

Legal Fabric Fades Away

As I watched Mercedes Corby yelling hysterically about the injustice of her sister's verdict outside the Court room in Bali I wondered how someone could act that way in public, but there I was some time later shouting at a Magistrate about another injustice with almost the same vigour.

When I heard the Magistrate say she was dismissing my case my heart started to race, the hair on my arms stood up, I could feel my temperature rise and all I wanted to do was roar at her, so I did. I gave her a few bars of *"you'll remember me!"*

For two frustrating years I spent fighting a fabric manufacturer and a furniture manufacturer over a defective lounge suite.

My case was never going to be easy to prove, especially as the problem with the fabric didn't become evident until a few months after it was delivered to my place.

It started with a small stain on one of the cushions. I was puzzled as the lounge had been scotch guarded.

The company who sold me the lounge blamed the scotch guard company.

I had to pay \$50 for the scotch guard representative to look at the lounge only to be told it was not a stain, rather the colour was disappearing from the material.

What? How can the colour just disappear?

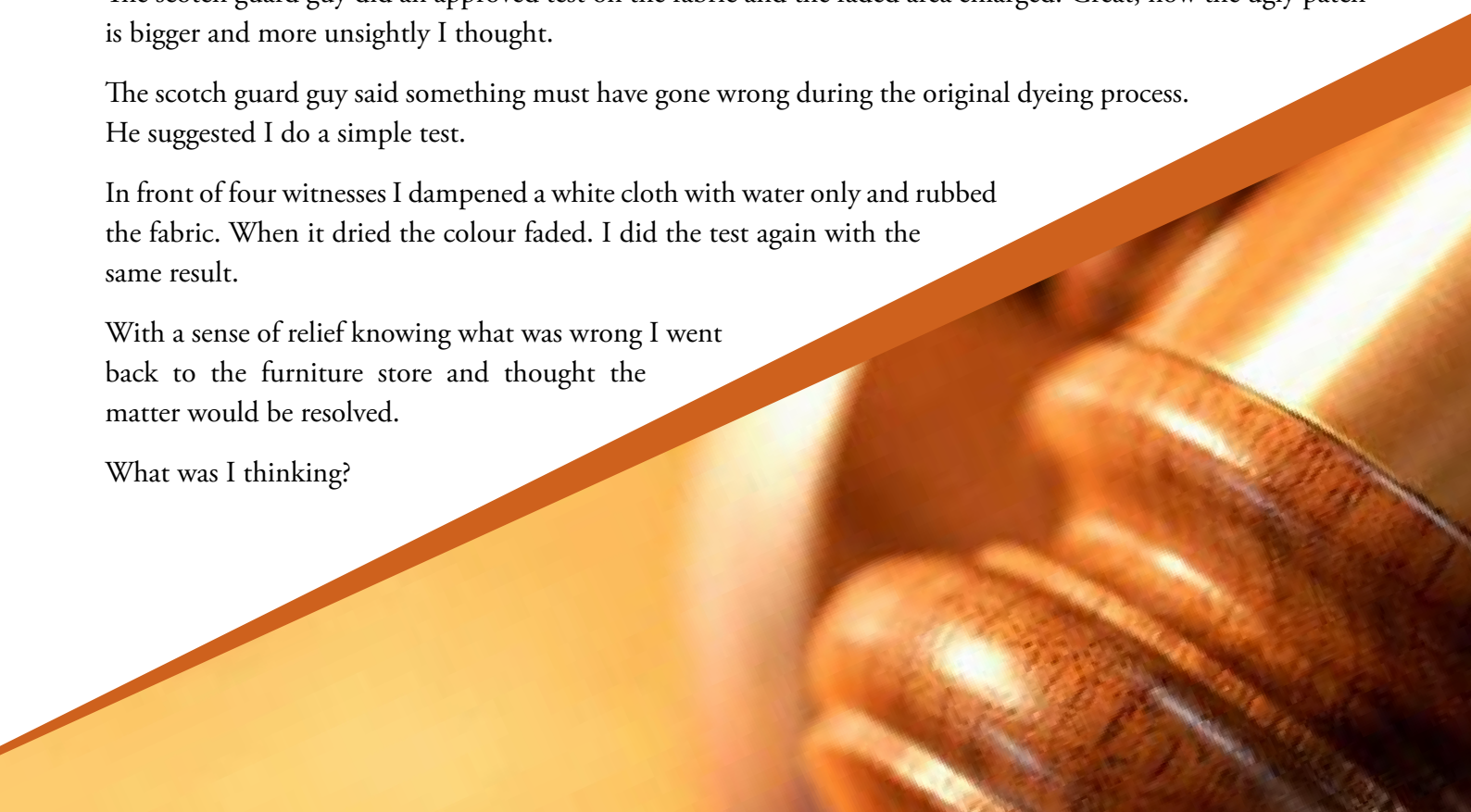
The scotch guard guy did an approved test on the fabric and the faded area enlarged. Great, now the ugly patch is bigger and more unsightly I thought.

