



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pearson v. EPSON CANADA LIMITED EPSON CANADA LIMITEE*, 2019
BCCRT 418

B E T W E E N :

Randall Pearson

APPLICANT

A N D :

EPSON CANADA LIMITED EPSON CANADA LIMITEE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Randall Pearson bought a printer/scanner XP-630 (printer) manufactured by the respondent Epson Canada Limited Epson Canada Limitee (Epson). He says that Epson installed a software update that caused his printer to

stop working, unless he removed the non-Epson ink cartridges and replaced them with Epson brand cartridges. The applicant says this information was not provided to him at the point of sale nor prior to the software update. The applicant seeks \$600 for Epson ink for the continued operation of his printer for “as long as the device works”, and \$50 in printing costs incurred. The applicant also asks that the tribunal order an “administrative penalty” under the *Business Practices and Consumer Protection Act* (BPCPA).

2. Epson disagrees. Epson says the applicant was informed, at the point of sale, that the printer was designed for use with Epson cartridges only. As well, Epson says the software update agreement provides that the updates are “as is” and not warranted as to the printer’s function once the updates are complete. Epson asks that the dispute be dismissed.
3. The applicant is self-represented. The respondent Epson is represented by principal or employee Jilana Miller.

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 118 of the *Civil Resolution Tribunal 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. In some respects, this dispute amounts to a “he said, they said” scenario with both sides calling into question the credibility of the other. Credibility of 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. In the

circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

6. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.
9. Turning to the applicant's request that the tribunal order an "administrative penalty" pursuant to the BPCPA. The BPCPA specifies, at section 164, that administrative penalties are imposed by the "director", who is an individual or administrative authority designated under section 175. This remedy is outside the tribunal's jurisdiction.
10. The applicant also made some arguments about deceptive practices under the BPCPA. The BPCPA applies to a "court" and not a tribunal for the purposes of an award of consequential damages.

ISSUES

11. The issue in this dispute is whether Epson misrepresented that the printer would function using third-party ink, either at the time the applicant purchased it or once a software update was installed, such that the respondent should have to pay him damages for the brand name ink he will now have to purchase.

EVIDENCE AND ANALYSIS

12. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
13. On February 6, 2016, the applicant bought the printer at London Drugs.
14. The printer operated well until March 6, 2018. On that date, I find that the applicant agreed to install an Epson software update.
15. The Epson Canada Software Agreement, which I find was displayed to the applicant before he accepted the software update, says the software is provided “as is” and without any warranty of any kind. It goes on to say that “Epson and its suppliers do not and cannot warrant the performance or results you may obtain by using the software.”
16. After the update, the applicant says, and I find that, the printer would no longer function if generic ink cartridges were used. The printer would only work if Epson brand ink cartridges were used.
17. The applicant wrote a letter of complaint to Epson.
18. On April 13, 2018, Epson wrote back to the applicant and advised that to gain full functionality of the printer he should replace the third-party ink with genuine Epson ink.

19. The applicant says that he was not told that the printer would need Epson brand ink in order to operate, at the point of sale. However, the Quick Guide and Warranty document, which the applicant admits was provided with the printer at the point of sale, specifies that the warranty does not extend to third-party parts added to the printer after its purchase.
20. As well, Epson filed evidence that the packaging on this type of printer, as of 2015, bore the words “The printer is designed for use with Epson© cartridges only, not third-party cartridges or ink.” I find that this wording was on the printer package when the applicant purchased the printer in February 2016.
21. Therefore, I find that Epson did not mislead the applicant to believe that the printer would work with third-party inks. Rather, it specified that the printer was designed to be used with Epson inks only, and that any software updates were not guaranteed as to the printer’s continuing function. While it is unfortunate and understandably frustrating for the applicant that the printer worked before the software update and not after, I do not find Epson liable for the loss of function. I dismiss the applicant’s claims for monetary compensation.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The applicant’s claim for tribunal fee reimbursement is dismissed. Since the successful respondent paid no tribunal fees, I make no order in this regard.

ORDER

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

Julie K. Gibson, Tribunal Member