



Civil Resolution Tribunal

Date Issued: July 9, 2020

File: SC-2020-001420

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mayahi v. 0965658 B.C. LTD. (dba Aldergrove Furniture Warehouse)*,
2020 BCCRT 764

B E T W E E N :

SORROOR MAYAHI

APPLICANT

A N D :

0965658 B.C. LTD. (Doing Business As ALDERGROVE FURNITURE
WAREHOUSE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about the quality of purchased furniture.
2. The applicant, Soroor Mayahi, says in January 2016 she purchased several items of furniture from the respondent, 0965658 B.C. LTD. (Doing Business As Aldergrove

Furniture Warehouse) (AFW), including 2 couches and an extended warranty. Ms. Mayahi says AFW assembled the couches incorrectly, and that the couches' material began to deteriorate around mid-2018, but AFW refused to repair them. Ms. Mayahi claims \$3,250 in damages, although she says this consists of \$2,500 plus tax for the 2 couches, plus \$500 for the extended warranty she says was not honoured.

3. AFW says the furniture was delivered as ordered, and that the couches were damaged by mistreatment, which is not covered under the warranty. AFW says it owes nothing.
4. Ms. Mayahi represents herself in this dispute. AFW is represented by an employee.

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. This dispute involves a "she said, it 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 CRT 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 CRT'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 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.

ISSUE

9. Is AFW liable for the damage to Ms. Mayahi's couches and the extended warranty cost, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Mayahi must prove her claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
11. The undisputed evidence is that Ms. Mayahi purchased several items of furniture from AFW, and an extended warranty for the furniture, on January 23, 2016. Ms. Mayahi submitted the only copy of the purchase invoice in evidence, which showed a total price of \$15,181 for all the furniture and an "extended warranty up to 5 years." The invoice did not break down the price of each item or the extended warranty. The first few items on the invoice copy are mostly obscured by a credit card receipt positioned on top of the invoice, although the words "recliner sofa" and "sectional" are visible on the invoice beside the receipt. Ms. Mayahi says AFW told her that the couches were "real" leather, which AFW denies. The couches' materials

are not listed on the invoice copy. I find there is insufficient evidence to show that AFW promised the couches were made of a specific material.

12. The terms of the extended warranty are not in evidence, however the invoice contained some general warranty terms. Ms. Mayahi says AFW never gave her a promised copy of the extended warranty's terms. But she does not directly dispute that the warranty terms printed on the invoice applied to AFW's warranties. The invoice includes the following, under the heading "Terms & Conditions" (reproduced as written):

"Surcharge and extra warranty is non refundable

Physical damage or misuse of product will void warranty

Warrenty covers by Manufactures only.

Wear & Tear is not covered by warranty."

13. From these terms and conditions, I infer that AFW normally provides a manufacturer warranty on furniture sales. On balance, I find the parties agreed to an extension of that warranty to 5 years following the purchase date. Given the terms on the invoice paid by Ms. Mayahi, I find she agreed that no warranty coverage was provided for physical damage or misuse, or wear and tear.
14. The *Sale of Goods Act* (SGA) also provides implied warranties on purchased items. I find the evidence does not show that Ms. Mayahi told AFW the couches were required for a particular purpose, or that she purchased the couches by description. So, I find the implied warranties of fitness for purpose and merchantable quality in sections 18(a) and (b) are not applicable. However, I find that the section 18(c) implied warranty is applicable here, which says the couches will be durable for a reasonable period of time having regard to their normal use and the circumstances of the sale.

