



Civil Resolution Tribunal

Date Issued: November 14, 2018

File: SC-2018-001290

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Breen v. Lombana*, 2018 BCCRT 727

B E T W E E N :

John Breen

APPLICANT

A N D :

Felipe Lombana

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This is a dispute about the private sale of a used camera that the applicant, John Breen, purchased from the respondent, Felipe Lombana. The applicant claims a refund of \$380 paid for the camera and \$39.20 for the cost of an inspection.
2. 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 relationships between parties that may continue after the dispute resolution process has ended.
4. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence.
5. In the circumstances here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
6. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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 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

8. Did the respondent misrepresent the condition of the camera, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The applicant responded to the respondent's Craigslist ad for a used camera and accessories. The ad said that the camera was in excellent condition and was used a handful of times. The camera's condition is noted in another location as "like new". The parties negotiated a sale price of \$375. The applicant and respondent met, and the applicant bought the camera for \$380 rather than going with the respondent to get change.
11. The respondent's sale of the camera to the applicant was a private sale. It was private because the respondent is not in the business of selling cameras, and the parties do not suggest otherwise. As a private sale, section 18 (b) of the *Sale of Goods Act* does not apply and there is no implied or legislated warranty for the buyer that the item will be of saleable quality. In other words, the sale was "buyer beware" and the applicant should have inspected the camera before buying it.
12. Two days later the applicant contacted the respondent and requested a refund because the camera did not work. It is undisputed that the respondent suggested that the applicant have the camera inspected, agreed to pay for the inspection and

that the applicant had an inspection done. In response to the claim, the respondent agrees to pay the \$39.20 for the inspection and so I award it.

13. I accept that the respondent expected the inspection to show that the camera was in good working order. The inspection found that the SD card reader unit, a part of the main PCB, was damaged. A repair was not possible because the PCB needed was no longer available.
14. Responsibility for assessing an item's condition before buying rests with the buyer. Generally, in a private sale such as this one, a buyer must beware. Here, the applicant personally inspected the camera. The applicant chose not to test the camera or have a professional inspect the camera before buying it.
15. If a buyer can show that there was a breach of contract, fraud, non-innocent misrepresentation, a warranty, or a known latent defect that was not discoverable through reasonable inspection or inquiries, buyer beware will not apply. Here, there is no suggestion of breach of contract or fraud. There was also no warranty claim as the camera was sold on Craigslist where items are sold "as is."
16. The applicant says that the respondent misrepresented the camera's condition. The fact that the camera did not work two days after the purchase, when the respondent said it was in excellent condition, is not enough. In a private sale, there can be no claim based on an innocent misrepresentation. The applicant must prove that the misrepresentation was negligent or fraudulent. In either case, the applicant must prove that the representation made was untrue.
17. On balance, I am not satisfied that the respondent made a false statement. If a false statement was made, I find that the respondent did not do so knowingly because he believed that the camera was working, and his belief was not negligent or reckless. The fact that the respondent suggested an inspection is support for my conclusion.
18. I accept the respondent's evidence that before making the listing he turned the camera on, checked that the functions were working, which they were, and looked at the pictures on the memory card. I take notice that to see the pictures the SD

card and associated SD card reader unit were working or that seeing the pictures would reasonably lead a person to believe that they were working. I do not think anything turns on the fact that the respondent had not taken pictures with the camera for some time.

19. The respondent says that if there was damage it was a latent defect. I disagree. I find that any damage was apparent on inspection. The applicant did not look for the damage or may not have been qualified to appreciate the damage, if it was there. Despite that, the inspection that was done after the sale is evidence that the damage was obvious, visible, and readily observable, or that it was to a qualified person. The applicant cannot impose the requirement to see damage on the respondent.
20. The applicant says that the decision of the tribunal in *German v. Faber*, 2018 BCCRT 57, is a precedent and that his claim, as in that case, should be accepted. The tribunal is not bound by previous decisions, but they can be useful in providing guidance. In that case the tribunal drew an adverse inference from the respondent's failure to participate in the tribunal process. That adverse inference played a role in the tribunal finding a misrepresentation. I have made different findings in this claim because of different facts. The evidence of the respondent's inspection of the camera before posting it for sale does not support a finding of misrepresentation.
21. The applicant had some success. Given that, I find that the respondent should, on a judgment basis, reimburse the applicant \$15 for his tribunal fees.

ORDERS

22. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$54.59, broken down as follows:
 - a) \$39.20 as reimbursement for the inspection;
 - b) \$0.39 in pre-judgment interest under the *Court Order Interest Act*, and

c) \$15 for tribunal fees.

23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

Megan Volk, Tribunal Member