



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Halpern et al v. J.R. FURNITURE PLACE LTD.*, 2019 BCCRT 501

B E T W E E N :

George Halpern and Joan M. Schultz

APPLICANTS

A N D :

J.R. FURNITURE PLACE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicants, George Halpern and Joan M. Schultz, claim against the respondent furniture company, J.R. FURNITURE PLACE LTD., for a refund for a couch that they bought for \$1,175. The applicants say that the couch that the respondent delivered was lower quality than the couch they viewed in the respondent's

showroom. The respondent says that it has already fixed the problem with the couch.

2. The applicants are represented by George Halpern. The respondent is represented by an employee.

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 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.
4. 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.
5. 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.
6. Under tribunal rule 9.3(2) (formerly numbered as 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.

ISSUES

7. The issues in this dispute are:
 - a. Did the respondent breach the parties' contract by delivering a couch that was lower quality than the couch the applicants viewed at the respondent's showroom?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants must prove their case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The applicants attended the respondent's showroom on September 16, 2017. They viewed a couch and ordered it in a different colour. The couch cost \$1,175, including tax, and the applicants paid a \$235 deposit.
10. In early November 2017, the respondent told the applicants that the couch was ready. The applicants paid the remaining \$940 owing for the couch. The respondent delivered the couch in mid-November.
11. The applicants say that they immediately noticed a difference in the quality of the couch they received compared to the one they had viewed. In particular, they noticed that the back and seat cushions had large wrinkles. The applicants contacted a manager for the respondent, who told them to take photographs of the couch and email them, which the applicants did.
12. The applicants say that the manager admitted that there was a problem with the couch. Over the next year, the respondent attempted to fix the problem twice. First, the applicants say that the respondent gave them new cushions to stuff into the cushion covers. The applicants say that this made no difference. Second, the applicants say that the respondent sent an employee to add additional stuffing to

the cushions, presumably to smooth out the wrinkles. The respondent says that the employee solved the problem. However, the applicants say that the additional stuffing did not help and actually made the couch uncomfortable because it became too firm.

13. The respondent eventually told the applicants that they could send the couch back to the manufacturer in Portland, United States, but would have to pay the return shipping. The applicants refused.
14. In this dispute, the respondent says that the supplier has agreed to replace the seat foam. The applicants say that this resolution is unacceptable because the underlying problem is the quality of the cushion covers.
15. The applicants provided 4 photographs of the floor model and 6 photographs of the couch that they received. I am satisfied that the photographs show a meaningful difference in quality between the showroom couch and the applicants' couch. It appears that the stuffing in the cushions does not fit correctly into the cushion covers, causing unsightly puckering and wrinkling.
16. The respondent provided very little evidence in this dispute. I accept the applicants' evidence that the problems with the couch remained despite the respondent's attempts to fix them. I rely primarily on the fact that the respondent says that the couch's manufacturer has agreed to replace the cushions. I find that if the respondent had fully resolved the issue, it is unlikely that the respondent would ask the manufacturer to replace the cushions and unlikely that the manufacturer would agree to do so.
17. The applicants say that the couch came with a "Craftsmanship Guarantee". The applicants do not provide any evidence about the terms of an express warranty or guarantee about the couch. There is no written contract in evidence.
18. However, section 19(2)(a) of the *Sale of Goods Act* (SGA) says that in a contract for sale by sample, there is an implied condition that the end product be the same quality as the sample. A "sale by sample" occurs when the parties either expressly

or implicitly agree that the purchaser will rely on a sample to make a purchase and the purchaser does not have an opportunity to inspect the end product before making the purchase. In the circumstances of this dispute, I find that the applicants' purchase of the couch was a sale by sample. Accordingly, section 19(2)(a) of the SGA applies.

19. I find that the respondent breached the implied condition in section 19(2)(a) of the SGA because the couch that the applicants received was not the same quality as the sample couch that the applicants inspected. Because the respondent breached a condition, the applicants had a right to reject the couch and demand a refund.
20. However, section 15(4) of the SGA says that because the applicants accepted the couch, the respondent's breach of the implied condition must be treated as a breach of a warranty. This means that the applicants cannot insist that the respondent take the couch back and get a full refund. Rather, under section 56(3) of the SGA, the applicants are only entitled to the reduction in the value of the couch they received compared to the couch they viewed.
21. There is no evidence before me about how much less the couch is worth because of the puckering in the cushions. I decided not to seek further evidence from the parties about the market value of the applicants' couch because doing so would be disproportionate to the amount involved.
22. On a judgment basis, I find that a 50% reduction in the purchase price is appropriate, which is \$587.50.
23. 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. The applicants were partially successful in this dispute. I find the applicants are entitled to reimbursement of half of their tribunal fees of \$125, which is \$67.50. The applicants did not claim any dispute-related expenses.
24. The applicants are also entitled to pre-judgment interest under the *Court Order Interest Act*. The precise date that the respondent delivered the couch is not in

evidence. The applicants say that they received the couch in mid-November. I have calculated pre-judgment interest from November 15, 2017.

ORDERS

25. I order that within 14 days of the date of this order, the respondent pay the applicants a total of \$666.89, broken down as follows:
- a. \$587.50 for breach of contract,
 - b. \$11.89 in pre-judgment interest, and
 - c. \$67.50 in tribunal fees.
26. The applicants are entitled to post-judgment interest, as applicable.
27. 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.
28. 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.

Eric Regehr, Tribunal Member