



Civil Resolution Tribunal

Date Issued: June 12, 2020

File: SC-2019-010692

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Greene v. eBay Inc*, 2020 BCCRT 656

B E T W E E N :

ROBERT GREENE

APPLICANT

A N D :

eBay Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about compensation for a gemstone purchase. The applicant, Robert Greene, used the website of the respondent, eBay Inc. (eBay), to purchase an advertised diamond from a third-party seller (seller). The seller is not a party to this dispute.

2. The seller sent Mr. Greene a white sapphire instead of a diamond. eBay refunded Mr. Greene's purchase price and original shipping under its money back guarantee policy. Mr. Greene says eBay should further compensate him because it should have stopped the seller from listing items. He also says eBay's money back guarantee is unfair because it does not cover all losses from the purchase. Mr. Greene seeks \$4,522 in compensation for lost profits and \$476.10 in expenses from replacing the sapphire. In some submissions Mr. Greene seeks \$767.53 for such expenses.
3. eBay says it that fulfilled its obligations by issuing the refund. eBay says the parties' user agreement otherwise limits its liability and says that the substance of Mr. Greene's complaints is with the seller and not eBay.
4. Mr. Greene represents himself. An employee represents eBay.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Preliminary Issue #1 – The Correct Respondent

9. eBay provided a copy of its user agreement. It is undisputed that the user agreement is binding on the parties. It states that, depending on where Mr. Greene resides, he may be contracting with either eBay or eBay Canada Limited.
10. eBay did not say that Mr. Greene should have named eBay Canada Limited as the proper respondent. The user agreement says its terms apply, regardless of which entity Mr. Greene is contracting with. As neither party relies on this term and the user agreement applies in any event, I have decided to consider this dispute on its merits below.

Preliminary Issue #2 – Territorial Jurisdiction of the CRT

11. The user agreement states that eBay resides in the state of California. eBay did not object to the CRT taking jurisdiction over this dispute and fully participated by providing evidence and submissions. However, as it resides outside BC, I must consider whether the CRT has jurisdiction over this dispute.
12. As noted in *Club Resorts Ltd v. Van Breda*, 2012 SCC 17, in order for the CRT to have territorial jurisdiction, there must be a real and substantial connection between BC and this dispute. Certain connecting factors allow a court to assume jurisdiction over a dispute. One of these factors is whether a respondent carries on business in BC. In *Equustek Solutions Inc. v. Google Inc.*, 2015 BCCA 265, aff'd 2017 SCC 34, the court found that Google Inc. carried on business in BC, even though it had no servers, offices, or staff in the Province. This was because Google Inc.'s advertising and web crawler activities took place in BC.

13. There is limited evidence before me on what physical presence (such as equipment or personnel) eBay has in BC, if any. The parties' user agreement says that eBay is a marketplace that allows users to offer, sell, and buy "just about anything in a variety of pricing formats and locations". It is undisputed that Mr. Greene used eBay's website to search for and purchase items from various sellers, for shipment to BC. Other users in BC can use eBay's services in a similar manner. I find it clear from the evidence that eBay's advertising activities in BC (in particular, of its third-party sellers) are significant. Given the reasoning in *Equustek Solutions Inc.*, I find that eBay carries on business in BC.
14. Once the CRT has territorial jurisdiction, it must then consider whether it should decline jurisdiction because another more appropriate forum exists. This is known as the doctrine of *forum non conveniens*.
15. The parties' user agreement states that any claim or dispute between the parties must be resolved exclusively by a state or federal court in Salt Lake County, Utah. However, it states that the parties can agree to make an exception.
16. The parties have not expressed any desire to have this dispute heard in Utah or any other forum outside BC. I find the parties have agreed to have this dispute heard in BC. I conclude that the CRT has jurisdiction over this dispute, and I find it appropriate to consider its merits below.

Preliminary Issue #3 – Claims for Punitive Damages

17. In his application for dispute resolution, Mr. Greene claimed for a combination of loss of profits and punitive damages. Mr. Greene says he no longer wishes to claim to punitive damages, though this does not reduce his claim amount in any way. I will therefore not consider punitive damages in my decision.

