



Civil Resolution Tribunal

Date Issued: April 28, 2020

File: SC-2020-000680

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Snell v. Cesarec*, 2020 BCCRT 456

BETWEEN:

JONATHAN SNELL

APPLICANT

AND:

IAN CESAREC

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is a dispute about a used laptop computer purchase.
2. The applicant, Jonathan Snell, purchased the used computer from the respondent, Ian Cesarec. The applicant says the computer does not function properly and is

unusable. The applicant claims a refund of the \$400 purchase price, and \$76.43 he paid to have the computer diagnosed.

3. The respondent says the computer was functioning normally when he sold it, and that he did not provide any warranty about its condition. He denies the applicant's claims.
4. The parties are both self-represented in this dispute.

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. This dispute involves a "he said, he said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the tribunal's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to 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. 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.

ISSUE

9. The issue in this dispute is whether the respondent is liable for defects in the computer purchased by the applicant, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove his claim on a balance of probabilities. I have read all of the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
11. The applicant answered the respondent's online advertisement for the laptop computer. There is no written purchase agreement in evidence, so I infer that the computer purchase contract was verbal. The best evidence of the respondent's offer to sell the computer, which I find the applicant accepted for a price of \$400, is from the advertisement. The computer was advertised as in "mint or new" condition, factory restored, and "as new", complete with its original packaging. I find this means the respondent said the computer was in working order. Even if the applicant reasonably believed the computer was in working order when purchased, it was not reasonably durable, as I discuss later.
12. In his submissions, the respondent said he sold the computer "as is where is." However, there is no evidence from around the time of the purchase that the respondent sold the computer "as is where is," so I find that was not a term of the purchase.

13. The parties met in the lobby of a building on December 9, 2019 to finalize the sale. The undisputed evidence is that the computer was turned on, and the initial setup screens appeared. According to the applicant, this initial setup process is lengthy, and certain steps require internet access, which was not available in the lobby. The applicant says the respondent was unwilling to wait until the applicant completed the process and the computer achieved its normal working state. The parties do not deny that the applicant paid for the computer and the parties departed before the computer had finished the setup process.
14. In contrast, the respondent says the applicant verified the computer was fully functional in the lobby. On balance, I find that although the applicant viewed certain initial setup screens in the lobby, he did not view the computer in its normal operating state to test whether it was fully functional.
15. I accept the applicant's evidence that the computer was bought as a gift, and that it was not turned on again until December 25, 2019. This is confirmed by witness statements in evidence. When the computer was turned on, it froze after a few minutes of use and would not function properly. The applicant says the computer appears to work without any programs launched, but as soon as there is a bit of load it will either freeze or automatically shut itself off. The applicant submitted multiple videos which I find showed the computer developed serious graphics issues within minutes or seconds of logging in.
16. In a text message exchange beginning December 28, 2019, the applicant asked the respondent to take the computer back and refund the purchase price, because it was defective. The respondent refused, and said something must have happened to the computer after the purchase. The text message exchange became heated, but the respondent agreed to consider a partial refund if the computer was not working. No refund happened, for reasons that are unclear.
17. Later, the applicant took the computer to a computer repair shop, Restart. A Restart invoice confirms the computer's graphics anomalies and restarting issues were related to bad RAM in the computer. The invoice said all computer system log files

had been cleared due to a recent re-formatting, so it was not possible to determine when the problem began. The invoice also said the computer hardware was obsolete and not produced anymore, and Restart was unable to repair the computer.

18. On the evidence before me, I find the computer was defective and not usable at the time it was first powered on after purchase, on December 25, 2019.
19. The respondent says the computer was in working order when he sold it, and that any defects must have occurred after the December 9, 2019 purchase. Based on the applicant's description of the problem and his video evidence, I find the computer falters after completing the initial setup process. Because the applicant only saw the setup screens on the purchase date, the lobby viewing made no difference. Given my finding that the computer was not turned on between the purchase date and December 25, 2019, I find it more likely than not that the computer was defective at the time of purchase.
20. In his Dispute Response, the respondent said he believed he complied with the *Sale Of Goods Act* (SGA). While some aspects of used goods sales are "buyer beware," I find that the implied warranty in section 18(c) of the SGA applies in this situation. This section requires that a purchased item be durable for a reasonable period of time considering the normal use to which it would be put and the surrounding circumstances of the sale.
21. Even if the computer had been in perfect condition when purchased, I find it was not durable for a reasonable period of time. An applicant video, made after the computer's issues were discovered on December 25, 2019, confirms that the computer and its packaging were cosmetically perfect, with essentially no visible damage. On balance, I find the computer was not subjected to any damaging forces or environments following its purchase. Further, there was no period of trouble-free use by the applicant.

22. As a result, I find the respondent broke the implied SGA section 18(c) warranty, that the computer would be durable for a reasonable period. Turning to damages, the applicant is entitled to be put in the position he would have been in if the section 18(c) warranty had not been broken. On the evidence before me, I find the computer is unusable and is not repairable. Therefore, I find the applicant is entitled to the entire \$400 purchase price in damages.
23. The applicant also claims \$76.43 he paid Restart to diagnose the computer problems. I find the applicant only spent this amount because the computer was sold in breach of the section 18(c) warranty. The applicant would not have needed to seek repair options when he did if the computer had been durable for sufficient time. So, I find the applicant is entitled to \$76.43 for computer services.

Tribunal Fees, Expenses, and Interest

24. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on \$476.43 in damages. I find interest on the \$400 purchase price is calculated from the December 9, 2020 payment date until the date of this decision, and equals \$3.03. A purchase receipt shows the \$76.43 service fee was paid on January 17, 2020, so interest on that amount is calculated from that date until the date of this decision, which equals \$0.42. The total interest owed is \$3.45.
25. 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, so I find the applicant is entitled to reimbursement of \$125 for tribunal fees. No dispute-related expenses were claimed.

ORDERS

26. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$604.88, broken down as follows:

- a. \$400 in damages for the faulty computer,
 - b. \$76.43 in damages for computer services,
 - c. \$3.45 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$125 in tribunal fees.
27. The applicant is entitled to post-judgment interest, as applicable.
28. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
29. 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.

Chad McCarthy, Tribunal Member