



Civil Resolution Tribunal

Date Issued: September 21, 2020

File: SC-2020-003760

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boateng-Kwakye v. Yli-Hietanen*, 2020 BCCRT 1065

BETWEEN:

BRIDGET BOATENG-KWAKYE

APPLICANT

AND:

JONATAN YLI-HIETANEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the purchase of a cell phone. The applicant, Bridget Boateng-Kwakye, bought what she thought was a new iPhone from the respondent, Jonatan Yli-Hietanen. Ms. Boateng-Kwakye says that Mr. Yli-Hietanen misrepresented the phone as a new, authentic iPhone with a one-year warranty. Ms. Boateng-Kwakye claims a full \$1,880 refund.

2. Mr. Yli-Hietanen says that he bought the phone in a sealed box and sold it to Ms. Boateng-Kwakye believing it was a new iPhone. He says because he is a reseller, the phone was delivered as is, and Ms. Boateng-Kwakye should know that he cannot provide a guarantee about any existing warranty. He denies that he owes Ms. Boateng-Kwakye any refund.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. 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.

7. 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

8. The issue in this dispute is whether Mr. Yli-Hietanen misrepresented the phone to Ms. Boateng-Kwakye, and if so, whether Ms. Boateng-Kwakye is entitled to an \$1,880 refund.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Boateng- Kwakye bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that Ms. Boateng-Kwakye responded to Mr. Yli-Hietanen's April 16, 2020 Facebook marketplace ad for the phone, which is reproduced as written:

iPhone 11 Pro Max 512gb Brand new – (Apple store Receipt)

This iPhone 11 Pro Max is untouched. It has plastic on both sides and comes with free brand new screen protectors and it's original receipt from Apple.

The phone is unlocked to any phone provider in Canada or internationally. Test it out! I will provide receipt.

Your device has NOT been reported lost or stolen and is currently NOT on the national *****list.

Estimated Warranty Expiration Date: One year once activated

11. It is undisputed that Ms. Boateng-Kwakye paid Mr. Yli-Hietanen \$1,880 for the phone on April 17, 2020. She says Mr. Yli-Hietanen told her his mother had bought him the phone, but he was selling it because he needed the money. Ms. Boateng-Kwakye says the phone was a gift for her fiancé, but when he inserted his SIM card into the phone, he discovered it was not an authentic iPhone, as it had an android operating system and some features did not work properly. She also says the phone was not new, as it already had a screen protector on the screen.
12. Ms. Boateng-Kwakye says she and her fiancé immediately called Mr. Yli-Hietanen to request her money back. She says that Mr. Yli-Hietanen then told her he bought the phone from someone else and did not have the money to refund her.
13. Mr. Yli-Hietanen says that in his free time he buys and sells phones, most of which are pre-owned, but some of which are new. In this case, he says he bought what was advertised on Craigslist as a new phone with a receipt, and he accepted the seller's representations about their authenticity. He says, based on the seller's representations, he placed his Facebook marketplace ad, reproduced above.
14. Mr. Yli-Hietanen says he was sure the phone he sold to Ms. Boateng-Kwakye was new because it was in a sealed box. However, in his submissions Mr. Yli-Hietanen states "I guess you really never ultimately know until you open the box". Further, through various text message exchanges with Ms. Boateng-Kwakye or her fiancé, Mr. Yli-Hietanen ultimately admitted he was "clueless" that he sold her a fake phone. He also does not dispute that the phone's receipt was not an original Apple receipt.
15. The evidence before me about the phone's authenticity includes photos showing the International Mobile Equipment Identity (IMEI) numbers on the phone's box and in the phone's settings. The photos show that one of the IMEI numbers on the phone's box does not match the number in the phone's settings. I accept that the IMEI numbers on the box and in the settings should match if the phone is an authentic, new iPhone.