Preliminary Issue #4 – References to Settlement Discussions

18. Mr. Greene says that eBay agreed to pay some of his claims during the facilitation stage of dispute resolution. eBay disagrees the parties settled any claims and objects to Mr. Greene sharing any information from settlement discussions.
19. There is no settlement agreement or signed consent order before me. Given this, and eBay's submissions, I find that the parties have not settled any of the claims in this dispute. CRT rule 1.11 states that settlement discussions are confidential and must not be disclosed during the CRT decision process, and so I do not consider Mr. Greene's references to them in reaching my decision.

ISSUES

20. The issues in this dispute are as follows:
 - a. Did eBay breach the parties' agreement, and if so, what is the appropriate remedy?
 - b. Is eBay's liability limited by the user agreement?

EVIDENCE AND ANALYSIS

21. In a civil claim such as this, the applicant Mr. Greene must prove his claims on a balance of probabilities. I have reviewed all the evidence and submissions and only reference them as necessary to give context to my decision.
22. As I will explain below, in order for Mr. Greene to succeed in his claim he must show that eBay breached a term of the parties' agreement. I find that Mr. Greene has failed to do so. Although he identified a number of business practices that he wishes eBay to change, for the purposes of this dispute I find eBay is under no obligation to do so. Mr. Greene's claims must also fail because the parties' agreement limits eBay's liability, particularly from the actions of third parties (including the seller).

23. The background facts are largely undisputed. In November 2019 Mr. Greene used eBay's website to purchase a gemstone from a third party, the seller. The seller listed the gemstone as a 1 carat diamond. In December 2019, Mr. Greene had the gemstone set in a ring and had it appraised. A gemologist determined the gemstone was actually a white sapphire. The evidence before me indicates the advertised diamond would have been more valuable.
24. Mr. Greene advised eBay that the gemstone was not as advertised. eBay contacted the seller and received no response. On December 15, 2019, eBay issued a refund for \$324.25 USD. This amount consists of the gemstone's purchase price plus original shipping.
25. Mr. Greene claims for lost profits from the expected sale of the ring and other costs flowing from returning the white sapphire to the seller. eBay disagrees it is responsible for such losses and relies upon the terms of its user agreement to exclude itself from liability.
26. I will first discuss whether eBay breached any of its obligations to Mr. Greene. I will then discuss whether the parties' user agreement excludes eBay from liability for the claimed losses.

Issue #1. Did eBay breach the parties' agreement, and if so, what is the appropriate remedy?

27. A copy of eBay's user agreement and money back guarantee policy are in evidence. Mr. Greene does not dispute that they are binding. As such, I find these documents form the parties' contract.
28. The user agreement says that eBay facilitates the sale of goods between buyer and seller. Mr. Greene says that eBay should have barred the seller from selling gemstones on eBay. He says eBay did not because it knowingly allows high-volume sellers to commit a small amount of fraud. He says eBay shows no such leniency with low-volume gemstone sellers.

29. As evidence, Mr. Greene provided a screenshot of the eBay feedback profile for the seller of the returned sapphire. The feedback profile is based on the reviews of other users. The seller had 5,897 positive, 5 neutral, and 26 negative reviews. The depicted negative reviews say the seller provided fake gemstones. Mr. Greene contrasts this with another seller that had lower sales volume with 17 positive reviews. He says the smaller seller sold him a fake diamond and eBay provided a refund, though it failed to compensate him for shipping costs. Mr. Greene says eBay subsequently stopped the smaller seller from advertising through eBay, whereas the larger seller continues to sell gemstones.
30. Mr. Greene did not identify what contract or policy term eBay breached. The user agreement states that sellers must meet eBay's "minimum performance standards", which are hyperlinked. However, Mr. Greene did not refer to the standards and they were not submitted in evidence. Elsewhere the user agreement states that eBay may suspend or terminate a seller's account if it determines the seller is abusing eBay or its services, but this decision is based on eBay's "sole discretion".
31. Further, section 4 of the user agreement, titled "Policy Enforcement", says that when a buyer or seller issue arises, eBay may consider the user's performance history and the specific circumstances in applying our policies. It adds that eBay may choose to be more lenient with policy enforcement in an effort to "do the right thing" for both buyers and sellers. I find that the terms of the user agreement entitle eBay to treat different sellers differently, based on factors such as volume of sales and feedback profile. I conclude that eBay has not breached its obligations to Mr. Greene.
32. From the evidence, I find eBay's business model relies in part on users to judge the trustworthiness of sellers based on such information as the feedback profile. Mr. Greene had access to the seller's feedback profile, including any negative reviews. Despite this, he purchased a gemstone from the seller. I find his actions inconsistent with his submission that the seller's feedback profile should have caused concern for eBay. The seller's total feedback profile consists of nearly 6,000

