



# Civil Resolution Tribunal

Date Issued: June 29, 2018

File: SC-2017-003190

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nevmerjitski v Ratinov*, 2018 BCCRT 293

**B E T W E E N :**

Maxim Nevmerjitski

**APPLICANT**

**A N D :**

Maxim Ratinov

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Helene A. Walford

### **INTRODUCTION**

1. This is a dispute about the private sale of a used stroller that the applicant Maxim Nevmerjitski purchased from the respondent Maxim Ratinov.

2. The applicant says that the respondent misrepresented the stroller as being manufactured in 2015 when it was actually an earlier model. The applicant wants to return the stroller and seeks a refund of the \$750 he paid for it.
3. The respondent says that the stroller was represented accurately, sold “as is”, does not have a warranty, and is a final 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 submission, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. 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.
8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - 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**

- 9. Did the respondent misrepresent the stroller, and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

- 10. I have only commented on the evidence to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
- 11. As noted above, the applicant says that the respondent misrepresented the stroller as a 2015 model. He says that in July 2017 he went to buy an adapter for his car seat and found out that the stroller was a 2013 or 2014 model and not compatible with his current model car seat. The applicant did not provide any further details about his car seat such as the year or model.
- 12. The applicant filed excerpts of the respondent's postings about strollers from an online message board. On June 6, 2014 the respondent posted: "I think Vista can be easy to resell. It's one of the best strollers available. I became unofficial stroller expert, due the the [sic] fact we want best for our baby. I can honestly say that after complex research and tests we came to the following best 2 strollers (for our needs): again Vista and City Select".
- 13. The applicant also filed a copy of the respondent's post dated October 30, 2014 indicating that his baby was born on October 29, 2014. The applicant says it was impossible for the respondent not to know that the stroller was not a 2015 model. The applicant also says that the respondent's online posts prove that the respondent bought the stroller before 2015 so the stroller could not be a 2015 model.

14. The respondent filed a copy of the advertisement he made on Craigslist being “Uppa Baby Vista Stroller 2015 Denny Red”. The price was \$750 and the stroller was described as “brand new fabrics on seat (basically you buy Uppa Baby Vista stroller as new. Bassinet as new condition. Have both boxes. Good condition in general”. The respondent also filed a copy of a text message indicating that the applicant was outside of his home on May 10, 2017, indicating the date that the applicant purchased the stroller. The respondent also filed a copy of the applicant’s July 8, 2017 text message:”Hi. Are you sure the stroller was a 2015 model and not older? I bought an adapter for 2015 for a car seat and it doesn’t fit”.
15. The respondent says that the stroller was advertised on Craigslist which has a policy of “sold as is and where is”. He says that although the advertisement has the number 2015 in it, he did not include the word “model”, and it is not acceptable for the applicant to ask for his money back after using the stroller for two months. The respondent says that he is not a store and even a store would not accept a return after two months.
16. The respondent says that he offered to help the applicant find an adapter for the car seat, which is supported by the parties’ text message in evidence.

*Buyer beware*

17. The respondent’s sale of the stroller to the applicant was a private sale. The respondent was not in the business of selling strollers. In general, a private sale buyer, like the applicant, bears the risk that the stroller’s quality is somehow defective.
18. Buyer beware means that a buyer must assess the condition of the item before buying it. There is no implied or legislated warranty. Here, the applicant did not take any steps to inspect the stroller before purchase and the Craigslist disclaimer indicates that items are provided on an “as is” basis.

19. In addition, although the applicant indicates that he tried to purchase an adapter for a car seat and it did not fit, the applicant did not provide any documentation proving that the stroller was not as advertised, that he bought an adapter, or that the adapter did not fit. However, I find that even if the applicant had proof of purchase of an adapter that did not fit, that does not relieve him of the responsibility of inspecting the stroller before he purchased it.
20. Buyer beware does not apply when there is: (i) breach of contract, (ii) fraud, (iii) non-innocent misrepresentation, (iv) there is a warranty, or (v) a latent defect that cannot be discovered by reasonable inspection (see: *Nixon v. MacIver*, 2016 BCCA 8 (CanLII)).
21. For the applicant to succeed with his claim, he must show that buyer beware should not apply because one of the conditions above existed.
22. There was no breach of contract, which is not particularly disputed. There was no warranty as the stroller was sold on Craigslist where items are sold “as is”. The applicant does not claim that the stroller had a latent defect. This leaves the question of whether the respondent made a fraudulent or negligent representation about the stroller being a 2015 model.

