

CITATION: *Davies v Carla Furnishers Pty Ltd* [2007] NTMC 027

PARTIES: CHRISTOPHER JAMES DAVIES

v

CARLA FURNISHERS PTY LTD

TITLE OF COURT: Local Court

JURISDICTION: Small Claims

FILE NO(s): 20622761

DELIVERED ON: 25 May 2007

DELIVERED AT: Darwin – Posted to the Parties By Consent

HEARING DATE(s): 1 February 2007

JUDGMENT OF: Jenny Blokland CM

**CATCHWORDS:**

SMALL CLAIM – FITNESS FOR PURPOSE

*Sale of Goods Act*

*Consumer Affairs and Fair Trading Act*

**REPRESENTATION:**

*Counsel:*

Plaintiff:	Self
Defendant:	Mr Venturin

Judgment category classification: C

Judgment ID number: [2007] NTMC 027

Number of paragraphs: 17

IN THE LOCAL COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20622761

*Davies v Carla Furnishers Pty Ltd* [2007] NTMC 027

BETWEEN:

**CHRISTOPHER JAMES DAVIES**  
Plaintiff

AND:

**CARLA FURNISHERS PTY LTD**  
Defendant

REASONS FOR DECISION

(Delivered 25 May 2007)

Ms BLOKLAND CM:

**Introduction**

1. The plaintiff Mr Christopher Davies has filed a claim against the defendant, Carla Furnishers Pty Ltd for \$1,000 plus certain associated fees being the amount he claims as a refund for the purchase of a Digital Video Camera from the defendant. The Statement of Claim alleges “False and Misleading Advertising on its Packaging”. In essence the plaintiff claims that the Digital Video Camera purchased by him from the defendant was not compatible with his Operating System in circumstances where the Operating System on his computer exceeded the minimum requirements advised by the manufacturer and the defendant.
2. The Notice of Defence states:

“No fault was found with the camera. Extensive research with JVC Customer Service/technical support was excellent (see letter from JVC attached). Carla Furnishers did not mislead the plaintiff in any way as determined by consumer affairs (see letter attached).”

### **Evidence in the Proceedings**

3. The plaintiff gave evidence that on 1 April 2006 he purchased a JVC Everio 20GB HDD Digital Camcorder (hereafter “the Camcorder”) from the defendant. He said that prior to the purchase he asked Mr Adrian Venturin (manager and sales person for the defendant on the occasion of the purchase), whether the files the Camcorder would produce would be compatible with his Apple Macintosh computer. He said the reason for buying the Camcorder was primarily so that he would be able to record images of his newborn baby and manipulate them, perhaps make them into DVD’s and forward them to family residing interstate. Mr Davies said he was directed by Mr Venturin to the “System Requirements” on the packaging. The Packaging in relation to “Macintosh” clearly indicates as follows:

“Macintosh Hardware iMacG4/G5, iBook G4, PowerMac 65, PowerBook G4, eMac, Mac Mini equipped with a USB2.0 connector”.

and

“OS Mac OS X (10.2.8, 10.3.1 to 10.3.9.)”.

4. Mr Davies told the Court both his computer and operating system clearly complied with the requirements, indeed exceeded them. (Exhibit P2). Mr Davies told the Court that after using the Camcorder to record some images, he found that the JPEG2 format produced would not display on his computer; that he followed the instructions according to the manual to convert the image but could not view the file that was converted. He reiterated that his computer clearly met or exceeded the requirements. He said he connected the camcorder to his television to view and the quality of the view finder was very poor.
5. Mr Davies told the Court he returned the Camcorder on 3 April 2006 and requested a refund that was accepted by staff and that the camcorder

remained at the defendant's store. He said he was initially offered a full refund by the sales person who went away to process the refund. The same sales person advised him that approval of the manager would be required. Mr Davies said he then contacted the manager on the next day and was offered a store credit rather than a refund. He declined the offer and requested the full refund. He said Mr Adrian Venturin told him that getting a refund would depend on the manufacturer issuing a refund approval. He said Mr Venturin told him he would contact the manufacturer and ask JVC technical support to make contact directly; he said Mr Venturin told him he did not have the technical knowledge to help.

