

MEDIA RELEASE

Thursday, 8 December 2011

National unfair contract terms and consumer guarantees to be under the spotlight

The Australian Consumer Law's unfair contract terms provisions are set to be tested in the Victorian Civil and Administrative Tribunal (VCAT) after the Consumer Action Law Centre issued proceedings against internship and work experience agency Borch Leeman on behalf of one of its clients. As well as the alleged unfair contract terms, Consumer Action's client alleges that Borch Leeman did not honour statutory consumer guarantees about the service they would provide.

It is alleged that Consumer Action's client originally engaged the services of Borch Leeman to advance his career in software development, but that the internship he was placed in was in internet marketing, rather than his nominated field.

It is also alleged that the cancellation term in the contract between Borch Leeman and Consumer Action's client was unfairly balanced in Borch Leeman's favour. Among other things, our client is asking the Tribunal to consider whether Borch Leeman's contract gave it unfair power to cancel the agreement and decline a refund.

Catriona Lowe, co-CEO of Consumer Action, said that, under the Australian Consumer Law, consumers can challenge specific terms in standard form contracts which they believe to be unfair. A term may be unfair where it causes a significant imbalance in the parties' rights and obligations.

'We're pleased that under the ACL we now have an opportunity to test the legality of cancellation terms that are potentially unfair', said Ms Lowe.

Ms Lowe said the case should also act as a reminder to consumers that, under the consumer guarantee provisions of the ACL, service providers have a clear obligation to provide services that must achieve the consumer's stated purpose and be of sufficient quality to achieve desired results. Consumers can seek redress if they believe that these guarantees haven't been complied with.

'Our client claims that he didn't get what he paid for. He alleges that he found himself doing low level tasks for a web marketing company when he'd said he wanted experience in IT software development.

'Under the ACL companies offering services to consumers must guarantee those services are fit for the stated purpose of the consumer. Our client alleges that he outlaid a significant sum of money believing Borch Leeman would help him secure an internship in software development, but he argues that's not what he got,' said Ms Lowe.

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