said that:

- the chain was a mass produced item, made in Italy, with a New Replacement Value (NRV) of £1,550; and
- the ring was also mass produced. One stone was chipped, and both stones had had some treatment, which was not unusual in the trade. But good trade practice was for a customer to be told of such treatment, which had an effect on value. No such disclosure had been made to Ms G. The NRV of the ring was £1,185.

Halifax said it would not meet her claim under section 75. Ms G had said she was told by the seller that the goods were hand made in Turkey, and were valued at least at what she had paid for them. However, there was no documentary evidence to substantiate her claim. Halifax paid Ms G £750 towards the costs of valuations she had obtained, but would not refund the cost of the goods.

Our adjudicator did not recommend that this complaint should be upheld. She considered that there was insufficient information to prove that there had been a breach of contract or misrepresentation, which was required for a claim under section 75 to succeed. Ms G responded to say, in summary, that:

- the treatment of the stones in the ring had not been disclosed to her as required by internationally accepted trade standards, which was mis-selling;
- she was given a tour of the factory and told that its jewellery was made by its own skilled craftsmen; and
- under section 75, Halifax should be jointly and equally responsible for the mis-selling that had happened.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

If Ms G had bought the goods in England in a contract to which English Law applied, then she might well have had a remedy against both the seller and Halifax. The English courts have decided that the principle of section 75 applies to a transaction which occurs abroad. However, in deciding whether there has been a breach of contract or misrepresentation for which the creditor is equally liable with the seller, the law of the contract will apply.

The conditions printed on the sales invoice say that Turkish law is to apply to the contract. They also include the following condition:

“All of the promises and the contracts, also the ones added later, are defined in writing.”

I understand this to mean that representations and terms not in writing are excluded from the contract.

If I am to uphold this complaint I need to be satisfied both that:

1. *there was a misrepresentation or breach of contract*

I accept that following the tour of the factory, Ms G expected that the goods she bought had been produced in the factory. Statements that were made to her reinforced this belief. However, on balance, and in the absence of any other evidence, I consider that there is not enough to show that a specific representation to that effect was made in respect of those particular items at the point of sale.

I also consider that the fact that the treatment of the stones, and the chip, were not disclosed to her does not mean there was a misrepresentation. Silence in this context is not a misrepresentation.

2. *And, the condition I have mentioned above is not effective to exclude any liability*

On the face of it, any promise or term not written into the contract has no effect. I have not seen anything to suggest that such a condition is not effective under Turkish Law. So I conclude that even if I were satisfied that a specific verbal representation about the place of manufacture of the goods had been made to Ms G, it would have no effect on this contract under Turkish Law.

For these reasons, I am not satisfied that there is a misrepresentation or breach of the contract in respect of these goods for which, under section 75, Halifax is liable to refund to Ms G the price she paid for the goods.

my final decision

My decision is that I do not uphold this complaint, and make no order against Bank of Scotland plc (trading as Halifax)

Under the rules of the Financial Ombudsman Service, I am required to ask Ms G to accept or reject my decision before 17 April 2015.

Lennox Towers
ombudsman