The scotch guard guy said something must have gone wrong during the original dyeing process. He suggested I do a simple test.

In front of four witnesses I dampened a white cloth with water only and rubbed the fabric. When it dried the colour faded. I did the test again with the same result.

With a sense of relief knowing what was wrong I went back to the furniture store and thought the matter would be resolved.

What was I thinking?



The furniture store sent the cushion off to the fabric manufacturer in Melbourne who then suggested a chemical must have been used to remove whatever had been spilled on it in the first place.

What? Now we're back to the stain theory. My pleas of innocence fell on deaf ears so I contacted Fair Trading.

They got the furniture store to agree to send the cushion to a laboratory, David Heffernan and Associates. As I said goodbye to the cushion for the second time I was told if the fabric were found to be faulty they would re-cover the cushion.

My joy when the laboratory found in my favour was short lived. The furniture maker now decided they would only fix the problem if the fabric manufacturer came to the party.

The fabric manufacturer demanded to conduct their own test so I sent the cushion off again - it was having a better social life than me.

The Royal Melbourne Institute of Technology (RMIT) test result was contrary to the previous result so I called the tester, who said the fabric passed a classification test for medium grade but not for heavy duty which most lounges should have.

While the cushion cover was being poked and prodded in Melbourne it occurred to me that maybe I was not the only person to have had problems with the fabric manufacturer.

I discovered that a major national furniture store had also had problems with materials from this company. The second store I visited was even more critical of the fabric manufacturer, saying they had to recover around six lounges due to faulty material – the same fabric as mine.

I was feeling smug so I commenced legal action.

I contacted a few lawyers to see how I should handle things. A few of them warned me that the ACT Small Claims Court might be different to the Fair Trading Tribunal in NSW, saying the focus of ACT magistrates are not primarily on consumer law.

