DRN-4743588

## The complaint

Miss B complains that Specialist Lending Limited, trading as Duologi, treated her unfairly regarding a dispute about a loan to purchase a heat pump.

## What happened

Miss B purchased a new Air Source Heat Pump ('the Pump') in October 2019, paid for by a fixed-sum loan agreement provided by Specialist Lending Limited, trading as Duologi (SLL for short). SLL paid the advance on the loan to a company I'll call Firm IY. Firm IY engaged another company I'll call Firm CG to install the Pump into Miss B's house. Originally Miss B spoke to a firm I'll call Firm R who'd provided her with a no-obligation consultation prior to her having the pump installed and her borrowing the money from SLL to pay for it.

Miss B says Firm R and other parties made numerous false representations about the benefits of the Pump. Unhappy with the performance of the Pump she tried to get it resolved with the various parties before raising a Section 75 claim under the Consumer Credit Act 1974 against SLL to resolve things, after she couldn't reach an agreement with any of the other parties.

SLL didn't uphold Miss B's claim or subsequent complaint, which was later referred to our service.

Our service has issued a number of assessments on this matter. And it is of note that during this dispute new information has come to light and offers have been made and not accepted. Both parties have sought a decision from an Ombudsman on the matter. Accordingly this dispute has come to me to decide.

In March 2024 I issued a provisional decision on the matter. In short I provisionally found that Miss B did take the finance to pay for the pump and should be liable for it. I also provisionally found that SLL can be held responsible for what Firm IY and Firm CG under S75 of the Consumer Credit Act 1974 and that it should; pay £300 for the cost of the report that Miss B arranged and paid, pay £1102 for the repairs done following the report which Miss B paid for, pay 8% simple annual interest on all refunded sums from the date Miss B made the payment, to the date the settlement is paid and pay an additional £350 redress for any increase in energy costs above what Miss B should have reasonably expected. I also found that SLL could use all of these awards to offset Miss B's outstanding debt. Both parties have provided their comments on my provisional findings.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

SLL has commented that it disagrees that it can be held responsible but has not provided any persuasive legal analysis to demonstrate why. I appreciate that there have been assessments and decisions on the matter from this service which appear inconsistent to

SLL. Nevertheless I've provided detailed analysis to the parties on this point and this has not been persuasively responded to by SLL. In essence its position it is that it doesn't like my finding but gives no persuasive reasons (and indeed little analysis of my position at all) for why it believes me to be wrong. It does acknowledge it is pleased that it can offset the awarded amounts against the outstanding debt. It has asked that its objection to my position is noted. I'm happy to do so. However I should note that unless it enters into providing arguments against the position I've taken then I, and indeed colleagues, having no reason to depart from the position I've articulated. Accordingly having considered SLL's comments entirely I see no persuasive reason to depart from my findings in my provisional position.

Miss B has responded to my provisional decision by providing a large number of documents to me, the vast majority of which this service had already. She has provided some other evidence including call recordings and other emails from around the time of sale and since. I've considered all of this and note that none of this evidence (both old and new) is persuasive to me to move away from my findings of my provisional decision. Indeed the persuasive evidence in this case is pointed to in my provisional decision and nothing subsequently provided alters, to my mind, the persuasive nature of the evidence I've previously pointed to nor does it persuasively counter the arguments I've made.

Miss B has made comments and provided evidence regarding Firm R. There is no dispute that Firm R had a role in these events. Nevertheless there remains no persuasive evidence or arguments to make SLL legally responsible for what Firm R said or did. So my position on this issue hasn't changed.

Miss B points to engaging a solicitor on the matter. She is of course entitled to have legal representation and to pursue her dispute through other avenues. And she can not accept this decision and the remedy therein. But she should be clear that if she doesn't accept it this will leave her in the same position as before, with SLL continuing to pursue her for the significant debt I've found it is entitled to pursue her for.

Having considered all of Miss B's and SLL's representations since my provisional decision and reviewed the whole matter afresh I see no persuasive reason to depart from the rationale articulated in my provisional decision. Accordingly this complaint is upheld and SLL must reduce the outstanding debt by the amounts noted below once it has received notification of Miss B's acceptance of my decision. If Miss B doesn't accept this decision then SLL won't have to take any action and this Service's involvement in this dispute will have come to an end.

The rationale for my position as set out in my provisional (which both parties have) is broadly set out again below save for minor adjustments reflecting the final nature of this final decision.

