



Civil Resolution Tribunal

Date Issued: March 8, 2018

File: SC-2017-003037

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brown v. Squire*, 2018 BCCRT 68

BETWEEN:

Keith Brown

APPLICANT

AND:

Mike Squire

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrew Pendray

INTRODUCTION

1. The applicant purchased an autographed baseball and baseball bat from the respondent for \$2,600 U.S. dollars. The applicant says that the respondent misrepresented the authenticity of the autographs on the baseball and the bat. He says that contrary to the claims set out on the respondent's advertisement for sale, the ball and bat did not have authentic signatures of the members of the 1992

Toronto Blue Jays World Series Championship team. Rather, the applicant says that the autographs on the ball and bat were forgeries.

2. The applicant requests an order that the respondent refund the purchase price of the ball and bat. The applicant also requests that the respondent be ordered to pay \$595.80 to reimburse the expense of having the ball and bat undergo an authentication process.
3. The respondent maintains that the autographs on the bat and ball are authentic. In the alternative, he says that he had no reason to believe that the autographs were not authentic when he advertised the items for sale.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions. No oral hearing was requested and I find that an oral hearing is not required.
7. In reaching that conclusion I acknowledge that this dispute involves an allegation of fraud. In considering the evidence and information provided by the parties I have kept in mind the fact that the credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful.

The assessment of what is the most likely account depends on its harmony with the rest of the evidence: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA). In considering what is most likely to be the truth, I consider what “a practical and informed person would readily recognize as reasonable in that place and in those conditions”. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under tribunal rule 121, in resolving this dispute the tribunal may:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issue in this dispute are:
 - a. Did the respondent misrepresent, either fraudulently or negligently, the authenticity of the ball and bat?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. While I have reviewed all the submissions, evidence and information provided by the parties, I have only addressed the evidence and arguments of the parties necessary to explain my decision.

Background

12. The respondent posted, on eBay, separate advertisements for sale for each of the bat and the ball.
13. The advertisement for the bat described the item as a “1992 Toronto Blue Jays World Series Champs SIGNED #’d Bat COA [certificate of authenticity]” (capitalization in original).
14. The advertisement for the ball has similar wording, describing it as a “1992 Toronto Blue Jays SIGNED (AUTOGRAPHED) World Series Baseball COA” (capitalization in original).
15. The bat and the ball both came with a document entitled “Certificate of Authenticity” from a company identified as Argus Sports Marketing (Argus).
16. The certificate for the bat is dated October 6, 1993. It certifies that the bat “bears 24 true signatures of the 1992 World Champion Toronto Blue Jays”. It further indicates that Argus guaranteed the authenticity of the signatures for the life of the item, and that if at any time the signatures were deemed to be created by means other than by the hand of the player, Argus would provide a full refund.
17. The certificate for the ball contains the same certification and guarantee. It is also dated October 6, 1993.
18. Prior to purchasing the bat and ball, in an April 8, 2017 email to the respondent, the applicant expressed concerns regarding the certificates of authenticity from Argus. The applicant noted that he had been unable to find any information on Argus, and queried whether the respondent had ever considered having the bat and ball authenticated by another company. The applicant suggested that if the respondent did obtain such authentication, the value of the bat and ball would likely be close to the price he was asking (\$2,999 U.S. dollars for the bat and \$599 U.S. dollars for the ball).

19. Despite expressing those reservations, the applicant went on, in that same April 8, 2017 email, to offer the respondent \$2,600 U.S. dollars for the bat and the ball.
20. The respondent accepted the applicant's offer, and the applicant paid the respondent \$2,600 U.S. dollars by money order.
21. On April 12, 2017, prior to having received the bat and ball from the respondent, the applicant emailed the respondent again. In that email the applicant noted that he had requested that an authentication service, PSA/DNA Authentication services (PSA), review the bat and the ball (presumably via photographs from the advertisement). The applicant provided copies of emails from PSA dated April 10, 2017 which indicated that the bat was "Likely not Genuine" and that PSA was unable to render an opinion as to the authenticity of the ball.
22. The applicant noted in that April 12, 2017 email that despite the emails from PSA, he remained comfortable with his purchase and he believed that the ball and bat were genuine. He requested that the respondent send a picture of the certificates of authenticity.
23. Once the ball and bat were in his possession, the applicant had them examined by James Spence Authentication, LLC (JSA), on May 6, 2017.
24. In an undated letter, JSA indicated that its opinion was that the autographs on the ball were not authentic. The letter identified several issues with the autographs on the ball.
25. In another undated letter JSA again concluded that the autographs on the bat were not authentic. JSA noted similar issues with the autographs on the bat as it had on the ball.
26. The applicant was displeased with this result. In a May 8, 2017 email to the respondent the applicant suggested that perhaps the signatures on the bat and ball had been made by the respondent. By May 11, 2017, the applicant had written the respondent to ask for a refund of his purchase.

27. The applicant subsequently had the ball examined by PSA/DNA Authentication Services. In an August 10, 2017 letter PSA/DNA indicated that its opinion was that the ball was not “authentic”. The letter indicated that in PSA/DNA’s opinion the autographs on the ball were “a clubhouse version”. PSA/DNA’s website explains that clubhouse autographs are those made by a clubhouse attendant rather than the player whose autograph is on the ball.

