



Civil Resolution Tribunal

Date Issued: June 16, 2020

File: SC-2019-010817

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Richards v. Korobanik.*, 2020 BCCRT 665

BETWEEN:

LAWREN RICHARDS

APPLICANT

AND:

LEONARD KOROBANIK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute arose over the private sale of a “plate compactor” machine (machine) for tamping soil.
2. The applicant, Lawren Richards, purchased the machine from the respondent, Leonard Korobanik, through the website Kijiji. Ms. Richards says Mr. Korobanik

falsely advertised the machine as new when he knew it was damaged or defective. Ms. Richards seeks \$550.00 as reimbursement for the machine and \$569.12 in damages.

3. Mr. Korobanik denies the claim. He says he sold it to Ms. Richards in new and unused condition and did not falsely advertise the machine.
4. The parties are each self-represented.
5. For the reasons that follow, I dismiss Ms. Richards's claims.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. 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 CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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.

9. As a preliminary issue, Mr. Korobanik submitted evidence after the CRT's deadline for submitting evidence had passed. The evidence is primarily Mr. Korobanik's recount of a conversation he had with a witness. Ms. Richards had an opportunity to review Mr. Korobanik's late evidence and respond. She objects to its admissibility on the basis that it is hearsay. I agree that parts of the statement are hearsay. However, 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, including hearsay evidence. I have admitted Mr. Korobanik's late evidence, but I found no need to rely on the hearsay statement and I have put no weight on it. Therefore, I have not discussed the late evidence any further in my reasons below.

ISSUES

10. The issues in this dispute are:

- a. Did Mr. Korobanik breach the parties' contract of sale by selling a defective or damaged machine?
- b. Did Mr. Korobanik falsely advertise the machine?
- c. What, if anything, is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Ms. Richards 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.

12. Ms. Richards purchased the machine from Mr. Korobanik off Kijiji on October 24, 2019. I find the sale was a private sale. There is no evidence that Mr. Korobanik was in the business of selling plate compactor machines.

13. A principle commonly referred to as “buyer beware” applies to private sales, subject to section 18(c) of the *Sale of Goods Act* (SGA) and non-innocent misrepresentation. Otherwise, the buyer generally bears the risk that the privately purchased item might be defective. Section 18(c) of the SGA says that goods must be “durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale ...”. Whether the machine was reasonably durable involves an assessment of the facts in the circumstances to determine the degree of reasonable durability (see *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454 (CanLII)).
14. Did Mr. Korobanik breach the implied warranty of durability? I find that he did not for the following reasons.
15. Ms. Richards says Mr. Korobanik seemed to be in a hurry and so, she did not test the machine at the time of sale. She says when she got home, she discovered that the machine would not run. Ms. Richards had the machine inspected by Woodsman Equipment & Rentals Ltd. (Woodsman). Ms. Richards says that Woodsman could not get the parts to fix the machine and suggested it might have a manufacturer’s defect. However, Woodsman’s October 25, 2019 invoice in evidence only states that the machine is “not revving up, check operation”. The invoice does not state why the machine was “not revving up”. The invoice does not state the machine is not repairable, the parts are unavailable, or that it had a manufacturer’s defect. So, I do not know why the machine would not run or if it could have been easily fixed with the right parts. Without explanation, Ms. Richards provided no statement from Woodsman or another mechanic on the machine’s condition. I find I have insufficient evidence to find the machine was not reasonably durable. I find that Mr. Korobanik did not breach the implied warranty under section 18(c) of the SGA.
16. The next question is whether Mr. Korobanik misrepresented the machine prior to sale. For the reasons that follow, I find that he did not.
17. The relevant Kijiji advertisement is not in evidence. However, the parties agree that Mr. Korobanik advertised the machine as “new, never used”. Ms. Richards does not

say that Mr. Korobanik made any other representations about the machine's condition. So, I find no other representations were made.

18. Mr. Korobanik undisputedly purchased the machine from "Princess Auto" in a "scratch and dent" sale within the year before selling it to Ms. Richards. Mr. Korobanik says that Princess Auto told him the machine had minor surface scratches but was new and in "perfect working" condition. Mr. Korobanik says the engine started in the store on first attempt. He states that he never used the machine while it was in his possession.
19. Ms. Richards asserts that Mr. Korobanik bought the machine from Princess Auto at a 90% discount, which Mr. Korobanik does not dispute. She speculates that this is "not the kind of discount a simply 'scratched' item would have". Though she does not explicitly say so, I infer she alleges the discount was because the machine was either used or damaged. There is no statement from Princess Auto explaining the 90% discount or confirming that the machine was sold used. Ms. Richards herself says the machine "did look new" and says it had the user's manual and "various attachments that also looked new". On balance, I find the machine was likely in new and unused condition as Mr. Korobanik asserts it was when he sold it to Ms. Richards. I find that Mr. Korobanik did not falsely advertise or misrepresent the machine.
20. I find the "buyer beware" principle applied to this sale. As a buyer, Ms. Richards should have assessed the machine's condition before buying it, which she chose not to do here. I find that her impression that Mr. Korobanik was rushed did not relieve her obligation to assess the machine prior to purchase. Ms. Richards could have chosen not to purchase the machine without an inspection. Instead, she bought it on sight.
21. For the reasons above, I dismiss Ms. Richards' refund and damages claims.
22. 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. Ms. Richards was unsuccessful and so, I dismiss her claim for CRT fees and dispute-related expenses.

ORDER

23. I dismiss Ms. Richards' claims and this dispute.

Trisha Apland, Tribunal Member