



Civil Resolution Tribunal

Date Issued: September 3, 2020

File: SC-2020-002713

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Anderson v. Liu*, 2020 BCCRT 989

BETWEEN:

WALTER ANDERSON

APPLICANT

AND:

YIZHEN LIU aka YILIN LIU aka RICK LIU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about the sale of a used computer.
2. The applicant, Walter Anderson, purchased a used computer from the respondent, Yizhen Liu aka Yilin Liu aka Rick Liu. Mr. Anderson says the computer broke down less than 2 months later. Mr. Anderson says the computer did not meet the implied

condition of durability under section 18(c) of the *Sale of Goods Act* (SGA). He also says Mr. Liu misrepresented the computer's condition. Mr. Anderson claims \$1,315.60 in computer repair costs, a refund of the \$2,700 purchase price, in exchange for his returning the computer to Mr. Liu.

3. Mr. Liu denies that he misrepresented the computer's condition and says he is not responsible for Mr. Anderson's repair costs. Mr. Liu asks that the dispute be dismissed.
4. Both parties are self-represented.

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 tribunal considers appropriate. CRT's authority

to order someone to do something is limited to specific performance of a contract, or the return of personal property. I find neither of these situations apply here. So, I find I do not have the authority to order Mr. Liu to take back the computer, as proposed by Mr. Anderson.

ISSUES

9. The issues in this dispute are:
 - a. Did Mr. Liu misrepresent the computer's condition and, if so, what is the appropriate remedy?
 - b. Did Mr. Liu breach an implied warranty of the SGA and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one the applicant, Mr. Anderson, must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
11. In January 2020, Mr. Liu advertised his used 2018 MacBook Pro computer for sale on Craigslist for \$3,200. In the advertisement Mr. Liu described the computer as "like new" and "in mint new condition" (all quotes reproduced as written). None of this is disputed.
12. Mr. Anderson submitted in evidence a series of emails between himself and Mr. Liu in early January 2020. In them Mr. Liu answered a series of questions asked by Mr. Anderson. Mr. Liu wrote that the computer had not had any repairs done on it.
13. The parties agree that Mr. Anderson viewed the computer on January 5, 2020 and then purchased it for \$2,700.

14. Mr. Anderson says that, before purchasing the computer, he again asked Mr. Liu if the computer had been repaired before and Mr. Liu answered no. Mr. Anderson submitted a May 22, 2010 affidavit of his friend, YD. YD was present when Mr. Anderson purchased Mr. Liu's computer. YD heard Mr. Anderson ask Mr. Liu about the computer's repair history and heard Mr. Liu say the computer had never been repaired. Mr. Liu does not deny having said the computer had never been repaired. So, I accept Mr. Liu told Mr. Anderson the computer had not been repaired before.
15. Mr. Anderson says the computer stopped working around the end of February 2020. Mr. Anderson says he took the computer to 4 different repair shops before finding one that had staff available to fix it. Mr. Anderson says Mr. Liu told him the computer had no prior repairs. However, Mr. Anderson says that an Apple repair technician told him the computer had a history of repairs in October and November 2019.

Did Mr. Liu misrepresent the computer's condition?

16. Fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer is induced by the false representation to buy the item (see *Ban v. Keleher*, 2017 BCSC 1132).
17. A seller must exercise reasonable care to ensure representations are accurate and not misleading. A failure to exercise this reasonable care is called negligent misrepresentation. If a buyer relies on that misrepresentation in making the purchase, the seller may be responsible for any losses arising from that misrepresentation (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
18. Based on the computer repair history submitted by Mr. Anderson, I find the computer was repaired by an Apple repair technician in October 2019 and again in November 2019. Based on the October 16 and November 22, 2019 Genius Bar work confirmation reports submitted by Mr. Liu, I find that both repairs were software repairs only.

19. However, I do not accept Mr. Liu's statement that the computer's prior repairs were irrelevant because they were software repairs only. Mr. Anderson specifically asked about computer repairs not software or hardware repairs, so I find no basis for Mr. Liu to believe Mr. Anderson was only asking about hardware repairs. So, I find Mr. Liu misrepresented the computer's condition when he said it had no prior repairs.
20. I find Mr. Liu knew the computer had been repaired before, as he submitted the Genius Bar work confirmation reports to the CRT.
21. Mr. Anderson says he would not have purchased the computer if he knew it had prior repairs. He explained his belief that some Apple laptops needed ongoing, costly repairs, and that he wanted to avoid that cycle when purchasing this laptop. Based on the May 22, 2010 affidavit of YD, I find Mr. Anderson explained this to YD immediately after the computer purchase. I find the computer's repair history was important to Mr. Anderson.
22. I disagree with Mr. Liu that Mr. Anderson would have bought the computer, even if he knew about the repair history. The test is not whether a reasonable person would have relied on the representation, but whether Mr. Anderson relied on it in the circumstances (see *Battrum v. MacKenzie*, 2010 BCSC 1285). Based on Mr. Anderson's January 2020 emails, he had made offers on other used computers and so I find Mr. Anderson was not committed to purchasing Mr. Liu's computer above any other computers. On balance, I find Mr. Anderson relied on Mr. Liu's inaccurate representation about the computer's repair history in buying the computer.
23. I now turn to whether Mr. Liu's misrepresentation caused Mr. Anderson a loss.
24. As set out in the March 27, 2020 London Drugs receipt, I find Mr. Anderson paid \$1,315.60 to repair the computer. Based on London Drugs' March 19, 2020 incident report I find the computer required hardware repairs. I further find there was no obvious damage to the outside of the computer, or indications of water damage, which might provide reasons for the needed repairs.

25. Mr. Liu says the March 19, 2020 hardware repairs are not at all related to, or caused by, the October and November 2019 software repairs. Regardless of whether the March 2020 repair costs were related to the October and November 2019 repairs, I find the March 2020 repair costs resulted from Mr. Anderson purchasing Mr. Liu's computer. But for Mr. Anderson's purchase, he would not have repair costs to pay. As noted, there is no indication that there is any external reason for the computer repairs.
26. Damages for negligent misrepresentation are intended to put the purchaser in the same position they would have been in, if the misrepresentation had not been made. The purchaser must establish, on a balance of probabilities, what that position would have been (see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308). I find Mr. Anderson has established that, if Mr. Liu had been truthful about the computer's repair history, Mr. Anderson would not have purchased this particular computer and so he would not have spent money on these particular repairs. So, I find Mr. Liu must pay Mr. Anderson \$1,315.60 for the computer repairs.
27. I find that refunding Mr. Anderson the \$2,700 purchase price for the computer would overcompensate him for his loss. I decline to grant that order and dismiss that claim.
28. The *Court Order Interest Act* applies to the CRT. Mr. Anderson is entitled to pre-judgment interest on the \$1,315.60 from March 19, 2020, the date he paid for the repairs, to the date of this decision. This equals \$8.36.
29. 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 Mr. Anderson is entitled to reimbursement of \$125 in CRT fees.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Liu to pay Mr. Anderson a total of \$1,448.96, broken down as follows:

- a. \$1,315.60 as reimbursement for computer repairs,
- b. \$8.36 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

31. Mr. Anderson is entitled to post-judgment interest, as applicable.

32. Mr. Anderson's remaining claims are dismissed.

33. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

34. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sherelle Goodwin, Tribunal Member

