



Civil Resolution Tribunal

Date Issued: October 10, 2018

File: SC-2017-003914

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shevchenko v. J.R. Furniture Place Ltd.*, 2018 BCCRT 606

B E T W E E N :

Yuriy Shevchenko

APPLICANT

A N D :

J.R. Furniture Place Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

John Chesko

INTRODUCTION

1. This dispute is about a sofa and loveseat.
2. The applicant, Yurly Shevchenko, purchased a sofa and loveseat from the respondent, J.R. Furniture Place Ltd. The applicant says the sofa and loveseat

were defective and claims a refund from the respondent. The respondent has refused to give any refund to the applicant.

3. The applicant is self-represented and the respondent is represented by an employee or principal.

JURISDICTION AND PROCEDURE

4. 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.
5. 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 on whole there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.
7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to pay money;
 - b. order a party to do or stop doing something;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to a refund for the sofa and loveseat.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, to succeed the applicant has the burden of proof on the balance of probabilities. That means the tribunal must find it is more likely than not that the applicant's position is correct.
10. I have reviewed all of the submissions and evidence, but only address the evidence and arguments to the extent necessary to explain my decision.
11. The applicant bought a sofa and loveseat from the respondent on March 21, 2017 for \$1600.00, including taxes and delivery. The invoice, signed by the applicant, sets out the sales price and has the following small print at the bottom of the form:
1. No Exchange. No Refund. all sales final. 2. All warranties covered by manufacturing. F.O.B. Factory. 3. Customer responsible for any damage caused on their premises during delivery. 4. If not paid in full we will repossess without any obligation 5. There will be a 20% restocking charge on shipped or unshipped goods. 6. You should thoroughly inspect this shipment as soon as received. Also hand-written on the invoice is the following: "As is floor model" and "As on Floor".
12. The applicant took delivery of the sofa and loveseat. There is no dispute the sofa and loveseat looked in new condition when the applicant purchased it.
13. However, the applicant says the sofa and loveseat deteriorated badly 'within 1 month of the purchase date'. The applicant says the 'leather started to crack' and the tanning delaminated from the seat and back rest area on both the sofa and loveseat. The applicant complained to the respondent about the sofa and loveseat and requested a refund.

14. The applicant submitted pictures of the sofa and loveseat taken when the furniture was purchased on March 21, 2017 and on later dates. Pictures dated June 19, 2017 show the finish on the seating surfaces and armrests of the sofa and loveseat cracked and coming off in flakes. Later pictures dated November 5, 2017 and April 19, 2018 show widespread cracking and breakdown of the seating and armrest surfaces. The overall appearance of the sofa and loveseat in the later pictures shows them in visibly poor condition.
15. The applicant submits the sofa and loveseat were used normally and should not have deteriorated so quickly. The applicant submits the respondent is a retailer and should be responsible for the quality and warranty of the furniture it sold. The applicant says it should get a full refund. The applicant also submits the respondent should reimburse the \$125.00 tribunal fees paid.
16. The respondent says the sofa and loveseat were sold to the applicant on an 'as is floor model' basis and the applicant is not entitled to any refund. The respondent says it sent a technician to look at the sofa and loveseat and the technician concluded the damage was 'beyond normal wear and tear'. The respondent also says it has not seen such degradation in such a short time span of a few weeks. The respondent points to the invoice with 'As is floor model' written on it. The respondent says the applicant was aware it was a floor model with no warranty. The respondent says the damage was not due to any fault of the respondent or the quality of the furniture supplied. While the respondent has refused any refund, the respondent says 'it stands behind' the quality of its products.
17. The law generally requires that a purchaser consider purchases carefully before spending their money. Once the item is bought, unless there was some misrepresentation or other legal basis to set aside the contract, the purchaser may be stuck with the item without a legal remedy. The general law is 'buyer beware' or, as it is sometimes called in legal Latin, '*caveat emptor*'.
18. However, the law has evolved and there are consumer protection laws set out in legislation that may apply. Purchasers in British Columbia have certain protections

under consumer laws such as the *Sale of Goods Act*. Sections 16 to 19 of the *Sale of Goods Act* set out certain requirements that may be included as a matter of the law to consumer contracts. Where it is someone's usual business to sell things to the public, section 18 of the *Sale of Goods Act* adds, or implies, certain terms into the sales contract between the seller and purchaser. Some of the terms implied into the contract are that the item being sold is in the condition described and in saleable quality.

