



Civil Resolution Tribunal

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File: SC-2019-007847

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Khairi v. Envo Drive Systems Inc.*, 2020 BCCRT 261

B E T W E E N :

HABIB KHAIRI

APPLICANT

A N D :

ENVO DRIVE SYSTEMS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a claim over the purchase and sale of “ebikes”.
2. The applicant, Habib Khairi, purchased 3 ebikes from the respondent, Envo Drive Systems Inc. The applicant says one of the ebikes was defective. It is undisputed that the applicant returned one of the ebikes. The applicant claims reimbursement

of \$2,090 for the returned ebike and extended warranty. The applicant says the respondent did not honour its warranty. He claims \$1,000 “to fix the other 2 bikes if battery or other parts go bad”. I infer the applicant is asking that the respondent pay for prospective repair costs to the 2 ebikes the applicant retained.

3. The respondent says it is an online business that sells ebikes. The respondent denies selling the owner a defective ebike. The respondent says in any event, the applicant already received a refund through his Visa credit card after Visa’s internal “arbitration verdict”. The respondent denies that it owes the applicant anything further on the ebikes.
4. The applicant is self-represented. The respondent is represented by its Chief Executive Officer (CEO).
5. I dismiss the applicant’s claims for the following reasons.

JURISDICTION AND PROCEDURE

6. 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a “they said, they 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. In the

circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

8. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
9. 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.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. To what extent, if any, must the respondent reimburse the applicant \$2,090 for the returned ebike?
 - b. To what extent, if any, must the respondent pay the applicant \$1,000 for possible future repairs for the 2 ebikes the applicant kept?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

13. According to the sales invoice, the applicant purchased 3 ebikes from the respondent on June 4, 2019, with batteries, extra parts, and a warranty extension. The total invoice shows the applicant paid \$5,125, after a global discount of about 18.5%.
14. The applicant undisputedly returned 1 of the 3 ebikes to the respondent (the "Evo"). The applicant seeks a refund of \$2,090.00 for the returned Evo and warranty, the claimed amount for that ebike.
15. The sales invoice shows the applicant paid less than the claimed \$2,090. The full sale price for the Evo with parts and battery was \$2,029 and the warranty was \$60. Applying an 18.5% discount to the purchase, I find the applicant paid about \$1,703 for the Evo and warranty. The applicant does not explain why he claims \$387 more than he paid.
16. By way of background, the applicant had brought the Evo back to the respondent's shop on about June 29, 2019, claimed it was defective, and demanded a full refund. The respondent refused a full refund on the basis that the Evo had no defect. However, the respondent offered a partial refund of \$1,552.42 for the Evo. The applicant rejected the respondent's offer. The applicant then asked the respondent for a full refund on the other two ebikes and warranties, which the respondent refused. The respondent asked the applicant to retrieve his Evo from its shop, but the applicant left the Evo with the respondent. In the end, the applicant left the Evo and kept the other 2 ebikes. None of these facts are disputed.
17. The applicant then claimed a \$5,125 refund through his credit card company, Visa for all 3 ebikes. The respondent says the dispute went through Visa's internal arbitration. The applicant does not say otherwise. The respondent provided an email from "Inuit" dated September 19, 2019, which undisputedly includes the outcome of the applicant's Visa refund claim. Visa concluded that the respondent was "liable" for \$1,051.52 based on the returned Evo. Visa released \$4,073.48 to the respondent, which is the difference between the full purchase price for the 3 ebikes and the chargeback on the Evo ($\$5,125.00 - 1,051.52 = \$4,073.48$).

