



Civil Resolution Tribunal

Date Issued: November 15, 2019

File: SC-2019-004644

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jagpal v. The Brick Warehouse LP*, 2019 BCCRT 1295

B E T W E E N :

RINA JAGPAL

APPLICANT

A N D :

The Brick Warehouse LP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over a television (TV) that the applicant, Rina Jagpal, bought from the respondent, The Brick Warehouse LP. The applicant says she is disappointed in

the picture quality and wants to return the TV to the respondent for a refund of \$1,474.79.

2. The respondent says the applicant bought the TV “As-Is” and so it was a final sale. Further, the respondent says it allowed the applicant to exchange the TV twice for a new one. It disputes that it must accept a 3rd return or refund the price of the TV.
3. The applicant is self-represented. The respondent is represented by Manager, Legal Services & Risk.
4. I dismiss the applicant’s claims for the reasons set out below.

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, email, videoconferencing, or a combination of these. I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal’s mandate of proportional and speedy dispute resolution, I decided I can fairly 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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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.

ISSUE

9. The issue in this dispute is whether the respondent must refund the applicant \$1,474.79 for the TV and accept its return.

EVIDENCE, ANALYSIS and FINDINGS

10. In a civil claim such as this, the applicant bears the burden of proving her claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The TV at issue in this dispute is a Samsung 65" UHD TV purchased on May 9, 2019 (3rd TV). It was undisputedly the third TV after 2 other exchanges.
12. The applicant says that on March 9, 2019, the manager ordered the 3rd TV for her online and that there was no unit displayed at the store. She says when she received the 3rd TV she was "very disappointed with the picture quality" and asked to exchange it, but the respondent's manager refused. There is no evidence the 3rd TV had a manufacturing or other defect.
13. The respondent agrees it refused to exchange the 3rd TV. It says it was not required under the sales contract to exchange it. The respondent says the applicant first purchased a TV on May 2, 2019, which as shown on the sales invoice, it sold "As-Is" and as a "final sale". However, the respondent permitted the applicant to return and exchange the 1st TV for a new 2nd TV on May 3, 2019. The sales invoice notes

say the 1st TV had a “cranky sound and auto shut off and on”. The respondent says on May 9, 2019 the applicant returned the 2nd TV, this time because it was not compatible with her Apple TV. The respondent then ordered the applicant the 3rd TV, which is the disputed Samsung UHD TV.

14. The applicant makes three separate arguments for her claim that she should be entitled to return the 3rd TV for a refund. These arguments are based on: a) the respondent’s return policy, b) negligent misrepresentation on quality, and c) section 38(1) of the *Sale of Goods Act* (SGA).

Return and Exchange Policy

15. The applicant claims the respondent should have allowed her to return the 3rd TV under its 7-day return and exchange policy. The policy in evidence states that the respondent will accept a return within 7 days of purchase for a full instore credit for a “change of heart” as long as the item is still in its “factory sealed packaging”.
16. The respondent says the 3rd TV was sold “As-Is” and the return policy did not apply. However, the parties’ May 9, 2019 sales invoice specifically references the policy on the back and that the applicant read the policy. I find the return policy described above applied to the contract of sale.
17. The respondent argues that even if the policy applied, the applicant was not entitled to the return because she opened the 3rd TV’s factory sealed packaging. The applicant does not dispute that she opened the factory sealed packaging and a text message in evidence confirms she opened it. In the Dispute Notice, the applicant said the policy “misleads” customers to think they can exchange an item when it does not in fact, allow exchanges where the factory seal is broken.
18. I find the respondent did not “mislead” the applicant by including in its policy a condition on exchanges. Conversely, I find by expressly including the condition on the invoice the respondent was forthcoming about the terms. I find the respondent

was permitted to rely on the policy terms when it refused to allow the return based on the applicant breaking the factory seal.

Negligent Misrepresentation on Quality

19. The applicant argues that she is entitled to the refund under the *Business Practices and Consumer Protection Act* (BPCPA) because the respondent's manager misrepresented the quality of the 3rd TV.
20. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement that has the effect of inducing a reasonable person to enter into the contract. To succeed on a claim for negligent misrepresentation, the applicant has to establish that:
 - a. The respondent owed the applicant a duty of care to provide accurate information;
 - b. The respondent made a representation to her;
 - c. The representation was untrue or misleading;
 - d. The applicant reasonably relied on the misrepresentation; and
 - e. The reliance caused the applicant's loss.

See: *Van Beek v. Dodd*, 2010 BCSC 1639.

21. The applicant says when she ordered the 3rd TV, the manager verbally told her it was "top of the line quality" and had "excellent picture quality". However, the applicant says she was "disappointed with the picture quality" when she received the 3rd TV because it was not "as good" as her old Samsung QLED TV. There is no dispute that the respondent did not have a Samsung UHD TV on display in the store. However, before ordering the 3rd TV, the respondent says the applicant had looked at the same Samsung UHD TV that Best Buy had on display and then decided to order it from the respondent. The applicant does not dispute this.

22. There is no evidence that the 3rd TV ordered on May 9, 2019 was anything other than “top of the line”. I find the applicant’s mere disappointment with the picture quality does not establish that the manager’s statements were untrue or misleading. What is an excellent picture quality to one person may not be to another. There is also no evidence the 3rd TV or its picture were defective. I note there might have been a visual difference due to UHD versus QLED technology, but there is no objective evidence either way.
23. I find the applicant has not established that the respondent made an untrue or misleading statement about the 3rd TV. I also find that the applicant has not shown she reasonably relied on the manager’s vague statements to purchase the TV. I find the applicant has not proven her claim based on negligent misrepresentation. I find there is no remedy available to her under the BPCPA.

Sales of Good Act

24. The applicant says she has a right to return the 3rd TV for a refund under section 38(1) of the SGA. The applicant summarizes section 38(1) of the SGA but does not explain how it would have entitled her to return the 3rd TV for a refund.
25. Section 38(1) of the SGA says that if goods are delivered to the buyer that the buyer has not previously examined, the buyer is not deemed to have accepted them unless and until the buyer has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.
26. Even though the applicant viewed a similar TV at Best Buy, I accept that she had a right to examine the 3rd TV because it was ordered online by the respondent and delivered to her home. However, I find the purpose of the examination under section 38(1) is to ensure the delivered goods conform with the contract. In other words, that it was the TV the parties bargained for. Section 31 of the SGA says that it is the seller’s duty to deliver the goods, and the buyer’s obligation to accept and pay for them, in accordance with the terms of the contract of sale. If the examined goods

conform to the contract, I find a buyer would have a reciprocal duty to accept them under section 31 of the SGA.

27. As mentioned, the applicant seeks to return the 3rd TV because she was “disappointed” with the picture quality. The evidence does not establish that the delivered 3rd TV was anything different than what was set out in the parties’ contract as shown on the sales invoice. For example, it was not a different model, size or brand, and there is no evidence it was defective. I find the applicant has not established that the 3rd TV failed to conform with the parties’ contract and so I find the applicant was required to accept it under section 31 of the SGA.
28. The applicant has the burden of proof. I find the applicant has not established on a balance of probabilities that she is entitled to return the 3rd TV for a refund.
29. Under section 49 of the CRTA 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. As the applicant was unsuccessful in this dispute, I find she is not entitled to reimbursement of her tribunal fees or claimed dispute-related expenses.

ORDER

30. I order the applicant’s claims and therefore, this dispute are dismissed.

Trisha Apland, Tribunal Member