19. Another term section 18(c) may add into a sales contract is that goods will be 'durable for a reasonable period of time'. What exactly 'durable for a reasonable period of time' means will depend on the circumstances in each case. After all, it would be almost impossible to have a set timetable of durability. What is durable for a reasonable time will differ from one product and situation to another.
20. While I am not bound by previous decisions of the tribunal, I have found these decisions on application of the *Sale of Goods Act* helpful: *Altieriu v Millwood Furniture Ent. Ltd.*, 2018 BCCRT 300, *Langteigne v Evans*, 2018 BCCRT 51, *James v Mountain Equipment Co-operative*, 2018 BCCRT 521 and *Wieser v Coastal Peoples Fine Arts Gallery Ltd.* 2018 BCCRT 163.
21. Based on the evidence and submissions before me, I find the applicant has proven the claim on a balance of probabilities and is entitled to a refund.
22. It is undisputed the respondent is in the business of selling furniture such as the sofas and loveseat to the public. I find section 18(c) of the *Sale of Goods Act* applies and it was an implied term of the contract the sofa and loveseat would be durable for a reasonable period of time.
23. I find the sofa and loveseat were not durable for a reasonable period of time. In coming to my conclusion I have considered all of the evidence and circumstances as well as the pictures showing the deterioration and poor condition of the furniture over time. I find it reasonable to expect a newly purchased sofa and loveseat would be durable for longer than a few months. I note the respondent's own

technician, who came and saw the sofa and loveseat, also concluded the sofa and loveseat deteriorated much more than normal. I find the deterioration of the sofa and loveseat surfaces had reached a point by November 5, 2017 that they were no longer useful as furniture for the applicant's house and amounted to a fundamental breach of the contract. I find the respondent was in breach of the implied term of the contract that the sofa and loveseat would be durable for a reasonable period of time.

24. To the extent the respondent submits the implied term of the *Sale of Goods Act* does not apply where the items were sold on the basis of "as is floor model", I find that is not the case. I find the *Sale of Goods Act* applies where, as here, the respondent is in the business of selling retail furniture to the public. I note any attempt to contract out of the minimum requirements of the *Sale of Goods Act* is prohibited in this situation under section 20. I note court decisions have also held that attempts to contract out of consumer protections in the *Sale of Goods Act* must be very clear in warning that specific consumer protections do not apply: See *Sugiyama v Pilsen* 2006 BCPC 0265 at paragraphs 35-36 and 41 to 43. Although I have found the implied term of reasonable durability applies to the sofa and loveseat, I also would have found the statements in the invoice such as "as is floor model" do not clearly exclude application of the *Sale of Goods Act*. While I am not bound by previous tribunal decisions, I have considered *James v Mountain Equipment Co-operative*, 2018 BCCRT 521 and find the circumstances in that decision different as the customer knew they were buying used items that had been returned and the retailer had even offered a full refund.
25. I have considered the respondent's submission the applicant could have done something to the sofa and loveseat that made it age prematurely. I do not accept the respondent's suggestion the sofa and loveseat might have been damaged by the applicant's pets. While I would agree that a retailer would not be responsible for pet damage, the respondents have put forward no evidence to support this. From the pictures submitted of the sofa and loveseat, I am unable to see any evidence of bites, scratches or pet damage. I also would have expected the

respondent's technician who inspected the furniture to have pointed out evidence of pet damage if there was any. I find the respondent did not provide any persuasive evidence to support the speculation the applicant may have done something out of the ordinary to the sofa and loveseat that caused it to deteriorate so quickly.

26. In sum, I find the applicant had a reasonable expectation the sofa and loveseat would be durable for more than a few months. I find the cumulative cracking, flaking and delamination on the sofa and loveseat in such a short period of time made them unfit for use as furniture in the applicant's home in all the circumstances contrary to section 18(c) of the *Sale of Goods Act*. The applicant brought this to the attention of the respondent as soon as possible and asked for a refund, which was refused by the respondent. I find the respondent is in fundamental breach of the contract between the applicant and respondent.
27. I find the applicant is entitled to a refund of the \$1,600.00 paid to the respondent for the sofa and loveseat. Given this conclusion, I find the applicant must return the sofa and loveseat to the respondent.
28. As the applicant has not yet returned the sofa and loveseat, I find the applicant is not entitled to pre-judgment interest under the *Court Order Interest Act*.
29. In accordance with the *Act* and the tribunal's rules, I also find the applicant is entitled to reimbursement of the \$125 in tribunal fees claimed.

ORDERS

30. I order that:
 - a. Within 45 days of this decision, the respondent must pay the applicant \$1,725.00, broken down as \$1,600.00 refund for the sofa and loveseat and \$125 in tribunal fees, and

- b. The applicant must return the sofa and loveseat, in its current condition, to the respondent on receipt of the \$1,725.00.
- 31. The applicant is entitled to post-judgement interest, as applicable.
- 32. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
- 33. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

John Chesko, Tribunal Member