In order to bring clarity to this case I'm not going to address every single nuance of the multitude of arguments made by the parties in this case. Rather I'm going to deal with the key points in this dispute as I see them and deal with them sequentially for clarity's sake. I've considered everything that the parties have said and provided to this service. However in line with our aim of providing impartial, clear, informal, fair, and reasonable outcomes I'll only deal with the key issues in this decision. I note that the parties here agree with little between them and similarly little with what our investigators have said.

**The Lending by SLL**

Miss B has said recently to this service the following:

"*Along the way, they've used my signature for purposes not known to me or consented by me in any way, shape or form. This then lead to a loan being activated that we didn't know about which has greatly hurt our credit score and ability to gain access to finance for our company to keep the roof over our children's heads*."

In essence she has said she doesn't believe she took out this loan from SLL and as a consequence infers that she shouldn't be liable for it in any way and that SLL shouldn't have acted as it has in relation to her not making payments towards it.

However what Miss B says doesn't sit well with the contemporaneous evidence available. I've copies of emails including Miss B from prior to the installation showing she's interested in having a pump installed. I've a copy of the loan agreement she electronically signed for the loan to pay for the pump. I've got an electronic date stamped audit trail of that agreement being emailed to Miss B on the email address she has used throughout her dealings with this service. I have on that electronic date stamped audit trail of her opening the email containing the loan agreement and then signing it and then returning it by email. This document has various personal details of Miss B on it and as I say went to and came from her email address.

I've also a copy of a handwritten document handwritten on a pre-printed form between the installers (Firm CG) and Miss B. This shows the cost of the installation service and goods to be £14,750. It gives her address, mobile number and email and describes her house and the position of the installation. It makes clear that the cost of the installation will be paid for by finance and that Miss B is liable to pay for that finance. Miss B has signed this document in separate places by hand. So I'm satisfied she knew she was taking a loan out to pay back the £14,750 cost of the installation.

I've also a copy of the pre-contract credit information document which includes Miss B's electronic signature. This also has her address and other personal details on it. This sets out the total amount payable by Miss B is £24,481.07 and that its five year agreement including a twelve month deferral period. I've also got a copy of the welcome letter SLL sent Miss B in the post after the agreement was made setting out the payments to be made each month. This includes the details of the bank account belonging to Miss B which was to pay the direct debits to repay the loan.

If I was to accept Miss B's arguments on the matter then it would not be clear to me how SLL have her bank details or why Miss B didn't do more when she received the documentation to both her email and her postal address at the time showing the loan she'd taken out. If she thought she hadn't entered a loan agreement at that point I'd have expected her to have been very quickly in contact with SLL challenging the matter vociferously. It would also be unclear as to how she thought a significant installation of equipment would be done in her house without her making any payment for it when she's signed documentation by hand committing to pay for it through a finance agreement.

Having considered this key issue carefully I'm satisfied on balance that Miss B did agree to take out this finance agreement and accordingly is liable to repay it. And SLL is entitled to pursue her for the outstanding balance, less items already removed from the balance and to be removed from the balance.

**Section 75**

To consider whether SLL is responsible here I must consider what SLL should do having received Miss B's claim to it. To do this, I have to decide what I think is fair and reasonable, having regard to, amongst other things, any relevant law including both legislation and case law. In this case, the relevant starting point is S75 of the Consumer Credit Act 1974 (the

"CCA") which says that, in certain circumstances, if Miss B paid for goods or services through a loan and there was a breach of contract or misrepresentation by the Supplier, SLL can be held equally responsible. But here there are a number of parties, so I need to clarify the position in relation to each of them.

For clarity's sake I shall explain the underpinning legislation concerning the DCS concept before explaining my thinking on this case. S75(1) of the CCA states:

"*If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, she shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor*."

Clearly SLL has a relevant relationship with Miss B as it agreed to provide her with the credit she used to pay for the Pump installation. So Miss B can hold it responsible for how it fulfils its role as her creditor, and it can demand repayment of the credit it provided to her.

The credit SLL provided was forwarded to Firm IY and SLL has contested whether it can be held responsible for what happened here because Firm IY was acting as an intermediary between the creditor and the end supplier of the Pump and its installation. It has pointed to other assessments by this service to support its position. It is clear that Firm IY have a number of contracts it uses and is an intermediary to a wide variety of situations, so I don't think this argument by SLL is persuasive in itself. I should also note that SLL should be aware of the contracts Firm IY has with consumers when it is providing the credit to pay for the advance and in this case I note it has made no attempt to deal with the terms of Firm IY's contract in this case.

