

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1277

Date of Decision: 6 March 2019

Complaint

The company's contractor was installing a Smart Meter at the customer's home on 1 November 2018. During the works, the contractor caused significant damage to the kitchen cabinet under the sink and damaged the plinth below the cabinet. Whilst they have accepted liability for the damage, the contractor's insurers are suggesting that repairs could be undertaken by a carpenter. However, the customer only trusts BBM to do the job - they were the company that made and installed the kitchen originally. BBM have advised that numerous potential issues/problems could be encountered. BBM will only take on the job if the company will meet the cost of all these potential issues/problems if they arise. In these circumstances, the compensation that the customer seeks is £10,000.00.

Defence

The offer of a new replacement kitchen cabinet and plinth (together with installation of these items by professional kitchen fitters, at the contractor's expense) is considered to be a reasonable basis for resolving the matter. The £10,000.00 claim is premised on events that have not yet happened and may never happen. Until such time as the work can be carried out, therefore, it would not be reasonable for the company, the contractor or the insurers to be made to pay (in effect) a hypothetical claim.

No offer of settlement has been made.

Findings

The damage caused by the contractor on 1 November 2018 did amount to a failure by the company to provide its services to the standard expected. It appears, however, that the dealings with the contractor's insurers have not yet fully run their course. The customer's claim is therefore made prematurely. In view of the relatively early stage that the dispute is still at, it would not be appropriate at this juncture to require the company to pay the compensation sought (or any amount of compensation).

Outcome

The company does not need to take any further action.

The customer must reply by 3 April 2019 to accept or reject this decision.

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- Andy advised the customer to get a quote for the replacement of the kitchen cabinet and kitchen plinth.
- On 2 November 2018, the customer sent Andy details of the size of the kitchen cabinet. He also informed him of the name of the company that had supplied the kitchen originally (“BBM”).
- The customer heard nothing further so he chased up Andy on 6 November 2018 to ask what was happening.
- He again chased Andy on 19 November 2018 but Andy replied that no one had answered the phone at BBM and that no one had replied to emails.
- The customer called BBM himself on 19 November 2018 and they answered the call immediately. They gave him details of the units and the price to replace the damaged items. The customer sent these details through to Andy and Andy said that he would forward the money to the customer’s account and that the customer could decide if he wanted to get his fitter to repair the kitchen or to use Andy’s team.
- The next day, the customer contacted Andy and said that he would use his team. However, Andy replied that - having seen the quality of the customer’s kitchen - he was not happy with his team taking the job on.
- The customer then went back to BBM and asked them to supply and fit the items into his kitchen. BBM confirmed that they could, in principle, do this work but warned that there would be numerous issues to address, specifically that:
 - they would have to have the new pipework removed;
 - they would have to remove the kitchen sink;
 - there was a possibility that the sink could get damaged;
 - there was a possibility that the granite (that the sink and cabinets are attached to) could be damaged;
 - if (during the course of the works) they happened to damage the sink, granite or any other cabinet then the whole kitchen would need replacing;
 - the granite would need total replacement as it is a natural stone;
 - the costs would run into thousands of pounds.
- BBM said that they would only take on the repair if the company agreed to cover all of these potential issues / costs.
- The customer spoke again to Andy on 21 November 2018 and Andy informed him that he would be making an insurance claim.
- The customer eventually heard back from the insurers. Whilst they accepted liability for the damage to the kitchen cabinet, the insurers asked the customer to get it repaired. The customer

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had been clear and detailed, however, about the problems that would be faced in carrying out a repair. He referred to the full explanation from BBM advising that the cabinet could not be repaired and had to be replaced.

- The insurers had not been out to the property to study the damage and have reached a judgment that contradicts the advice from the professional company (BBM) that made and installed the customer's kitchen originally.
- The customer reminded the Contractor that they had agreed that they wanted to pay to replace the damaged cabinet but the insurers have taken a different response.
- The customer says that he will only trust BBM with the work on his kitchen, as they are the experts.
- In light of all of this, the customer would like the company to accept full responsibility for the fixing of his kitchen - this must include covering all costs in relation to dealing with the damage caused. The compensation that the customer seeks in this regard, therefore, is £10,000.00.

The company's response is that:

- After the unfortunate incident on 1 November 2018, the Contractor accepted liability for the matter immediately. The company's liability, however, is limited to the value of the damaged item at the time of the incident.
- A new kitchen cabinet and plinth was offered to the customer, at the Contractor's expense, on 2 November 2018. As the Contractor is a plumber, they also offered to pay for the customer's chosen kitchen fitter, BBM, to install the new cabinet and plinth (as BBM are the experts in their field.)
- The customer asked for assurances from the Contractor that they would also cover any potential costs in the event that further damage was caused whilst fitting the new cabinet and plinth. The matter was correctly passed to insurers at that point. The insurance company stated that they believed a competent carpenter could repair the damage caused to the kitchen cabinet. The customer, however, has chosen not to accept this proposed course of action.
- From the company's point of view, the offer of a new replacement kitchen cabinet and plinth (together with installation of these items by professional kitchen fitters, at the Contractor's expense) should be a reasonable basis for resolving the matter. If the professional kitchen fitting company caused further damage then they would be liable to correct any such damage. If BBM considers that they cannot install the new items without causing any further damage then (it is suggested) the customer should look to employ another company who believes it can.
- If there is no other company willing to take on the work then that leaves only the option put

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forward by the Contractor's insurance company. In practice, the company considers this to be the most sensible option anyway - because:

- a skilled carpenter could install a stronger piece of wood to replace the current chipboard used at the back of the kitchen cabinet;
 - the middle support pillar, which sits inside the cabinet and between the doors, can also be repaired without signs that it is a repair job;
 - the plinth can be replaced for a new one, without affecting the rest of the kitchen;
 - a new piece of wood can be painted white and installed as a backboard for the cabinet;
 - the original holes made for the centre pillar in the cabinet can be filled and then the centre pillar refitted;
 - once this has been done - and the cabinet refilled with the items that are usually there - there will be no sign that the cabinet is not original;
 - added to this, there is no 'risk' to the rest of the kitchen as it stands today.
- Whilst it is understood that the customer has been inconvenienced by this incident, the company has endeavoured to reach an agreement to put things right. Unfortunately, because he has declined both remedial options presented to him, there was nothing to be gained by corresponding further and, in line with its formal complaints procedure, the customer was advised that the company had made its final decision.
 - At this stage, there is only a 'risk' of further damage. As the moment, no actual further damage has been caused. It is not possible to determine whether any further damage would necessarily occur (whether because such further damage is/was inevitable or because it was/would be caused accidentally by BBM during the works that they would be carrying out). Until such time as the work can be carried out, it is submitted that it would be unreasonable for the company, the Contractor or the insurers to agree a blanket approval to pay (in effect) a hypothetical claim. The claim is premised on events that have not yet happened and may never happen.
 - For these reasons, it is submitted that the company should not be found liable to pay the £10,000.00 compensation claimed.
 - Finally, the company mentions that the Contractor's insurers are still working with their loss adjusters and BBM to reach a resolution that would be acceptable to all parties. The aim is to restore the cabinet to the condition that it was in, prior to the damage.

How is a WATRS decision reached?

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In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. I have reviewed in particular:
 - a. the 'chain of events', which is set out by the company on pages 1 to 3 of its defence; and
 - b. all the materials contained in the 'Evidence 1' item, which is appended to the company's defence;
 - c. the photograph of the kitchen cabinet and the two other documents, submitted by the customer alongside his WATRS application form;
 - d. the customer's comments of 21 February 2019 in reply to the defence filed by the company. (These comments were filed late but as they are very short, I have considered it reasonable to take them into account).
2. Looking at the various photographs provided, the damage caused by the Contractor on 1 November 2018 can readily be seen. I note that a number of weeks passed before the Contractor's insurers were notified and that then there was a further delay before the insurers put forward their proposals for a resolution. It is easy to appreciate, therefore, the degree of inconvenience that the customer has obviously been put to because of this matter.
3. In principle, the company does not appear to dispute that it has a liability in this case. To put the

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matter beyond doubt, however, I do find that the damage caused by the Contractor on 1 November 2018 plainly constituted a failure - on the part of the company - to provide its services to the standard that one would reasonably expect.

4. The next question is what loss entitlement (if any) flows from the failure in services that has been established. In this regard, the customer is very specific. He argues that he should be receive financial compensation of £10,000.00 (i.e. the maximum award that the Scheme Rules allow.) Notably, however, the £10,000.00 that the customer is claiming does not appear to be associated with the damage caused by the Contractor on 1 November 2018. Instead, the claimed compensation is said to relate to a potential scenario where further damage might be caused to the kitchen during the course of works to remedy the original damage caused on 1 November 2018. There is something of a mismatch, therefore, between:
 - a. on the one hand, the failure that I have found on the part of the company; and
 - b. on the other, the compensation entitlement that the customer is contending for.
5. BBM have warned about the problems that could be encountered in replacing (as opposed to repairing) the damaged goods. The customer is obviously anxious that he should be fully indemnified against the risk that those potential problems might come to pass.
6. It strikes me that, ultimately:
 - a. any remediation in this case will need to be carried out both reasonably and proportionately; and
 - b. the customer is under a duty to mitigate his losses (anyway) and to avoid taking unreasonable steps that might mean the losses are increased; and
 - c. many of the customer's key concerns (as to whether, for example, the kitchen cabinet is now incapable of repair) are ones that should/would be taken into account by the insurer's loss adjusters.
7. I view the company's assurance at the end of its defence as important:

"... Finally, it should be noted, our contractor's insurers are still working with their loss adjusters and BBM (who originally installed Mr []'s kitchen) to reach a resolution acceptable to all parties. The aim is to restore the cabinet to the condition it was in, prior to the damage ..."

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8. It seems, therefore, that the dealings with the insurers have not yet fully run their course. Consequently, I consider the customer's claim to be premature. In this respect, I accept the company's submission that "... *should it become necessary, [its] contractor's insurers would consider a further, substantiated claim, on its own merit. Until such time as the work can be carried out, it would be unreasonable for either [the company, its] contractors or their insurers to agree a blanket approval to pay a hypothetical claim ...*"
9. Given the still relatively early stage that the dispute is at, I am not persuaded that it would be appropriate to require the company to pay the £10,000.00 compensation sought by the customer (or to pay any amount of compensation). Fundamentally, the customer is arguing for losses that arise from events that have not yet occurred. I do not consider that I can properly make a financial award against the company on such a basis. Depending on how events unfold from here, it is certainly possible that losses of the sort that the customer fears will in fact be incurred. However, to direct the company to pay compensation at this point in time would in my assessment be putting the cart before the horse. Consequently, the claim does not succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 3 April 2019 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

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Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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