



Civil Resolution Tribunal

Date Issued: August 29, 2019

File: SC-2018-005569

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MacKinnon v. Letrix Scooter City Ltd.*, 2019 BCCRT 1026

BETWEEN:

Brenda Mary MacKinnon

APPLICANT

AND:

LETRIX SCOOTER CITY LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about compensation for alleged misrepresentation about functionality of a power wheelchair and a power scooter.

2. In January 2017, the applicant, Brenda Mary MacKinnon, bought a new Shoprider Power Chair (wheelchair) from the respondent, Letrix Scooter City Ltd. In May 2017, the applicant decided to trade in the wheelchair for a portable 3-wheel power scooter, called a Pride Mobility Go-Go Sport (scooter). The applicant says she was incorrectly told the wheelchair was not designed for hills or a rainy climate, and so she did not use it in January 2017 when she could have. The applicant also complains the scooter is not suited for hilly terrain, which she needed. As discussed below, the applicant claims \$5,000 in compensation and also appears to seek an order that the respondent “take back” the scooter.
3. The respondent says the applicant knew the wheelchair was rated for outdoor use and that she also knew the scooter was rated for indoor and only limited outdoor use.
4. The applicant is self-represented. The respondent is represented by Pamala Smith, its owner.

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 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. In some respects, this dispute amounts to a “she 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 here, I find that I am properly 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.

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 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: 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.

ISSUE

9. The issue in this dispute is to what extent, if any, the respondent must reimburse the applicant for the wheelchair and scooter.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove their claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
11. The applicant alleges she was "grossly misinformed" about the vehicles not being suitable for wet conditions, icy snow and on hilly terrain. First, she says she was incorrectly told the wheelchair could not be used outside. Second, she says she was not told the scooter was inadequate for use on hilly terrain. She also says the scooter had insufficient battery power.
12. I turn to the relevant chronology and the evidence before me.

Wheelchair

13. The parties agree the applicant paid \$4,695 for the wheelchair on January 26, 2017. The invoice states “no returns” after 5 days, and returns within 5 days are subject to a 15% restocking charge. The invoice also says not to “expose to minus 30c degrees”. Otherwise, there are no warnings or instructions about the wheelchair’s use outdoors. It is undisputed the applicant did not express any concern about the wheelchair to the respondent until she brought it for trade-in in May 2017.
14. The respondent says that after a 2 to 3 hour visit in their store considering appropriate options, the applicant bought the wheelchair for use in her home as well as outdoors. The respondent says the applicant explained she needed to use the wheelchair in her small apartment, but also use it outside. The applicant denies that she ever said she wanted to use the wheelchair in her small apartment. Nothing turns on whether the applicant said she wanted to use the wheelchair inside. The material point is that the respondent knew she wanted to use it outside. The respondent’s January 26, 2017 business record notes the applicant “spent a very long time here asking lots of questions” and there is no indication the respondent told the applicant there was limited outdoor use.
15. I reject the applicant’s argument that the respondent incorrectly told her the wheelchair could not be used in inclement weather. There simply is insufficient evidence to support this claim and the applicant bears the burden of proof. My conclusion is also supported by the fact that the wheelchair invoice did not have the ‘no outdoor use’ warning like the scooter invoice did. Again, I note the applicant never expressed concern about the wheelchair during the 4 months she owned it, including when she traded it in.
16. For the reasons above, I dismiss the applicant’s claims related to the wheelchair’s functionality or loss of use.

Scooter

17. It is undisputed the applicant chose to trade in the wheelchair and that she chose the scooter she bought. The applicant says she did so because the scooter could be disassembled and put into her car.
18. The parties agree the applicant paid \$2,200 for the scooter on May 17, 2017. The scooter invoice notes the wheelchair trade-in, so I infer the \$2,200 was a reduced price to reflect some value for the wheelchair. The scooter invoice also says, “NO RETURNS ON THIS PRODUCT” (capitals in original), though it also offers a 2-year warranty on “parts and labour”. Unlike the wheelchair invoice, the scooter invoice also states, “DO NOT store equipment in outdoor areas exposed to weather”, noting this would void the warranty. Next, the scooter invoice clearly states the battery warranty is limited to 6 months. I find all of this detail on the scooter invoice shows the applicant knew or should have known the scooter had limited use outdoors.
19. The respondent submits that the “NO RETURNS ON THIS PRODUCT” notation on the invoice reflected the parties’ discussion that the wheelchair was a better fit for the applicant’s needs, given the scooter was limited in its use outdoors. On balance, I accept this evidence as I find it fits best with the weight of the evidence before me, including the fact that the wheelchair invoice allowed returns within 5 days (with a restocking fee). In any event, the notation is clear that the scooter was non-refundable.
20. As noted, the applicant argues she was “grossly misinformed” about the scooter. She says she did not know the scooter was not suited for hilly terrain or inclement weather. This is essentially an allegation that the respondent negligently or fraudulently misrepresented the scooter to her. Had the respondent done so, that would be a legal basis to find the applicant was entitled to reasonable compensation. However, I find the weight of the evidence does not support the applicant’s misrepresentation claim. My reasons follow.