Here Firm IY's contract documentation between it and Miss B in this case is persuasive to me. Here "we" is defined as Firm IY and the contract goes on to say things like:
"*We will carry out the work with all reasonable skill and care."*
*"We will carry out the work and all communication with you to the required standards and*
*"We will ensure you are provided with a guarantee that covers both the installation and the goods installed."*
*"We, and/or our contractors, agree to carry out the work with all reasonable skill and care in the planning, installation and commissioning of the home improvement measure/s described in the Quotation."*
*"We agree to supply the goods and carry out the installation work as set out in the Quotation."*

So whilst SLL argue that Firm IY are only acting as brokers, I'm not persuaded by this. It is clear to me that Firm IY are also responsible for the installation and supply and the quality of the goods as well (according to the terms and conditions of their own agreement with Miss B) supplied by it or its sub-contractors. So although Firm IY didn't physically install the Pump into Miss B's house, Firm CG did, I'm satisfied that through the workings of the contractual agreements in place SLL can be held responsible for any breach of contract or misrepresentation by Firm CG (and obviously Firm IY) with regard to the works it did.

Lastly there is the party involved called Firm R. Its clear Firm R were involved to some degree at the outset of this issue. In section 75 claims there is an onus on claimants to demonstrate their cases as they would have to in the legal process against the supplier. However neither Miss B nor I have been able to establish that SLL should be responsible for what Firm R said to Miss B. This is because Firm R are not the supplier of services under the DCS agreement in place here nor do they appear to be acting on behalf of Firm IY in the contract that Miss B has with Firm IY. And I've considered s56 of the CCA and not been able to establish that SLL should be held responsible for Firm R under that section of the

legislation either. So although Firm R have made representations to Miss B here I can't establish that SLL can be held responsible for the actions of Firm R.

So having established that SLL can be held responsible for what Firm IY and Firm CG did I now need to establish what breaches of contract or relevant misrepresentations it can be held responsible for.

**Liability**

As I've explained, for SLL to be liable under S75 a breach of contract or a material misrepresentation by either Firm IY or Firm CG needs to be established. Helpfully Miss B has provided an independent report on the matter which has been provided to SLL. This report finds that the pump wasn't installed with reasonable skill and care originally and thus this qualifies as a breach of contract which SLL is responsible for. The independent report company has since made good by making some repairs and various adjustments. They confirmed that the Pump now operated as it should. And as Miss B has since sold the property there is no ongoing liability here to SLL in terms of the Pump's ongoing effectiveness.

The Investigator here made the following redress methodology that SLL should pay and put it to both parties in their assessment of 28 November 2023. They noted that SLL had waived interest on the agreement which amounts to effectively saving Miss B £9,731.07 that she'd have otherwise paid in interest, so she has received a considerable benefit as a result of that decision by SLL already.

**Putting things right**

Within this assessment they explained why they approached the matter in the way they had and also the reasons for not being able to provide a more detailed methodology to the loss here including various influencing and difficult to measure factors which made precise calculations very complex, if not impossible. I consider the end redress methodology fair for broadly the same reasons as the Investigator including the need to bring this matter to finality particularly seeing that Miss B has left the property and the need to bring clarity to the overall dispute in terms of redress. So I direct SLL must pay on notification of Miss B's acceptance of this final decision:

1) £300 for the cost of the report that Miss B arranged and paid
2) £1102 for the repairs done following the report which Miss B paid for
3) Pay 8% simple annual interest on all refunded sums from the date Miss B made the payment, to the date the settlement is paid.
4) Pay an additional £350 redress for any increase in energy costs above what Miss B should have reasonably expected.

After some back and forth SLL agreed (after it discussed the matter with Firm IY) that Miss B should receive (in relation to the above) redress points one to three, but counter offered a lower amount of £200 in relation to point four. Miss B rejected both the Investigator's last assessment and this counteroffer. SLL also noted that Miss B no longer lived at the property and had never made any of the payments due and raised concern that she'd not be inclined to repay the debt owed now that she has moved. And considering Miss B having not engaged with SLL I can understand their thinking. It also said these amounts should be taken from the outstanding debt.

I've considered the issue of Miss B's repayments carefully and the amounts SLL owes. Bearing in mind that Miss B has never paid any significant sum towards this debt she took out, I think SLL's concerns are valid. I also think its removal of interest from the debt is a

substantial benefit to Miss B and should be reflected in the award made. Accordingly SLL can reduce the sums above (1-4) from the outstanding balance Miss B has once Miss B accepts this decision and she provides her new address to this service for onward notification to SLL.

## My final decision

I uphold this complaint about Specialist Lending Limited, trading as Duologi. It must redress the matter as I've described and it can remove all those amounts from the outstanding debt on notification of Miss B's acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 May 2024.

Rod Glyn-Thomas
**Ombudsman**