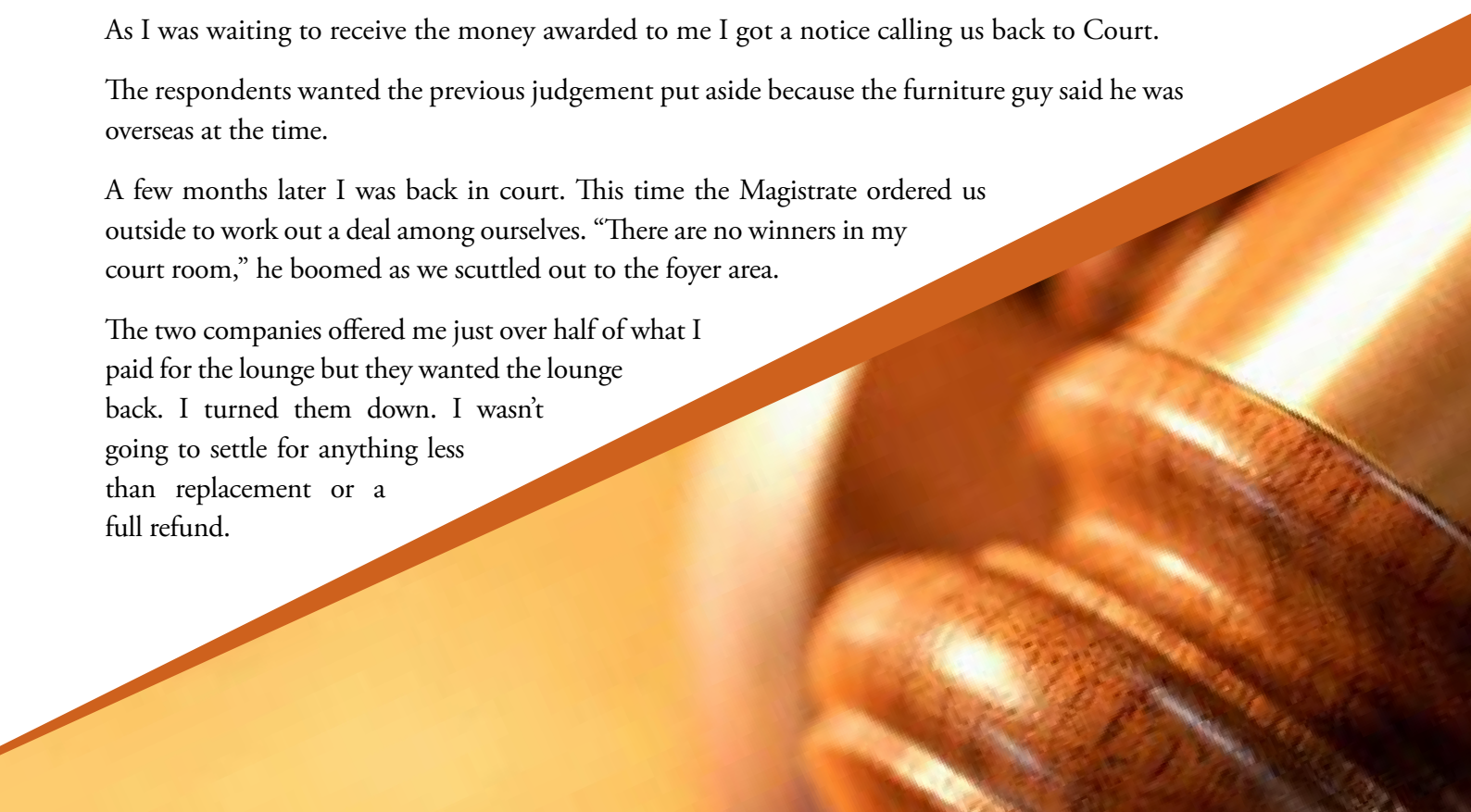
The first court hearing was in September 2004. Neither of the two respondents turned up so the Magistrate found in my favour.

As I was waiting to receive the money awarded to me I got a notice calling us back to Court.

The respondents wanted the previous judgement put aside because the furniture guy said he was overseas at the time.

A few months later I was back in court. This time the Magistrate ordered us outside to work out a deal among ourselves. "There are no winners in my court room," he boomed as we scuttled out to the foyer area.

The two companies offered me just over half of what I paid for the lounge but they wanted the lounge back. I turned them down. I wasn't going to settle for anything less than replacement or a full refund.



As we couldn't agree, we had to come back to court to see a Deputy Registrar.

During that meeting the Deputy Registrar asked the fabric guy how much it would cost to supply material to re-cover the lounge. Learning it was not a lot of money he said "maybe that would be the best outcome for everyone."

Because the furniture guy hadn't shown up to that hearing, we had to come back to court – for a fifth time.

The court room was full that last day and the Magistrate's opening comments indicated she had too many cases before her.

I sat and waited anxiously. Quite a few cases were postponed but I was one of the lucky ones - my case was transferred to another Magistrate.

At the start of the hearing the Magistrate indicated she had not read all the paperwork. This can't be good, I thought.

I spoke first. I talked about the test results from the experts and told her about the tests I conducted in front of witnesses.

The furniture guy said he had replicated the test with no fading. He suggested we conduct the test again in the court room.