reviews that are over 99% positive. I find it speculative to conclude from this profile that eBay knew the seller was committing fraud.

33. Mr. Greene also says that eBay should do more to protect buyers of gemstones because they can be easily faked and are costly to verify as genuine. As an example, he says sellers often misleadingly advertise moissanite (a type of gemstone) as diamonds. He says eBay should set up measures to prevent such listings from appearing in user searches.
34. I acknowledge Mr. Greene's submissions that eBay could potentially do more to protect buyers of gemstones. However, it is not obligated to do so under the parties' contract. I find it would neither be appropriate nor within the CRT's jurisdiction to rewrite the parties' agreement to impose such obligations on eBay. In any event, Mr. Greene did not seek such an order in his application for dispute resolution.
35. In summary, I find that eBay has not breached any of its obligations to Mr. Greene. I dismiss his claims. In the event that I am wrong, I have also considered whether the user agreement limits eBay's liability to what it has already paid to Mr. Greene.

Issue #2. Is eBay's liability limited by the user agreement?

36. The user agreement states that that eBay does not guarantee the quality of items advertised or the truth or accuracy of any listings. Under another section labelled limitation of liability, it states that users agree not to hold eBay responsible for any damages or losses (including lost profits) resulting directly or indirectly from using eBay's services. Notably, it lists as an example that eBay is not responsible for any loss resulting from the content, actions, or inactions of third parties, including items listed under eBay's services. The agreement also says that if eBay is found liable, its liability is limited to any amounts due under its money back guarantee policy, including any applicable sales tax and original shipping costs.
37. I have reviewed the money back guarantee policy. In general terms, it states that eBay will refund the cost of a purchased item plus original shipping if a purchased

item does not match its listing description. The seller is then required to reimburse eBay.

38. Mr. Greene does not say the user agreement or eBay's policies require eBay to cover losses flowing from the purchase of counterfeit gemstones. Instead, he says that failing to cover such costs is unfair to jewelry buyers. He says that it is costly to verify a gemstone as genuine through a gemologist. If a counterfeit gemstone is discovered, there are further costs from returning the gemstone.
39. I find that the parties' user agreement limits eBay's liability to the \$324.25 USD already paid by eBay to Mr. Greene. The user agreement explicitly states that eBay is not responsible for any losses (including lost profits) from purchasing goods that do not match the seller's description. That is the situation here. The only applicable exception is the money back guarantee, and I find that eBay fulfilled its terms when it issued the \$324.25 USD refund to Mr. Greene. For this reason, as well as the those set out above, I dismiss Mr. Greene's claims.
40. Mr. Greene acknowledges that he has used eBay's money back guarantee in the past. I find he knew or should have known about the terms of the user agreement and policy. If he found them unfair, I find it was open to him to stop buying through eBay.
41. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find that eBay is the successful party. I do not award it any CRT fees as it did not pay any. I do not award any dispute-related expenses to any party as eBay did not claim any. I dismiss Mr. Greene's claims for any fees or expenses.

ORDER

42. I dismiss Mr. Greene's claims and this dispute.

David Jiang, Tribunal Member