16. On balance, I find Mr. Yli-Hietanen's admissions and the weight of the other evidence support Ms. Boateng-Kwakye's claim that the phone Mr. Yli-Hietanen sold her was not an authentic, new iPhone 11 Pro Max and, therefore, it also did not come with a one-year Apple warranty.
17. As noted above, Ms. Boateng-Kwakye alleges that Mr. Yli-Hietanen misrepresented the phone in his ad. A "misrepresentation" is a false statement of fact, made in the course of negotiations that has the effect of inducing a reasonable person to enter into the contract. If a seller misrepresents the product, the buyer may be entitled to compensation for losses arising from that misrepresentation. There are 2 types of misrepresentation: fraudulent and negligent misrepresentation.
18. 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.
19. While Ms. Boateng-Kwakye submits that Mr. Yli-Hietanen knew from the beginning that the phone was "not genuine" and that she believes he is in the business of selling fake phones, I find the evidence falls short of proving that submission. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (CanLII), the judge said that because fraud is a very serious allegation, which carries a stigma, it requires evidence that is clear and convincing proof of the elements of fraud, including the mental element. I find there is insufficient evidence before me to establish Mr. Yli-Hietanen's intention to commit fraud in this case.
20. However, for the following reasons, I find that Mr. Yli-Hietanen negligently misrepresented the phone.
21. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure their representations are accurate and not misleading to the buyer. I find that Mr. Yli-Hietanen should have suspected that the phone might not be an authentic iPhone or may have been a used phone when he bought it. He says the

person he bought it from knew he was a reseller of “mostly” used phones. He does not dispute that he bought the phone for about \$600 less than the retail price with the intention of reselling it for profit. Yet, there is no evidence before me that Mr. Yli-Hietanen made any inquiries of the person he purchased it from about why they were selling a new phone with a receipt, for such a low price, rather than simply returning it to the Apple store.

22. Under the circumstances, I find it was unreasonable for Mr. Yli-Hietanen to rely on the seller’s representations about the phone, and he should have made further inquiries to satisfy himself that he was reselling a new, authentic iPhone 11 Pro Max. I find he failed to exercise reasonable care to ensure the representations he made about the phone were accurate when reselling it to Ms. Boateng-Kwakye.
23. I have also considered whether the *Sale of Goods Act* (SGA) applies to this sale. Section 17(1) of the SGA says that in a contract for sale of goods by description, there is an implied condition that the goods must correspond with the description. Courts have interpreted the word “description” in section 17 to mean the definition or identification of the goods: see *Clayton v. North Shore Driving School et al.*, 2017 BCPC 198. Given my findings that the phone Ms. Boateng-Kwakye purchased was not, in fact, an iPhone 11 Pro Max with an original Apple receipt, as described in Mr. Yli-Hietanen’s ad, I find Mr. Yli-Hietanen breached this implied condition in the contract for the phone’s sale.
24. In summary, I find Mr. Yli-Hietanen breached the implied condition of the sales contract that the phone described in his ad matched the phone he sold to Ms. Boateng-Kwakye, and he negligently misrepresented the phone to Ms. Boateng-Kwakye, inducing her to purchase the phone.
25. Damages for breach of contract are intended to put the innocent party in the same position as if the contract had been performed: see *Water’s Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319. If the contract had been performed, Ms. Boateng-Kwakye would have a new 512gb iPhone 11 Pro Max, which undisputedly costs \$2,258.87. However, Ms. Boateng-Kwakye claims only a refund of the \$1,880

she paid Mr. Yli-Hietanen for the phone, which I find is a more appropriate measure of damages in this case.

26. Further, damages for negligent misrepresentation are based on the principle of putting the innocent party in the position they would have been in had the misrepresentation not been made: see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308. I find that Ms. Boateng-Kwakye would not have purchased the phone at all if the misrepresentations had not been made, so, again, refunding the \$1,880 she paid is appropriate.
27. However, I note that Ms. Boateng-Kwakye, or her fiancé, still possess the purchased phone. It would over-compensate Ms. Boateng-Kwakye if I ordered a full refund and she kept the phone. While it is not an authentic iPhone, it still has some functionality and, therefore, I find it has residual value. On a judgment basis, I find that residual value to be \$100. Therefore, I reduce the phone's purchase price by the amount of its residual value, and I order Mr. Yli-Hietanen to refund Ms. Boateng-Kwakye \$1,780.
28. The *Court Order Interest Act* applies to the CRT. Ms. Boateng-Kwakye is entitled to pre-judgement interest on the \$1,780 from April 17, 2020, the date of the purchase, to the date of this decision. This equals \$8.93.
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 Ms. Boateng-Kwakye is entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

30. Within 14 days of the date of this decision, I order the respondent, Jonatan Yli-Hietanen, to pay the applicant, Bridget Boateng-Kwakye a total of \$1,913.93, broken down as follows:

- a. \$1,780 as reimbursement for the amount paid for the phone,
- b. \$8.93 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

31. Ms. Boateng-Kwakye is entitled to post-judgment interest, as applicable.
32. 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.
33. 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.

Kristin Gardner, Tribunal Member