18. I find that Visa's liability decision is not binding on me. I find there is insufficient evidence of Visa's dispute resolution process to refuse to resolve the applicant's claim under CRTA section 11(1)(a)(ii) on the basis the dispute has already been decided. Therefore, I am resolving the dispute despite the Visa decision.
19. However, the applicant does not dispute receiving the Visa refund. Based on Inuit's email, I find the applicant has already received \$1,051.52 of the \$1,703.00 he paid for the Evo and the warranty. So, is the applicant entitled to anything more for the returned Evo and warranty?
20. The applicant argues that he is entitled to full reimbursement based on the warranty. The warranty in evidence provides for a full refund for all parts if unused, undamaged, unscratched, clean and "resell-able". The warranty says it will supply a "free replacement part" if there is a defect.
21. I find there is insufficient evidence before me that the Evo had a defect. The only specific problem with the Evo raised in the emails is that the Evo's chain "kind of jumps and does not go to place". The respondent says the Evo just needed a derailleur adjustment, which it performed for free. The Evo was undisputedly used when the applicant returned it and I find it had no defect. Therefore, I find the warranty did not entitle the applicant to return the Evo for a full refund. I also find the warranty was not refundable itself. The terms do not say the warranty was refundable.
22. The applicant also argues that he is entitled to a refund because the respondent sold him the Evo as new, when it was in fact a used demonstration model. However, I do not accept the Evo was used prior to purchase. Throughout the parties' contemporaneous email discussions, they both specifically refer to the Evo as "new". I find this is likely because the Evo was new.
23. The applicant seems to argue as well, that he is entitled to a full refund because the respondent recommended the Evo, which his child is too young to ride legally. The parties agree that the legal age for ebikes is 16 and the applicant's child is younger.

However, the respondent's CEO says that he specifically told the applicant before purchase that his children "may not legally ride ebikes". I accept the respondent warned the applicant about the legal age because it is supported by an email. I find it more likely than not that the applicant chose to purchase the ebike despite the respondent's warning.

24. The *Sale of Goods Act* (SGA) applies to this sale. Section 18 of the SGA implies conditions that goods sold by a commercial seller must be reasonably "durable", "fit for their purpose" and of "merchantable quality". I find no breach of the implied warranties. For the reasons above, I find the applicant has not proven that the Evo was defective. I also find the applicant has not established that he relied on the respondent's skill and judgment in buying the Evo for his child. Overall, I find insufficient evidence that any of the 3 ebikes were unfit for the purpose of riding as a bicycle, not durable, or not of merchantable quality.
25. In this case, I find the principle of "buyer beware" applied to the sale. I find the applicant assumed the risk of purchasing an ebike for a child. I find the applicant is not entitled a further refund based on his child's inability to ride an ebike.
26. For the reasons above, I find the applicant has not established a basis for the warranty refund. I also find the applicant is not entitled to anything more than the \$1,051.52 he received from Visa for the Evo.
27. While the respondent retained the Evo, I find it was only because the applicant unilaterally left the Evo at the respondent's shop and refused to pick it up. Again, I find the applicant was not entitled to return the Evo for a refund under the warranty. Also, the respondent says the applicant agreed to the \$1,051.52 for the Evo during the Visa arbitration. The applicant provided no information about the Visa arbitration for me to find otherwise. Despite holding the burden of proof, the applicant provided no evidence of the value of the now used Evo.
28. On a judgment basis, I find that \$1,051.52 is a fair price for the returned Evo. Therefore, I dismiss the applicant's \$2,090 reimbursement claim.

29. The applicant also asks for \$1,000 to pay for future repairs in case anything goes wrong with the ebikes or batteries that he kept, and because he anticipates that the respondent will not honour the warranty. The applicant does not say there are any current problems with these 2 ebikes or batteries. I find the applicant's claim is speculative and the claimed amount unsupported by the evidence. I dismiss the applicant's claim for \$1,000 for potential future repairs.
30. 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. As the applicant was unsuccessful and in accordance with the tribunal's rules, I find the applicant is not entitled to reimbursement of his claimed tribunal fees.

ORDER

31. The applicant's claims and this dispute are dismissed.

Trisha Apland, Tribunal Member