Johnston v R&J Leather (Scotland).

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Consumers' rejection of goods in the Sheriff Appeal Court

The Consumer Rights Act 2015 consolidated and extended core consumer rights covering a wide range of contracts. The Act and its underlying policy promoted the idea of 'informed consumers' to assert and enforce their rights in view of their weaker bargaining power vis-à-vis traders. *Johnston and Johnston v R&J Leather (Scotland) Ltd* [2019] SAC (Civ) 1 represents the first reported decision under the 2015 Act. It focuses on the short-term right to reject goods within 30 days of ownership having been transferred and delivery of the goods to the consumer, the right to receive a refund of payments made and the consumer's obligation to make goods available for uplift by the trader.

The Facts

Having ordered and paid for a leather suite from R&J Leather (Scotland) Ltd, the Johnstons took delivery on 30 June 2017. Immediately, the many defects rendered the suite unsatisfactory (an issue not contended by R&J), and the Johnstons intimated rejection of the goods while visiting R&J the next day. Additionally, they communicated their intimation to reject to the trader's head office by email and telephone, having been told to do so by the sales assistant. R&J employees duly arrived at the Johnstons' home a few days later, but instead of collecting the rejected suite commenced to repair one of its many flaws. Numerous attempts to invite R&J to uplift the suite and repay the purchase price followed: letters by recorded delivery, including an offer of alternative dispute resolution were returned unaccepted; telephone calls remained unanswered; similar attempts by the local MP to intervene were ignored.

Faced with this lack of cooperation Mrs Johnston raised a court action. R&J's behaviour remained consistent: no defence was offered and an order for payment was granted. Regarding the matter being finally at an end, the Johnstons gave away the unwanted suite. This, coupled with the order for payment, at last sparked R&J into a response: essentially, the trader argued that unless the suite was available for collection under s.20(7) of the Act, the consumer should be unable to receive a refund. This represented the core issue for the Sheriff Appeal Court to decide

The Appeal

R&J accepted that the Johnstons had exercised their short-term right to reject the suite and had done so the day after delivery. However, they proceeded to argue that consumers are generally obliged to make rejected goods available for uplift without time limit and irrespective of R&J's consistently uncooperative behaviour. In other words, the trader's entitlement to a return of the goods was absolute. They based their view on a literal interpretation of the wording of s.20(7): the duty to make rejected goods available arose "*from* the time" the right to reject was exercised, not "*at* the time". In addition, the duty was to "make", not to "have made" the goods available, all of which indicated an ongoing obligation without time limit.

R&J tried to substantiate their view with three decisions dating back to the sale of goods regime of the 19th century. *Lupton & Co v Schulze* 91900) 2 F 1118 concerned to purchasers of tweed cloth who failed to return pieces which they viewed as non-conform to contract until the supplier provided cloth that did. The Inner House duly decided that the cloth had to be returned to its origin. In *The Electric Construction Company v Hurry and Young* (1897) 24 R 312, buyers of dynamos intimated their rejection but proceeded to use them regardless – behaviour which could not support a claim for compensation to the buyer. In *Padget v M'Nair* (1852) 15 D 76 goods that did not conform to the samples were rejected but not returned by the buyer who held on to them until compensation was paid or conform goods were sent. It was held that the buyers could not reject non-conform goods but then keep them in order to force the supplier's hand. R&J claimed that all of these decisions

supported their view that the Johnstons had a duty to hold on to the suite – possibly indefinitely, or until such a time the trader got round to pick up the unwanted item.

The Sheriff Appeal Court decided that such a literal interpretation of s.20(7) was "an unattractive proposition", as it left the consumer's duty "open-ended, unqualified and indefinite" (para 27). Statutory interpretation needed to be used to reach a just outcome in the circumstances, rather than open up a path towards "unfairness and absurdity" (para 27). Normally, there was a duty on the consumer to make the goods available for them to be uplifted. However, the court noted that the three cases cited all related to situations where the purchasers of the goods did not want to return them, in stark contrast to the situation at hand: the Johnstons had done everything they could have done in order to tempt R&J to uplift the suite and repay the purchase price. Faced with such deliberate inertia the duty to make goods available for return could not be open-ended: "R&J effectively abandoned their right to seek recovery" (para 32), and the Johnstons were free to do as they pleased with the suite, including giving it away – without losing their right to repayment of the purchase price.

The Consumer Rights Act is a consumer protection measure, designed to address and deal with exactly the type of scenario Mr and Mrs Johnston had experienced. R&J's argument to invite the court to hold that there was an indefinite duty on consumers to hold on to rejected goods until these were collected seemed akin to an attempt to ram a square peg into a round hole. While the three cases involved purchasers rejecting goods but *refusing* to return them, they also involved commercial rather than consumer contracts: 19th century sale of goods statute and case law had not been concerned by an imbalance of bargaining power between parties in a world of consumerism. Those were the days of commerce, parties acting at arm's length and merchantable quality

The Johnstons still had to have a relatively long breath from intimating rejection to finally securing the refund of the payment they had made. However, their consistent approach and behaviour in seeking and following the advice they had received clearly helped their quest. This is significant and distinguishes their case from others, for example *Combe v Pert's House Furnishers Ltd* 2018 G.W.D. 15-207. That dispute – decided under the Sale of Goods Act 1979 - also involved an argument around rejection, but the behaviour of the consumer was inconsistent without clear intimation of rejection to the seller. By applying and interpreting the law in s.20(7) purposefully, the Sheriff Appeal Court has set a valuable and useful precedent. The decision will be of assistance in similar situations involving unresponsive traders to reach settlement more swiftly in the future, while it also reminds traders of the importance to have a clear process in place in order to deal with rejection of goods by their consumers: burying the head in the sand is risky, as it is likely to lead to having to refund payments without recovery of the rejected goods.