



Civil Resolution Tribunal

Date Issued: February 22, 2021

File: SC-2020-005588

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goring v. Fusion Cine Sales & Rentals Inc.*, 2021 BCCRT 203

B E T W E E N :

VICTORIA GORING

APPLICANT

A N D :

FUSION CINE SALES & RENTALS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about an allegedly defective camera. The applicant, Victoria Goring, says she purchased a new Sony camera from the respondent, Fusion Cine Sales & Rentals Inc. (Fusion). Ms. Goring says the camera's LED display hinge broke shortly

after she purchased it, and that Fusion refused to reasonably repair the “flimsy” hinge under a warranty or otherwise. Ms. Goring claims \$4,000 and to have her camera replaced with a new, fully working camera. She does not say which remedy she prefers. She also claims \$1,000 in travel expenses, presumably because she does not live in the same area as Fusion.

2. Fusion says that the camera hinge likely broke because it was subjected to excessive force after being sold, which neither it nor Sony covers under a warranty. Fusion says that Ms. Goring did not provide the camera for inspection, even when offered free courier service to and from its service centre. Fusion says it is not responsible for the camera damage and travel expenses, and owes Ms. Goring nothing.
3. Ms. Goring is self-represented in this dispute. Fusion is represented by its president, Byron Drinkle.

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). Section 2 of the CRTA states that 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 the dispute’s parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties’ submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue.

Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

6. Section 42 of the CRTA says 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 Ms. Goring's camera was defective, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Goring must prove her claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
10. At the outset, I note that Ms. Goring submitted no evidence or submissions in this dispute. The CRT provided Ms. Goring with multiple extensions of time to file submissions in support of her dispute claims. Following these extensions, in a December 9, 2020 preliminary decision, I also provided Ms. Goring with a 1-month extension to file her submissions. Despite multiple reminders following that extension, Ms. Goring did not provide any submissions, or any replies to Fusion's submissions. I find Ms. Goring chose not to provide any submissions in this dispute, other than those she gave in the Dispute Notice, despite having a reasonable opportunity to do so.

11. Fusion submitted evidence that included correspondence between the parties, and a close-up but poorly focussed photo taken by Ms. Goring of a broken camera hinge. Fusion agrees that it sold Ms. Goring the camera in question, although it is unclear exactly when she purchased it. Fusion also says that it is Sony's western Canada service depot, but at the time Ms. Goring requested repairs all its technicians were located off site due to the COVID-19 pandemic. Fusion says this meant "while you wait" inspections and repairs were not possible.
12. In her application to the CRT, Ms. Goring said that Fusion personnel accused her of breaking the camera and that she should just "go to Sony." She also said that Fusion refused to provide her with a service appointment.
13. I find the correspondence in evidence is inconsistent with Ms. Goring's description. I find that Fusion informed Ms. Goring that hinge damage normally requires a substantial force or impact, which is not covered under warranty. Ms. Goring said she required an appointment for the damage to be evaluated and repaired in a single day, because she lived a long drive away and was rarely in the same city as Fusion. Fusion told her that a same-day repair was impossible because of the lack of on-site technicians, and because ordering parts took at least several days and sometimes weeks. However, Fusion offered free courier service so Ms. Goring could send the camera to Fusion for inspection and repairs and have it returned. I find Ms. Goring refused the free courier offer.
14. On the evidence before me, I find that Fusion reasonably refused Ms. Goring's request for a same-day inspection and repair appointment, given the absence of technicians there and the lead times for obtaining replacement parts. I find Ms. Goring unreasonably refused to allow Fusion to inspect the camera in any other fashion, including by sending it to Fusion at no cost to Ms. Goring.
15. Significantly, Ms. Goring does not explain exactly when or how the hinge damage occurred, whether the hinge was moving or subjected to force when damaged, or in what circumstances she noticed the damage. She provided no evidence to support her claim that the hinge was "flimsy" and defective, apart from saying that it broke

while in her possession. Further, although Ms. Goring does not say that the camera is beyond repair, she does not explain why Fusion should provide her with a new, replacement camera or the unproven \$4,000 cost of a replacement camera.

16. In order to be entitled to a remedy for a defective hinge, I find that Ms. Goring bears the burden of proving the hinge was defective in some way, and that it broke because of this defect. I find Ms. Goring has only provided an unsupported allegation that because the camera hinge was “flimsy” and broke, it must have been defective. I find there is a lack of reliable and objective evidence about the damage and how it occurred. Despite this lack of evidence, I find Ms. Goring denied Fusion a reasonable opportunity to inspect the hinge for the cause of the damage, and to repair any defective parts under an applicable warranty if it found the damage resulted from a defect.
17. Having reviewed the evidence and submissions, I find that Ms. Goring has not met her burden of proving that the hinge was defective, or that it broke because of a defect. So, I deny her claim for the alleged \$4,000 replacement cost of the camera, and her request for a replacement camera.

CRT FEES AND EXPENSES

18. 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. Fusion was successful here, but paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements, including Ms. Goring’s unexplained and unproven \$1,000 travel expense claim.

ORDER

19. I dismiss Ms. Goring's claims, and this dispute.

Chad McCarthy, Tribunal Member