#### *Fraudulent misrepresentation*

23. In a buyer beware situation, there is no right of recovery for an innocent misrepresentation. For a remedy to apply, the misrepresentation must be fraudulent or non-innocent: *McCluskie v. Reynolds*, 1998 CanLII 5384(BCSC).
24. In *Ban v. Keleher*, 2017 BCSC 1132 (CanLII), a BC Supreme Court judge reviewed the law of fraudulent misrepresentation in the context of the purchase and sale of a residential property. The judge set out what a claimant must prove to succeed in a claim for fraudulent misrepresentation:
  - a. the defendant made a representation of fact to the claimant;

- b. the representation was false in fact;
  - c. the defendant knew that the representation was false when it was made, or made the false representation recklessly, not knowing if it was true or false;
  - d. the defendant intended for the claimant to act on the representation; and
  - e. the claimant was induced to enter into the contract in reliance upon the false representation and thereby suffered a detriment.
25. In *Shaughnessy v Sidhu*, 2016 BCPC 308 (CanLII), the judge said that a fraudulent misrepresentation is a representation of fact made without any belief in its truth, with the intent that the person to whom it is made will act on it, and actually causing the person to act on it.
26. I find that the applicant has not established fraudulent misrepresentation by the respondent in this case. While the applicant may have assumed that the stroller was a 2015 model because the advertisement is listed as “Uppa Baby Vista Stroller 2015 Denny Red”, the number 2015 in the advertisement alone are not sufficient to support a finding of fraudulent misrepresentation. The applicant did not provide any evidence that he was induced to purchase the stroller because it was a 2015 model.
27. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (CanLII), the judge said that because fraud is a very serious allegation, which carries a stigma, it requires evidence that is clear and convincing proof of the elements of fraud, including the mental element. There is no such evidence before me establishing the respondent’s intention to commit fraud in this case.
28. I find that the applicant has not proven on a balance of probabilities that the respondent fraudulently misrepresented the stroller.

### *Negligent misrepresentation*

29. A 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, and (5) the reliance must have been detrimental to the buyer (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
30. I accept that the applicant and respondent were in a special relationship. The respondent owed the applicant a duty of care to represent the stroller in an accurate manner that was not misleading. The respondent did not provide any evidence about why he used the numbers 2015 in the stroller advertisement other than to represent the year or model of the stroller. The respondent did not provide any evidence to confirm when he purchased the stroller either, that would demonstrate whether it was a 2015 model or an earlier model as the applicant claims. However, as noted above, the applicant did not provide any evidence to support his claim that the stroller was not a 2015 model. On balance, the applicant has not proven that the respondent acted negligently in making the representation.
31. As noted above, the applicant has not provided evidence that he was induced to purchase the stroller based on it being a 2015 year.
32. While the applicant states that he attempted to purchase a car seat adapter but it would not fit as the stroller was not a 2015 model, the applicant did not provide any evidence supporting his adapter purchase or evidence that the stroller was not a 2015 model. The applicant did not provide any evidence proving that he could not purchase a suitable adapter. On balance, I find that the applicant has not proven that he suffered a detriment due to his reliance on the respondent’s representation about the stroller.

33. In summary, I find that the applicant has not proven on a balance of probabilities that the respondent fraudulently misrepresented the stroller. As such, buyer beware applies and the sale was “as is”.
34. Given my conclusions above, I dismiss the applicant’s claim. In accordance with the tribunal’s rules, I find the applicant is not entitled to reimbursement of the \$125 he paid in tribunal fees.

**ORDER**

35. I order that the applicant’s dispute is dismissed.

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Helene A. Walford, Tribunal Member