21. The scooter invoice warned the applicant about exposure to weather. The applicant also acknowledges the scooter's user guide states the user should "avoid as many hills, cracked, broken, or soft surfaces as possible". The user guide also gives detailed instructions for battery charging, and it expressly notes that hills and uneven surfaces will affect the battery's power and running time. It also has a "WARNING!" icon with a statement that the user should not travel up or down potentially hazardous inclines, including but not limited to areas covered with snow, ice, cut grass, or wet leaves. The user guide also has large diagrams showing the maximum allowable incline angle. The applicant does not deny she was given the user guide at the time she bought the scooter, as asserted by the respondent. The applicant made undated handwritten notations on the user guide. The applicant does not explain why she argues she was misinformed about the scooter when she had the user guide, and expressed no concern to the respondent about the scooter's functionality for at least several months.
22. In particular, it is undisputed that the respondent did not hear from the applicant until 5 months later, on October 31, 2017, through an advocacy group who demanded a refund of \$2,495 for the applicant. However, the advocacy group's letter complained about the wheelchair not being appropriate for the applicant's needs. Yet, the wheelchair had been traded in already months earlier, without any expression of concern. The advocacy group's letter mentioned no concerns at all about the scooter's functionality. I find the fact that the applicant used the scooter for 5 months without concern supports the conclusion that the respondent did not misrepresent the scooter's function on hills. I also note the scooter was purchased on May 17, 2017 with a 6-month battery warranty, and as of October 31, 2017, that 6 months was almost up.
23. The applicant's claim rests on the fact the scooter was not suitable for hills and inclement weather. Based on the evidence before me, I find the applicant knew or ought to have known the scooter was built for indoor use and limited outdoor use on moderate terrain, avoiding hills and inclement weather. I dismiss the applicant's claims based on alleged misrepresentation about the scooter's functionality.

24. Based on the applicant's evidence, I accept there was an episode in April 2018 where the applicant started to roll back on a hill. While unfortunate and understandably alarming for the applicant, as noted there is no evidence before me that the respondent misinformed the applicant about the scooter. If the applicant did not read the documentation she received at the time she bought the scooter, that is her responsibility. The documentation clearly warned against using the scooter on steep inclines.
25. I turn then to the applicant's argument that the scooter had "constant power stoppage". She provided little evidence in support of this allegation and has not shown she complied with the express instructions about battery charging that are set out in the user guide. Apart from the April 2018 episode, the applicant did not detail any other episodes where the scooter lost power during her use of it.
26. That said, I acknowledge the applicant's June 24 and July 8, 2018 witness statements from RB, who said they borrowed the applicant's scooter and it lost power on 4 occasions between June 29 and July 4, 2018, "even after charging all night". However, RB appears to acknowledge that the loss of power was likely due to use on hilly terrain and that the scooter was not built for such use.
27. The *Sale of Goods Act* (SGA) applies to the respondent's commercial sale of the scooter. Section 18 of the SGA states the goods must be reasonably fit for their purpose, of saleable quality, and reasonably durable in all the surrounding circumstances. I accept there were inclement weather conditions in January 2017 and I also accept the applicant lives in a neighbourhood with hilly terrain. However, those facts do not mean the respondent misled the applicant when it sold her the wheelchair or the scooter. Given the scooter's invoice and user guide, and the fact the applicant used the scooter for over 6 months without expressing concern about it, I find the weight of the evidence does not establish any breach of the SGA. I say the same about the wheelchair, which I have also addressed above.

28. In summary, I find the applicant has not proved the scooter was defective in any way or contrary to her stated purpose when she bought it. I find the applicant has also not proved the respondent misrepresented the scooter's functionality to her.
29. Next, the respondent acknowledges that it refused to service the applicant's scooter, given the applicant's earlier threats to sue it. However, it is undisputed the respondent directed the applicant to another warranty service provider that would provide service at no cost to the applicant, which the applicant refused. I dismiss the applicant's claims related to the battery's alleged failure.
30. Finally, I acknowledge the parties' submissions about their exchange of settlement offers, which were not accepted. Parties often make settlement offers to reach a compromised solution that provides finality. Given those offers failed to resolve the dispute and it proceeded to the point where I was asked to issue a binding decision, I find nothing turns on the settlement offers.
31. The applicant's requested remedies are inconsistent in her submissions. At times, she appears to claim both \$4,695 and \$2,200. At other times she claims \$2,495, as the difference in price. She also appears to claim \$2,200, as a refund of the scooter's price. Elsewhere, she claims a total of \$5,000, the tribunal's monetary limit in small claims disputes. Given my conclusion above that the applicant has not proved the respondent is responsible for her limited use of the wheelchair or scooter, I do not need to address her damages claims in any detail.
32. Under the CRTA and the tribunal's rules, a successful party is generally entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. As the applicant was unsuccessful, I dismiss her claims for fees and expenses. The respondent did not claim any fees or expenses.

ORDER

33. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair