



Civil Resolution Tribunal

Date Issued: July 10, 2018

File: SC-2017-002956

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *guan v. Amazon Canada Fulfillment Services Inc*, 2018 BCCRT 315

B E T W E E N :

helen guan

APPLICANT

A N D :

Amazon Canada Fulfillment Services Inc

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a refund for a smartphone. The applicant helen guan¹ bought a smartphone online through the respondent Amazon Canada Fulfillment Services

¹ The parties' names are set out as shown in the Dispute Notice.

Inc., for which she paid \$934.61. Instead of the phone, she says she received hand soap valued at \$4.99.

2. After obtaining a return shipping label from the respondent on January 30, 2017, the applicant says she mailed the hand soap back to the respondent. The applicant says the tracking shows the phone was delivered back to the respondent in February 2017, but the respondent has refused a refund because it says it did deliver a smartphone, not hand soap. The applicant wants \$934.61, the amount she paid for the smart phone. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issue in this dispute is whether the respondent is responsible for refunding the applicant for the smartphone, given the respondent says the applicant has not proved she did not receive the smartphone or that she returned one.

EVIDENCE AND ANALYSIS

8. Generally, in a civil claim the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. It is undisputed that on January 24, 2017 the applicant ordered the Samsung Galaxy S7 smartphone at issue in this dispute. It is also undisputed that the applicant returned hand soap to the respondent sometime in February 2017. What the respondent does dispute is the applicant's claim that she did not receive the Galaxy smartphone the respondent says was delivered on January 26, 2017.
10. The respondent notes that the applicant had ordered another smartphone in April 2017 and was fully refunded \$1,721.02 for that phone on April 19, 2017 after the applicant had said she had received hand soap instead. The respondent says it has investigated and denies there was any sort of 'processing error' that resulted in hand soap being shipped instead of phones. It appears the respondent refunded the April 2017 smartphone either before or while it was investigating the requested refund for the January 2017 smartphone at issue here. In any event, the applicant does not deny this is her second claim of receiving hand soap instead of a smartphone she ordered.
11. The respondent says the applicant has produced nothing to show that the package she received did not contain the smartphone she ordered. The respondent says in particular the applicant has not proved she actually received hand soap rather than the phone she ordered, and says she could easily have taken photos to prove it. For reasons discussed further below, I agree.

12. I agree with the respondent that as a condition of using the respondent's online marketplace, the applicable and binding contract is the respondent's "Conditions of Use" and "About Refunds" policy. Those provisions, under the heading 'Returns, Refunds and Title' state that the respondent "does not take title to returned items until the item arrives at our fulfillment center". The provisions state that the respondent has discretion to issue a refund without requiring a return. There is no basis for me to require the respondent to exercise that discretion here.
13. While the applicant shows she had a text message exchange with the respondent's customer service representative, the agent indicated someone more senior would have to authorize any refund. I do not agree with the applicant that this exchange supports the applicant's claim. The fact that the respondent's customer service representative did not tell the applicant to document what she received before returning hand soap is not determinative. The applicant had already agreed to the respondent's policies when she bought the smartphone. Moreover, I am unable to find that the applicant has proved on a balance of probabilities that she did not receive a Galaxy smartphone on January 26, 2017. I therefore find she is not entitled to the claimed refund.
14. In accordance with the tribunal's rules, as the applicant was unsuccessful in her claim, I find she is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

15. I order the applicant's claims, and therefore this dispute, are dismissed.

Shelley Lopez, Vice Chair