6. The plaintiff said he spoke to a person from JVC technical support whose name was "Sal"; that Sal agreed that the MP2 files would not play on the Mac operating system 10.2.8 and that he tried to work out some different ways of working through the problem. Mr Davies said that Sal suggested a way of creating a different file format. Mr Davies said that this process was much more time consuming and created a file three times larger than the original file size. He said it was a different default format than that suggested by the manual and was not an acceptable solution. Because of the size of the converted file Mr Davies said it would fill up his computer and he would not be able to get the four hours worth of video on to the computer and be able to watch it. He said it was very poor quality because the format recommended by Sal was not the default file format. Mr Davies said that he told Sal that he was not happy with that as a technical solution and that Sal had said he would contact the retail store regarding a refund.
7. Mr Davies said that when he contacted Mr Venturin on the following day (7 April 2006) Mr Venturin stated he had received an email from JVC technical support saying there was nothing wrong with the camera. He said he was advised that JVC had refused to issue a refund authority and therefore he (Mr Venturin) would be unable to refund the price of the camera. Mr Davies made the point that although he could *view* the images he wanted to produce

files that would work and could be viewed and used on his computer. He eventually sent a letter of demand to Carla Furnishings and after not receiving a reply sent a letter to Consumer Affairs. He said on 14 August 2006 he received a letter from Consumer Affairs saying they had contacted both the retailer and manufacturer and had not been able to reach a solution. That letter is before the Court (Exhibit P5). The letter concludes:

“In this instance I am unable to determine that there has been any contravention of the *Consumer Affairs and Fair Trading Act* by either trader. Consumer Affairs role in disputes such as this involves the provision of a conciliation service and has no power to force the trader to provide an outcome desired by the consumer”.

8. I note the conclusion of Consumer Affairs was expressed in a slightly different way in a memorandum to the defendant (Exhibit 8) that reads as follows:

“This is to advise that in relation to a complaint received by Mr Christopher Davies in relation to a JVC camcorder that he purchased from your premises in Darwin, this office was unable to determine that either Betta Electrical or JVC Australia had contravened the Northern Territory’s *Consumer Affairs and Fair Trading Act*.

As a result of the lack of evidence of contravention of the Act that came to the attention of this office, our file on the matter was closed and the consumer advised accordingly”.

9. Although I acknowledge that sometimes facts that are revealed throughout a consumer affairs investigation may be of relevance to the Court, there is nothing that either party has put forward from the investigation that illuminates the facts further. The letters forwarded to both parties are in my view inconclusive and in any event the Court must act on the evidence that is before it.
10. In cross-examination of the plaintiff Mr Venturin asked him if basically if the camera worked. Mr Davies replied that it takes a picture but does not provide a file that he can view on his computer. Mr Davies was referred to a

letter from JVC dated 21 September 2006. That letter from JVC Australia to Carla Furnishings reads in part as follows:

“Please find below details of our conversation with the above customer in reference to their camcorder. It seems that the customer is simply unhappy with the camera operation and what is required to download footage etc.

The customer has called through to our technical support line and was taken through the procedures (that were emailed to him) on how to download footage. The customer seemed to be unhappy with the length of time and the procedure involved with using his Mac.

Although the customer seems to have been advised that the camcorder creates MPEG2 files, it was defined that there are several forms of MPEG2 files and that the Everio models create an MPEG2 modfile which the Mac initially cannot read unless it is converted to a DV format. The customer is not happy with the entire procedure required to use the camcorder. The camcorder is working to manufacturing specifications and details of what PC requirements are needed to operate the Everio are also available”.

11. After referring to that letter Mr Venturin asked Mr Davies whether after getting technical help from JVC he was able to get an image on the screen. Mr Davies explained that when he used the software provided to create the default file type listed in the manual, the JPEG2 could not perform that function. He agreed that the technical people did take him through changing the file format which he was able to do but the size was too large. Mr Davies disputed the statement in the letter (Exhibit D7) stating that it is not the MPEG2 files that are converted to DV format, but rather the original file on the camera which is a MOD file that is converted to either a DV file or an MPEG2. He said the first method does not work and the second one takes a huge time to convert. Mr Venturin asked Mr Davies whether he had read the small print and Mr Davies indicated that what Mr Venturin was referring to was making DVD video, not the operating system.
12. Mr Venturin gave evidence on behalf of Carla Furnishers Pty Ltd. He said when he sold the camera to the plaintiff on 1 April 2006 the plaintiff was

