



Civil Resolution Tribunal

Date Issued: March 13, 2020

File: SC-2019-009390

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sikandar v. J.R. Furniture Place Ltd.*, 2020 BCCRT 303

B E T W E E N :

RUBAB SIKANDAR

APPLICANT

A N D :

J.R. FURNITURE PLACE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a furniture sale. The applicant, Rubab Sikandar, purchased a mattress set and bed frame from respondent, J.R. Furniture Place Ltd. The applicant claims the respondent misrepresented the condition of the products and the respondent did not comply with the *Business Practices And Consumer Protection Act* (BPCPA). In addition, the applicant claims that the respondent

improperly pressured them into making the purchase. The applicant seeks a refund of the \$1,700 purchase price.

2. The respondent denies the applicant's claims. The respondent says the products were sold "as is" and the contract states there are no refunds. The respondent also argues that they disclosed the stained product to the applicant in the store and on the sales invoice.
3. The applicant is self-represented. The respondent is represented by a business representative.

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* (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.
5. 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. Though I found that some aspects of the parties' submissions called each other's credibility into question, 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.
6. 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.

7. 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

8. The issues in this dispute are:
 - a. Must the respondent refund the \$1,700 purchase price because the applicant cancelled the agreement based on the BPCPA?
 - b. Must the respondent refund the \$1,700 purchase price because the respondent allegedly coerced the applicant into making the purchase by duress or undue influence?
 - c. Must the respondent refund the \$1,700 purchase price because the respondent misrepresented the condition of the mattress products?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove their case on the 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.
10. I first note that the applicant has provided multiple public consumer reviews. I find that these reviews do not relate to this transaction in dispute. As such, I find that these consumer reviews are not relevant and I have not considered them in making my decision.
11. It is undisputed that the applicant purchased a mattress set and a bed frame from respondent's furniture business on November 9, 2019 for \$1,700. The products

were floor model units and the mattress had stains. The applicant admits that they were aware that there were stains. However, the applicant claims the respondent tried to hide the extent of the stains.

12. The mattress stains were noted on the invoice. The sales invoice noted that the products were being sold “as is.” In addition, the sales invoice stated that there were no refunds and all sales were final. The applicant signed the invoice.
13. The applicant claims that the respondent improperly pressured them into making the purchase. The applicant says the respondent’s salesperson followed them around the store preventing the applicant from making a careful decision. The applicant also claims that the respondent physically prevented the respondent from leaving the store without making a purchase. The respondent denied these claims.
14. The applicant also claims the respondents misrepresented the condition of the mattress by repeatedly covering the stained mattress with a sheet. The respondent says the applicant was fully aware of stains and they only replaced the sheets to keep the showroom tidy.

BPCPA

15. The applicant submits the contract was a direct sales contract under the BPCPA. I disagree. Direct sales contracts are defined as those entered into in person at a place other than the seller’s permanent place of business. It is undisputed that this transaction was made at the respondent’s furniture store. Accordingly, this is not a direct sales contract within the meaning of the BPCPA.
16. I will also consider whether this contract is a future performance contract under the BPCPA. Although the parties did not refer to the future performance contract provisions of the BPCPA in their submissions, I have considered its application to this dispute as the terms of the BPCPA are mandatory. Since the relevant facts are not in dispute and the applicant has already made claims under the BPCPA, I have determined that it is unnecessary for the parties to make submissions on the application of the future performance contract provisions of the BPCPA.

17. Section 17 of the BPCPA defines a future performance contract as an agreement for services where the full amount is not paid, or where services are not supplied in full, at the time of the contract.
18. Here, the applicant paid the full amount, but the mattress set and bed frame were not supplied at the time the contract was entered. So, I find the contract is a future performance contract.
19. Sections 19 and 23(2) of the BPCPA set out the requirements that a future performance contract must contain. These requirements include, among other things, an itemized purchase price, a notice of the buyer's right to cancel if any and the supply date.
20. First, I will consider whether the contract itemized the purchase price as required by the BPCPA.
21. The applicant says the price was \$700 for the mattress set and \$1,000 for the bed frame. The applicant says there was a \$700 price tag on the mattress set and a \$1,000 price tag on the bed frame. The respondent did not provide any evidence of the marked prices of the products. However, the respondent states that the applicant paid a total of \$1,700 for both the mattress set and the bed frame.
22. The invoice provided by the applicant described the mattress set and bed frame separately and stated a single total price of \$1,700. The applicant's copy of the invoice did not state any sales taxes or delivery charges. The applicant says that the respondent told them that there would be no sales tax or delivery fees.
23. The respondent's copy of the sale invoice differs from the applicant's copy. The respondent's sale invoice had the following additional entries:
 - a. \$1,447.54 for price of the products
 - b. \$75 for delivery fees
 - c. \$76.13 for Goods and Services Tax

d. \$101.33 for Provincial Sales Tax

24. The respondent says that delivery charges and sales taxes were included in the total price of \$1,700. The respondent says that the delivery and sales tax entries were added to their copy of the invoice at the end of the business day.
25. Dictionary.com defines “itemizing” as to “give particulars or, list the individual units or parts of.” Based on this definition, which I find useful, and the word’s common usage, I find that the BPCPA requires the respondent to provide a listing of each charge to the applicant. I find that the contract did not itemize the purchase price as required by the BPCPA.
26. Based on the applicant’s undisputed submission, I find that the mattress set had a separate price of \$700 and the bed frame had a separate price of \$1,000. However, the invoice provided to the applicant did not provide any breakdown of the price between the mattress set and the bed. The invoice provided separate descriptions of these products but the separate purchase prices were not itemized. In addition, the invoice did not list the delivery charges or sales taxes on the invoice.
27. I find that the respondent breached section 19(f) by BPCPA by failing to itemize the purchase price. Based on this finding, it is unnecessary to determine whether the respondent also breached the BPCPA by not providing the buyer’s right to cancel, if any, or stating the supply date. Accordingly, I decline to make findings on these issues.
28. Section 23(5) states a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than 1 year after the date the consumer receives a copy of the contract if the contract does not contain the information required in Sections 19 and 23(2).
29. Based on the applicant’s undisputed submission, I find that the applicant provided notice of cancellation by telephoning the respondent the next day. I find that this is sufficient notice of cancellation of the agreement under section 23(5) of the BPCPA.

30. I find that it is unnecessary for the applicant to return any products to the respondent since the mattress set and bed frame were never delivered to the applicant.
31. Given the respondent's failure to comply with the BPCPA and the applicant's cancellation of the agreement, I find the respondent must refund the applicant \$1,700.
32. In light of this finding, I find that is unnecessary to address the issues of whether the applicant was under duress or undue influence in making the contract or whether the respondent misrepresented the condition of the products. Accordingly, I will not make any findings on these issues.
33. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the refund of the purchase price of \$1,700 from November 10, 2019, the date the applicant cancelled the agreement, to the date of this decision. This equals \$11.35.
34. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. As no dispute-related expenses were requested, none are awarded.

ORDERS

35. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,836.35, broken down as follows:
 - a. \$1,700 as refund of the purchase price,
 - b. \$11.35 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.

36. The applicant is entitled to post-judgment interest, as applicable.
37. Under section 48 of the CRTA, 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.
38. Under section 58.1 of the CRTA, 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.

Richard McAndrew, Tribunal Member