



Civil Resolution Tribunal

Date Issued: July 24, 2018

File: SC-2017-006764

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gallant v. Richard Lawence doing business as Copper Island Docks*,
2018 BCCRT 364

BETWEEN:

Timothy Gallant

APPLICANT

AND:

Richard Lawence doing business as Copper Island Docks

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about 4 replacement dock tires the applicant, Timothy Gallant, wants from the respondent, Richard Lawence doing business as Copper Island

Docks. The respondent says after 4 years there is no warranty. The parties are self-represented.

JURISDICTION AND PROCEDURE

2. 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.
3. 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. Neither party requested an oral hearing.
4. 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.
5. 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.

ISSUE

6. The issue in this dispute is to what extent, if any, the respondent owes the applicant reimbursement for 4 replacement dock tires.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, 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.
8. The respondent sold the applicant his dock, together with its wheels and tires, for \$17,850 in March 2014. The “3 x 20 ramp aluminum with wheels” portion of that invoice totaled \$3,510. The quote stated “full warranty as individual item allows”. The respondent provided a “warranty information” document that specifies a 2-year warranty on all products, with certain exceptions that I infer do not apply. The metal fabricator of the wheels sent an email to the respondent in March 2018 stating that it does not supply a warranty.
9. In November 2017, the applicant discovered hubs on 4 out of 5 dock wheels were broken.
10. The applicant claims \$217.27 for reimbursement of what he paid to buy 4 replacement dock tires (\$153.27) and aerosol foam (\$64.00). Further to a quote the applicant provided in evidence, he also claims \$1,280 to pay for the re-welding of the dock’s wheel hubs and to re-design the washers to include a non-abrading material.
11. The applicant says the disputes arises from a poor design of the wheel hubs and “is not necessarily only about the tires”. The applicant says the metal washer holding the tires to the wheel hub has, by constantly spinning, abraded the hub so that it has almost worn through the hub. The applicant says the second problem is that the supplied plastic tires have ½” diameter holes in them as a byproduct of the “plastic blow molding process”, which allows silt to accumulate over the year and makes the tires very heavy. The applicant says the respondent now recognizes this mistake and offers foam-filled tires instead, which do not allow silt to accumulate.

12. The respondent's sale of the dock (including its wheels, hubs, and tires) was not 'buyer beware'. This is because the respondent is in the business of selling such things. As such, the implied warranty provisions in section 18 of the *Sale of Goods Act* (SGA) apply to it, namely that each item is in the condition described and is of saleable quality and reasonably fit for its purpose. Section 18(c) of the SGA states that there is an implied condition that the goods will be durable for a "reasonable period of time", taking into account how the goods would normally be used and all the surrounding circumstances of the sale.
13. The respondent says there is no warranty after 4 years, and as noted above that its warranty is for 2 years for all products, including wheels. After that, the respondent says there is "too much unpredictable wear and tear" on wheel parts.
14. I accept that the applicant's dock was only in the water for about 4 months a year. However, the fact remains that the applicant bought the dock and its wheels and tires in March 2014, over 3.5 years before this dispute began. The respondent has not breached its contractual warranty of 2 years. It may be that the dock's wheels and tires were not constructed from an ideal design, given the metal shaft has worn down and the tires had a hole that filled with silt. However, those facts do not mean they were not fit for their purpose. The applicant used them for 3.5 years. I cannot agree that 3.5 years is so short a period of time such that the respondent has breached the durability provision in the SGA. The fact that the respondent has since decided to improve upon its design and use a foam aerosol to fill the wheels is also not determinative. Products evolve over time. I cannot conclude that given the applicant's use of the dock for 3.5 years that there is any warranty at this point. I dismiss the applicant's claims.
15. The applicant was not successful. In accordance with the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees.

ORDER

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

Shelley Lopez, Vice Chair