But instead of conducting the test on the same side as the faded area the fabric guy insisted the test be done on the non-faded side of the cushion.

Before the test patch dried, the Magistrate made up her mind. As no colour from the lounge transferred to the white cloth used to wet the fabric she decided there wasn't a problem.

She asked me why I didn't just turn the cushion over so I wouldn't see the damaged side.

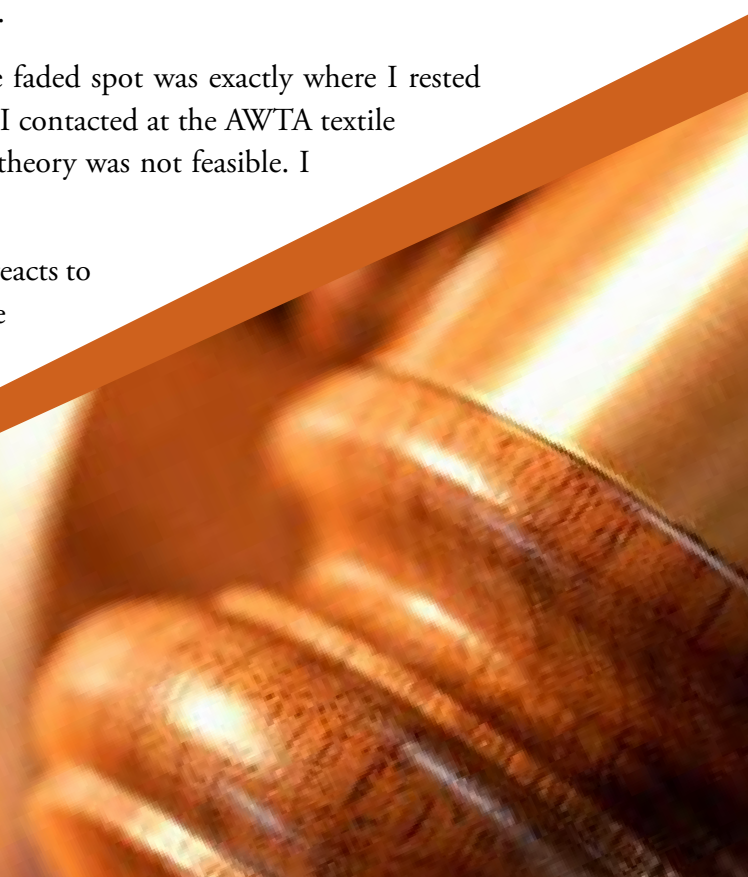
It was then I started to feel justice slipping away.

Just when I thought things couldn't get worse the fabric guy presented new evidence - a letter from some textile "expert" on colour fading who had not examined the cushion but concluded that the fabric could only have faded from a spill, cleaning chemicals, or even perspiration.

I was aghast. I had already considered perspiration, as the faded spot was exactly where I rested my foot when watching TV. But according to the scientist I contacted at the AWTA textile laboratory prior to the first court appearance he said that theory was not feasible. I now realised he may have given me wrong advice.

I tried to pursue the perspiration theory. Surely fabric that reacts to perspiration isn't suitable for a lounge? But the Magistrate was not interested.

The AWTA scientist also told me that fading can occur over time – but where was he when I needed him?



The Magistrate was annoyed that I would not entertain the possibility that someone had spilled something on the lounge without my knowledge.

The fabric guy then claimed his company had never experienced any problems of this kind with this material.

I reminded him that I had two statutory declarations regarding two furniture stores who had had problems with his fabrics, and that one had to re-cover six lounges due to fraying and discolouration problems.

The Magistrate wasn't listening so I raised my voice to get her attention.

At that time I noticed the side door opening and a sturdy female law enforcement officer walk through with her eyes locked on me. She sat at the back of the room, watching.

The Magistrate said she was concerned that I had not taken up the offer from the furniture guy to re-cover the cushion when all this first happened. What offer I snapped. I looked that bastard right in the face and called him a liar but what I really wanted to do was lean over and squash him like a bug.

