



Civil Resolution Tribunal

Date Issued: September 14, 2018

File: SC-2017-007545

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *James v. Mountain Equipment Co-operative*, 2018 BCCRT 521

B E T W E E N :

Gareth James

APPLICANT

A N D :

Mountain Equipment Co-operative

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about warranty service on a bicycle. The applicant, Gareth James, says the respondent, Mountain Equipment Co-operative (MEC), refused to repair or replace the cracked frame of the bicycle he purchased at MEC's store.
2. The applicant seeks an order for \$1,400 to replace the purchased bicycle with an equivalent model, plus \$900 for repairs on a loaned bicycle he used while the purchased bicycle was unusable.
3. MEC says the bicycle was purchased during the "2015 Bikefest", where all the items for sale were used, and had been previously purchased and returned by other customers. MEC says signage at the Bikefest event made it clear that the items were used, and that no warranty or guarantee applied. MEC also disputes the amounts claimed by the applicant.
4. The applicant is self-represented. MEC is represented by an employee, Nicole Watt.

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 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.

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: 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.

Limitation Period

9. The applicant purchased the bicycle in June 2015 and filed his dispute with the tribunal on December 22, 2017. As this period is over 2 years, it raises the question of whether the applicant's claim is statute-barred under the *Limitation Act*. However, documents provided by the applicant establish that he first noticed the crack in the bicycle's frame on April 20, 2016. I find that this is when the applicant's claim was first discovered, and thus his claim is not barred under the *Limitation Act*.

ISSUES

10. The issues in this dispute are:
 - a. Is the applicant entitled to \$1,400 to replace the bicycle?
 - b. Is the applicant entitled to \$900 for repairs to a loaned bicycle?

EVIDENCE AND ANALYSIS

11. 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.

12. The parties agree that the applicant bought a Ghost brand bicycle for \$250 at MEC's Bikefest event in June 2015. The sale was held on the roof of MEC's Vancouver store. The parties also agree that the applicant discovered a crack in the bicycle's frame, in the area where the seat post is inserted into the frame, around April 20, 2016.

Store Guarantee

13. The applicant says that when he bought the bicycle, he thought the regular conditions of sale, including the warranty, applied.
14. In his submissions, the applicant admits that he knew the items for sale at the Bikefest event were previously owned and returned. Specifically, he says that when he entered the store, an MEC employee told him to "check out" the Bikefest sale on the store's roof for great bargains "on returned items and inventory." Similarly, in a December 21, 2016 email to MEC, he said the employee suggested he visit the Bikefest because there were "some great deals to be had on returned items."
15. The applicant also admits that he knew the bikes sold at Bikefest could not be returned or exchanged.
16. MEC says the bicycle was not covered by their normal "Rock Solid Guarantee" because it was sold as a steeply-discounted second-hand item, and the applicant was aware at the time of purchase that it was a final sale not covered by a warranty.
17. MEC says that signs were posted throughout the sale area stating that no warranty or guarantee applied. MEC provided photos of these signs posted around the rooftop sale area, including on the exit gate and at various places on the perimeter fencing. The signs have bright green lettering on a black background with a white border, and have an uppercase and underlined heading stating "buyer beware".

The signs say that all merchandise is final sale, with no warranty or Rock Solid Guarantee.

18. The applicant says he accepts that there was some of this signage at the Bikefest event, but says it was not sufficient. I disagree. The applicant admits he knew the bikes could not be returned or exchanged, so I find this means he also knew the warranty did not apply, as it was written on the same signs.
19. Based on the evidence provided by MEC, I find that their usual warranties and guarantees did not apply to sale of the applicant's bicycle.
20. The applicant says that because MEC provided a free tune-up for the bicycle in July 2015, this means the regular guarantee applies. I do not agree. The tune-up was a gratuitous benefit.
21. The applicant did not provide evidence about the specific terms of MEC's Rock Solid Guarantee. Thus, even if I found that it applied (which I have not), the applicant would not have met the burden of proving that MEC breached its guarantee policy.

Sale of Goods Act

22. Because MEC is in the business of selling bicycles and other sporting equipment, section 18 of the BC *Sale of Goods Act* (SGA) applies to the bicycle sale. Section 18(a) of the SGA says that the goods must be reasonably fit for their express or implied purpose, as made known to the buyer. The applicant rode the bicycle for approximately 10 months, so I find the bicycle was reasonably fit for its purpose.
23. Section 18(c) of the SGA states as follows:
 - (c) there is an implied condition that the goods will be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale.

24. In *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454 (CanLII), the BC Provincial Court said that in applying section 18(c), one must evaluate all the facts of the sale in order to determine the degree of reasonable fitness or durability. In *Drover*, the plaintiff bought a 7-year-old pickup truck that required \$5,426 in repairs in the 7 month period after its purchase. The court found that despite the repairs, there was no breach of the implied condition of durability in section 18(c) based on the fact that it was a used vehicle with 161,500 kilometers on it at the time of purchase, and the plaintiff was able to drive it a considerable distance despite the repairs.
25. Applying that reasoning to the facts of this dispute, I find that the applicant knew the bicycle was previously owned and returned, and he knew it was sold as a final sale with no returns or exchanges. He says an equivalent bicycle costs \$1,400 new, so he bought his bicycle at an 82% discount. He rode the bicycle without problems for 10 months. Based on these facts, I find that the bicycle was durable for a reasonable period, particularly given its highly discounted purchase price.
26. For these reasons, I find that the applicant has not established that MEC breached an applicable store guarantee or the implied warranty in the SGA. I therefore conclude that the applicant is not entitled to any refund for the bicycle. I find the applicant is not entitled to compensable for repairs to a loaner bicycle for the same reason, and also because he provided no evidence to prove the cost and nature of such repairs.
27. Even if I had found a breach of warranty, I would have found that MEC met its full obligation under any warranty by offering the applicant a refund of the \$250 purchase price, as set out in its December 23, 2016 email. This would have put the applicant in the same position as if he had never purchased the bicycle in June 2015. He says he should be provided a functioning bicycle, as this is what he had before he attended the Bikefest. However, MEC has no contractual obligation regarding the applicant's previous bicycle. Also, in an April 21, 2016 email, the applicant described his previous bicycle as an "old frankenbike" with fatigued

components. In a December 21, 2016 email, he said it was over 10 years old and “beat up”. There is no basis in the evidence before me to conclude that such a bicycle was worth more than \$250. I infer from the evidence that the applicant threw or gave it away, which indicates very low monetary value. MEC withdrew its \$250 offer as this tribunal proceeding continued without settlement. I find MEC is not obligated to refund anything.

28. The tribunal’s rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss her claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDERS

29. I dismiss the applicant’s claims and this dispute.

Kate Campbell, Tribunal Member