15. As discussed below, I find this dispute is about whether couch flaws that developed were covered by the extended warranty, and whether they breached the implied warranty of durability in the SGA.
16. Ms. Mayahi says that after about 2 years, the surface of the couch material began to peel. Ms. Mayahi says she contacted AFW numerous times, beginning in the fall of 2018, to complain about this problem. She says AFW assured her it would take steps to investigate and repair the couches, which it failed to do for an extended period. However, I find the first evidence of post-purchase contact between the parties is via text messages exchanged in January 2020, when the parties were having difficulty setting up a time to inspect and possibly repair the couches. There is no other evidence, such as documents or witness statements, showing that Ms. Mayahi complained of any couch deficiencies before January 2020, 4 years after their purchase.
17. Both parties provided undated photos of what appears to be a single couch, which I infer from context were taken relatively recently. I find that the photos show a couch with fine, widespread cracks in the black surface material of the seating and armrest areas, revealing lighter-coloured portions of the material below. The back of the couch only has local imperfections at the level of a window ledge behind the couch, and along the top edge where the couch might contact a wall when reclined. The photos appear to show minor food waste and soiling under the cushions, as well as a diaper wedged into the frame below the cushions, and a close-up of a small puncture hole. I find the physical damage, such as cuts, punctures, and soiling, does not appear to be major damage as alleged by AFW, and is not widespread like the surface cracks. The parties do not suggest that this physical damage to the couch material is covered under a warranty, and Ms. Mayahi only asks that the surface cracks be fixed.
18. AFW submitted undated letters it says are from 2 third-party furniture repairers, about the state of the couches and their repair. One was based on photos of the couch, the other apparently on a personal inspection. Ms. Mayahi says only one

person personally viewed the couch, whom she believes was an AFW employee and not a third-party couch repairer. I place little weight on these letters because they are undated, provide no business contact information other than a person's name and phone number, and do not describe the authors' experience in or qualifications for evaluating furniture. Further, the letters fail to explain the cause of the surface cracks that are Ms. Mayahi's concern, and fail to sufficiently describe the nature of the leather damage that was from "major physical misuse," apart from rips that appear minor in the couch photos. Overall, I find that cuts, punctures, and soiling were not causes of the couch material surface cracks.

19. The parties agree that certain couch zippers were broken, but I find that the evidence does not identify a specific cause. So, I find the evidence fails to prove the 4-year-old zippers failed because of unreasonably poor durability. Ms. Mayahi also says AFW failed to install couch "handles" correctly. But there are no photos of any couch handles, and I find Ms. Mayahi failed to describe exactly what was wrong with the handles, or whether the couches' operation was affected. So, I find she has not met her burden of proving that AFW incorrectly installed couch handles.
20. Ms. Mayahi alleges that the couch frames seemed loose, which caused the couches to move uncomfortably. However, she also said that "the frame is still strong". Given this contradiction, and the lack of other evidence that the couch frames were loose, I find that the couch frames were not unacceptably loose.
21. Turning to Ms. Mayahi's main complaint, the couch material surface cracks, I find that they are present only on high-wear areas, such as the seating surfaces, armrests, and where the couch appears to have contacted a wall. There are no similar cracks in most areas of the back of the couch. I find this is evidence that the cracks are wear-related. Ms. Mayahi did not submit any expert evidence, such as from a furniture manufacturer or qualified repairer, which I find would be needed to show that the cracking was caused by defective material rather than years of wear and tear. There is also no evidence showing the expected durability of the couch material, what kind of care it required, or how long it should have remained crack-

free with normal use. In the absence of expert evidence, and with no information about the expected lifespan of the couches, I conclude that the surface cracking after 4 years, even if it first began after 2 years, is the result of wear and tear from the significant family use described by Ms. Mayahi. I find the evidence does not support defective material causing the surface cracking. As a result, I find that extended warranty coverage for the cracking is excluded as wear and tear.

22. On the evidence before me, I find that the couch material cracks are purely cosmetic, and that the couches are still useable as couches. Further, in these circumstances I find such cosmetic flaws in a well-used 4-year-old couch do not indicate a lack of durability for a reasonable period, even if the cracks first began after 2 years. So, I find that AFW did not breach the implied warranty of durability under the SGA. I dismiss Ms. Mayahi's claim for \$2,500 plus tax in damages for the couches.

23. I also dismiss Ms. Mayahi's claim for \$500 for the extended warranty, because I find she has not proven the price of the warranty, and did not show that AFW failed to repair any alleged defects that were not excluded as wear and tear or physical damage. I also find the evidence does not show that AFW promised Ms. Mayahi any additional warranty coverage that included couch material surface cracks caused by wear and tear.

CRT FEES AND EXPENSES

24. 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. Ms. Mayahi was unsuccessful, so I find she is not entitled to reimbursement of CRT fees she paid. AFW paid no CRT fees, and neither party claimed CRT dispute-related expenses.

ORDER

25. I dismiss Ms. Mayahi's claims, and this dispute.

Chad McCarthy, Tribunal Member