



Civil Resolution Tribunal

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File: SC-2017-006372

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Highland Farms Ltd. v. G.F.I. Industries doing business as Robertson
Plastics*, 2018 BCCRT 401

B E T W E E N :

Highland Farms Ltd.

APPLICANT

A N D :

G.F.I. Industries doing business as Robertson Plastics

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about mirrors the applicant, Highland Farms Ltd., bought from the respondent, G.F.I. Industries doing business as Robertson Plastics. The applicant

says the mirrors were not reasonably fit for the intended purpose. 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 while there are inconsistencies in the evidence about what advice the respondent's representative provided, I find I can fairly resolve the dispute based on the documentary evidence before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282.
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.

ISSUES

6. The issues in this dispute are a) whether the respondent sold the applicant mirrors that were not reasonably fit for their intended purpose, and b) if so, what is the appropriate remedy.

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 applicant operates an indoor equestrian riding facility. The applicant asked the respondent if it could provide mirrors that could be mounted on the facility's wall. The applicant says it told the respondent's sales representative, TM, about their requirements, including the necessary dimensions and that the mirrors be mounted directly to a plywood wall, and that the facility was indoor but not climate-controlled.
9. The applicant says having heard their requirements, TM recommended an acrylic sheet 3mm mirror, and gave the applicant installation instructions how to fit custom cut pieces "as many 4' x 8' as possible" together to mount them on the plywood with wood screws directly through the acrylic mirror. The respondent says the "as many 4' x 8' just refers to the fact that the applicant wanted the pieces left as large as possible to minimize seams. The respondent denies providing installation instructions, which as discussed below is the central issue in this dispute.
10. The applicant says it relied on TM's recommendation and bought the mirrors, and hired an experienced finishing carpenter to install them, who was the applicant's principal's family member, and not a professional glazier. The respondent's April 19, 2017 invoice #185341 was for \$3,057.60, for 11 mirrors measuring "48 x 96", including labour and delivery. It is unclear to me why the applicant claims \$2,999, instead of \$3,057.60.

11. The respondent's invoice states, "customer is responsible to inspect condition and dimensions of cut plastic prior to leaving store ... SALES FINAL on cut-to-size orders. Leave as many 4' x 8's together as possible. ...".
12. Significantly, there is nothing on the invoice about installation. There is no contemporaneous written documentation about the applicant's requirements for the mirrors or what TM told her about the mirrors or installation.
13. After installing the mirrors in April 2017, the applicant says it was clear the mirrors were not reasonably fit for the purpose intended and did not match the type of product the applicant had said it required. In particular, the applicant says that when mounted to the plywood with screws, the mirrors were "completely distorted and abstract". The applicant says TM suggested they loosen the screws, but this did not solve the problem. Even if this were true, I find it does not prove that the respondent, through TM, gave the applicant improper installation instructions. At most it proves that TM was trying to help the applicant find a solution after the installation had been done.
14. The respondent then told the applicant that all sales were final and that the applicant would need to hire a professional mirror installer for information about installation. (The respondent as noted says it always told the applicant to hire a professional installer.) At that point, the applicant says the respondent said that before installation acrylic mirrors needed to be mounted on backing with a glue adhesive to prevent distortion, which the applicant says TM never disclosed at the time of sale. The applicant says the respondent refused to come and examine the mirrors and refused to accept their return. I find it is undisputed that the mirrors had a distorted appearance due to the improper installation.
15. As noted, the central area of dispute is about installation instructions. The applicant's photos clearly show one mirror cracked where the screw was put in and there is distortion in the mirrors' reflection. As noted above, the applicant says TM told them to screw the mirrors directly into the plywood. In contrast, the respondent says it told the applicant it does not provide installation services and

that it recommended the applicant hire a professional installer. The respondent denies providing installation instructions. The respondent acknowledges TM indicated that acrylic could be drilled but again cautioned that the applicant seek a professional installer.

16. Section 18 of the *Sale of Goods Act* (SGA) says there is no implied warranty “as to the quality or fitness for any particular purpose of goods”, except under specified circumstances. One such exception is if the seller deals in the goods, there is an implied condition that the goods are of “merchantable quality”. I agree with the respondent that the issue here is not about a defect in the mirrors themselves or that the mirrors were not fit for the applicant’s purpose. The respondent says the acrylic material was cut to size as requested by the applicant, to reduce the number of seams, and delivered by courier in pristine condition. There is no evidence of any scratches or delamination or improper sizing. I find the evidence is clear that the reason the mirrors did not function properly was due to the installation method.
17. The applicant also says that the respondent engaged in a deceptive practice, contrary to section 5 of the *Business Practices and Consumer Protection Act* (BPCPA), in selling the applicant mirrors with installation instructions that “did not come close to meeting our intended use”.
18. As noted above, this is the heart of the matter. Again, the applicant bears the burden of proof. Has the applicant proved that the respondent’s salesperson TM told it to screw the mirrors directly into the plywood, instead of advising to hire a professional installer as submitted by the respondent? I note TM is no longer employed by the respondent and there is no evidence from him before me. I find the answer is no, the applicant has not proved TM made those statements, which the respondent says is inconsistent with its business model. The respondent’s invoice suggests the respondent’s role was limited to selling the goods, which required inspection at the store by the customer and that all sales were final.

Those terms do not on their face suggest the respondent extended itself into providing installation instructions.

19. I place little weight on the applicant's principal's notes of her conversations with TM, the only relevant portion of which states that on April 25, 2017 she asked TM about installation and if they could just screw the mirrors into the wall. Her notes state, "he said yes". I say this because she has an interest in the outcome of the dispute and because she stated she kept the notes after she recognized the respondent was unwilling to find a resolution to the problem. In other words, the notes were not taken at the time of the alleged conversation with TM, but only transcribed after the mirrors were installed. On balance, I find the applicant's claims must be dismissed.
20. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful, I find it is not entitled to reimbursement of the claimed \$125 in tribunal fees.

ORDER

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

Shelley Lopez, Vice Chair