very contented with the deal and there was a discussion about specification. He said the camera had been returned to the store and the camera has been left in the store's possession which was Mr Davie's choice. As a result of Mr Davie's contact with Mr Venturin he said he contacted JVC support and was advised there would be no refund approval if there was no fault with the camera. He said he informed Mr Davies. Mr Venturin was asked by Mr Davies in cross-examination whether at the time of purchase Mr Venturin was asked whether the camcorder would work on his computer and he referred Mr Davies to the box. Mr Venturin agreed with that proposition and he also agreed that he was asked whether it would work or not on Mr Davie's computer.

### **Consideration of the Evidence**

13. In my view Mr Davies gave clear and strong evidence. He obviously has a sound grasp of computers in the sense that he was clearly comfortable with the language and terminology and appeared to know his operating system well. He had kept sound records of every step he took in the process (example see Exhibit P1). I found his level of recall and precision in his evidence to be superior of the evidence offered on behalf of the defendant. The defendant produced a letter (Exhibit D7) from the manufacturer as discussed above. The contents of that letter are unable to be tested. The plaintiff has however given strong contrary evidence that is credible in terms of his dealings with the manufacturer and I prefer his evidence. I also prefer his evidence over Mr Venturin's as the plaintiff is much clearer about what occurred at the time of purchase. I appreciate that Mr Venturin has acknowledged he does not understand technical matters concerning computers and that may have contributed to some vagueness regarding his evidence concerning the original purchase. I also note the defendant has not called any person on behalf of the manufacturer nor anybody else in the defendant's store in relation to the offer of a refund or store credit. I find the facts on balance of probabilities in favour of the plaintiff. Materially, I

find that the JVC hard disk camcorder produced an MPEG2 file format that could not be displayed on the Macintosh 10.2.8. The requirements on the package that the supplier directed the purchaser to clearly indicate that the operating system Mac OS 10.2.8 is the minimum system required. Even though there is some evidence that the plaintiff was not satisfied with the picture quality on the view finder during playback through a television, this is not the primary basis of the claim which is about compatibility of the files produced by camcorder with the minimum operating system.

## **Conclusions**

14. In my view this case clearly falls under the Northern Territory *Consumer Affairs and Fair Trading Act*, in particular section 64 that provides as follows:

### **64. Implied undertakings as to quality or fitness**

(1) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section –

- (a) as regards defects specifically drawn to the consumer's attention before the contract is made; or
- (b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

(2) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the supplier or to another person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose (whether or not that is a purpose for which such goods are commonly supplied) except where the circumstances show that the consumer does not rely, or that it is unreasonable for the consumer to rely, on the skill or judgment of the supplier or of that other person.

(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for another



as they apply to a contract for the supply of goods made by a supplier in the course of a business, except where that other is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.

15. In my view section 64(2) is clearly enlivened as it was known to the supplier that the goods were required to be used on an Apple Mac operating system 10.2.8 and the supplier referred the consumer to the operating system required on the packaging. In my view the digital video camera was not fit for purpose and the plaintiff's claim succeeds.
16. Further, in my view this situation is also governed by s 19 *Sale of Goods Act* and the plaintiff should succeed:

**19. Implied condition as to quality or fitness**

Subject to this Act, and of any other law in force in the Territory, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows –

- (a) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose but in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose;
  - (b) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality but if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed;
  - (c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade; or
  - (d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.
17. At the conclusion of the hearing the parties agreed that the Courts Judgment could be forwarded to them by post rather than the necessity to appear again

in Court. Further, at the end of the hearing the defendant asked the Court to take the Camcorder into the Court's possession. That has formally been received as Exhibit 10. The defendant has permission to uplift that exhibit at the conclusion of the appeal period.

### **Orders**

1. Judgment for the plaintiff.
2. The defendant is to pay the following sums to the plaintiff:  
  
\$1,000 (being the refund)  
  
\$65 (Court fee)  
  
\$15 (Company search fee)  
  
**\$1,080 Total Judgment Sum**
3. I disallow incidental photocopying costs in the Small Claims jurisdiction.

Dated this 25<sup>th</sup> day of May 2007.

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**Jenny Blokland**  
CHIEF MAGISTRAT