I told the Magistrate I wouldn't have spent the last two years fighting this case had that offer ever been made. She said it was hard to know who to believe. "Where's the bible?" I demanded.

The Magistrate questioned why someone would spend two years fighting a case like this. Hadn't she ever met people like me who will fight to the death for the things we believe in?

I begged the Magistrate to call the furniture store to find out why the six lounges needed recovering. She refused.

I then begged her to look at the cushion where the test had been done only ten minutes previously. The colour had faded now the fabric was dry. She declined.

I was told to be quiet as I started pressurising other people in the court room to look at the cushion. I wondered whether I would end up languishing in jail for contempt of court – but I certainly did have a lot of contempt for the Court that day!

When the Magistrate dismissed my case I demanded to know whether I could appeal her decision. "I'm not your lawyer," she barked back.

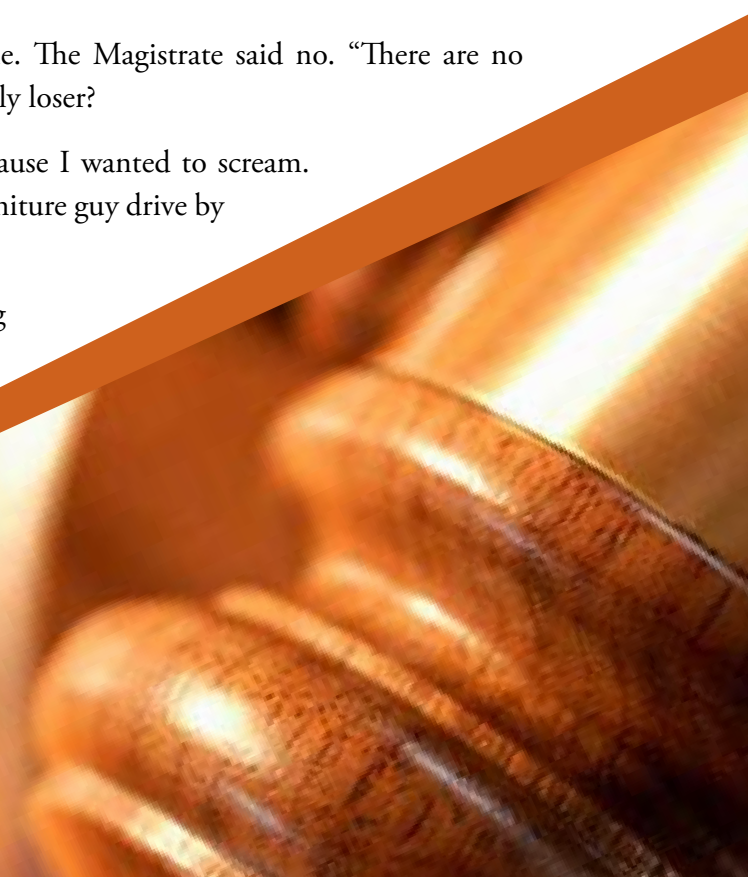
The fabric guy asked for compensation for his court time. The Magistrate said no. "There are no winners here today," she said. So why did I feel like the only loser?

When I got outside I had to take a few deep breaths because I wanted to scream.

While I sat in my car trying to calm down I noticed the furniture guy drive by in his expensive shiny black Mercedes.

I visualised myself turning into the Incredible Hulk – ripping off his car door, throwing the liar on the ground and then crushing his car with my bare hands.

I was brought back to reality by the beeping of my mobile phone. It was a message from



my daughter - 'I love you for standing up to what you believe in and I'm so sorry things didn't go in your favour.'

Her message was just what I needed. Someone believed I was telling the truth.

I have learned many things from this experience. I now know there are companies who do not care about customer relations and business people who will lie in court to prove their case. I have also come to know that so called experts can have differing views which cause confusion for those of us who look to them for answers, and I am disillusioned with a justice system which is often flawed and cumbersome.

So ... if you have ever wondered why the colour on your fabric lounge or dining chair is disappearing for no apparent reason, do not blame your friends or loved ones, your furniture may just be reacting to your perspiration.

And did I turn the cushion over?