Analysis

Fraudulent Misrepresentation

28. Fraudulent misrepresentation occurs when a seller makes false representation of fact, the seller had some level of knowledge that the representation was false (either through knowledge or recklessness), the false representation caused the buyer to act, and that action caused the buyer to experience a loss: *Bruno Appliance and Furniture Inc. v. Hryniak*, 2014 SCC 8.
29. There is no question in this case that in his advertisement for sale the respondent represented the bat and ball as having been signed by the members of the 1992 Toronto Blue Jays. In addition to the description of the advertisement, the respondent also represented that the bat and ball would come with a certificate of authenticity. I accept that the respondent represented that the autographs on the bat and ball were authentic, and not forgeries.
30. I also accept that the applicant purchased the bat and ball because he believed the representation that they were authentically autographed items.
31. There remain the questions of whether the representation as to the authenticity of the autographs was in fact false, and whether the evidence supports a conclusion that the respondent had some level of knowledge that the representation was false.
32. While I acknowledge the submissions of the parties on the issue of whether the items were authentic, I do not consider it is necessary to determine whether the

representation of authenticity was in fact false. In my view, the evidence falls short of supporting a conclusion that it is more likely than not that the respondent made the representation of authenticity knowing it was false, or made it recklessly without knowing whether it was true or false.

33. The respondent's evidence was that he opened a sports memorabilia store in 1979 which he operated until approximately the mid 1990s. He has provided copies of magazine articles about sports memorabilia he was featured in and in which his memorabilia store was referenced, as well as copies of sports memorabilia trade magazines which he published during that period. Although the applicant has suggested that the tribunal should "investigate" the respondent and the sports memorabilia store he claimed to have owned, the applicant has not provided any submissions which would cause me to question the reliability of the evidence and information provided by the respondent on this point. I accept, based on the documentary evidence, that the respondent has a lengthy history in the sports memorabilia sales industry.
34. The respondent explained that in operating his memorabilia store he had done business with Argus primarily in 1993 and 1994. He noted that he was very experienced in the industry by that point in time, that he had met the "owner/president" of Argus at a memorabilia show in "1992/1993" where Argus was selling items autographed by Toronto Blue Jays players, and that he therefore felt he was well aware of "who Argus was, what their business was and how they were conducting it."
35. The respondent indicated that he had purchased more than 50 autographed items from Argus during the period of 1993 to 1994, and that he had never previously received a complaint upon re-selling those items. He noted that every item he had purchased from Argus had come with an Argus Certificate of Authenticity such as those provided with the bat and ball in this case.
36. I find that the evidence does not support a conclusion that the respondent knew the autographs on the bat and ball were not authentic. Rather, I accept that the

respondent believed, based on his experience in the sports memorabilia industry, and his experience purchasing items from and selling items certified by Argus, that the autographs on the bat and ball were authentic.

37. Given the applicant's lengthy history of working in the sports memorabilia industry, and having not had any prior complaints about the authenticity of Argus certified products, I find the evidence does not support a conclusion that the respondent recklessly made the representation of authenticity without knowing that the representation was true or false. Simply put, based on his experience in purchasing and selling Argus certified products with no issues, I do not consider that it was reckless for the respondent to choose to indicate in his advertisement that the bat and ball came with a certificate of authenticity from Argus. He had no reason to doubt the authenticity of the Argus certifications.
38. As I do not consider that the evidence shows that the respondent represented the authenticity of the autographs on the bat and the ball knowing that such representation was false, or made it without knowing whether it was true or false, the applicant has failed to prove that the respondent engaged in a fraudulent misrepresentation.

Negligent Misrepresentation

39. Negligent misrepresentation occurs when (1) there is a duty of care based on a "special relationship" between the seller making the representation and the buyer; (2) the representation in question was untrue, inaccurate, or misleading; (3) the seller acted negligently in making the representation; (4) the buyer relied, in a reasonable manner on the negligent representation; (5) the reliance must have been detrimental to the buyer: *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC).
40. Like my finding that that the respondent did not make a false representation, or make a representation recklessly without knowing whether it was true or false, I find the evidence does not support a conclusion that the respondent acted negligently in representing that the bat and ball autographs were authentic.

41. The law requires that a seller making a representation must exercise such reasonable care as the circumstances require to ensure that the representation is accurate and not misleading.
42. Here, the respondent made a representation that the bat and ball autographs were authentic based on his experience with Argus certified products. In short, he had purchased many products from Argus, he believed those products to be authentic, and he had not had any previous complaints which would suggest to him that they were not authentic.
43. One might ask whether reasonable care would require the respondent to have, as the applicant in fact suggested in his April 8, 2017 email, obtained an alternative authentication from a company such as JSA.
44. Again, given the respondent's experience, which was that he had previously purchased and sold Argus certified products with no issues raised, I do not consider that it can be said that it would have been reasonable for him to obtain such an alternative authentication in this case. The fact that the applicant was prepared to make an offer for purchase without such an additional alternative authentication further suggests to me that reasonable care did not require the respondent to obtain such further authentication.
45. As a result, I consider that the applicant's claim for negligent misrepresentation must fail.

General Comment

46. As set out above, I have found that the respondent did not either knowingly, recklessly, or negligently make a false, untrue, inaccurate, or misleading representation about the authenticity of the signatures. As a result, it is not necessary to my decision to enter a detailed consideration of the submissions of the parties regarding the reliability of authentication services such as those used by the applicant.

47. I note in passing, however, that I was struck by the fact that the opinions on authenticity provided by JSA and PSA/DNA did not include any indication as to the expertise of the person providing the opinion, and included very limited explanation for the opinions reached. Had I not otherwise found that the applicant's claim failed, I likely would have placed little weight on those opinions.
48. In accordance with the tribunal's rules, as the applicant was not successful in his claim, I find he is not entitled to reimbursement of tribunal fees. The respondent made no claim for reimbursement, and I therefore make no order about dispute-related expenses.

ORDER

49. I order that the applicant's dispute be dismissed.

Andrew Pendray, Tribunal Member