



Civil Resolution Tribunal

Date Issued: April 22, 2021

File: SC-2020-006526

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Johnson v. 0965658 B.C. Ltd.*, 2021 BCCRT 413

B E T W E E N :

DAN JOHNSON and SANDRA TODD

APPLICANTS

A N D :

0965658 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a furniture sale. The applicant, Sandra Todd, purchased the furniture from the respondent, 0965658 B.C. Ltd. The respondent operates as Aldergrove Furniture Warehouse (AFW). The other applicant, Dan Johnson, is Ms. Todd's spouse. Mr. Johnson had no direct involvement in the sale.

2. Ms. Todd paid AFW a \$768.48 deposit for the furniture. The applicants say the sale contract should be cancelled and the deposit returned for several reasons. They allege that the parties' contract was a "future performance contract" under the *Business Practices and Consumer Protection Act* (BPCPA) that did not comply with the provisions of the BPCPA. They also allege that AFW engaged in unconscionable acts or practices and misrepresented the furniture's warranty and availability. They also say that the parties' contract should be cancelled because it was only an agreement to sell under section 6(6) of the *Sale of Goods Act* (SGA).
3. AFW disagrees. It says that under the contract's terms, the sale was final and the deposit non-refundable. AFW did not counterclaim for Ms. Todd to complete the sale or pay any amounts allegedly owing for the furniture.
4. Mr. Johnson represents the applicants. An employee or principal represents AFW.
5. For the reasons that follow, I find that Ms. Todd and AFW entered into a future performance contract under the BPCPA. I find that the contract did not comply with the BPCPA, and Ms. Todd was entitled to cancel the contract. So, AFW must refund the \$768.48 deposit to Ms. Todd. I dismiss Mr. Johnson's claims because he was not a party to the contract.

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). 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.
7. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

8. 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.
9. 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.

The CRT's Jurisdiction and the BPCPA

10. Section 171 of the BPCPA states that the Provincial Court has jurisdiction over proceedings to recover damage or loss for failure to comply with the BPCPA. The CRT does not have jurisdiction to award remedies for a breach of the BPCPA. However, the CRT may consider the BPCPA in deciding whether the parties' contract should be cancelled and if the applicants are entitled to a refund.

ISSUES

11. The issues in this dispute are as follows:
 - a. Are any applicants entitled to cancel the contract under the BPCPA, and if so, what is the appropriate remedy?
 - b. Did AFW misrepresent the furniture and if so, what is the appropriate remedy?
 - c. Can the applicants cancel the contract because it was an agreement to sell under the SGA?

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicants must prove their claims on a balance of probabilities. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. AFW chose not to provide evidence but did provide submissions and comments in an agreed statement of facts.
13. The background facts are not disputed. On July 22, 2020, Ms. Todd went to AFW's business to purchase furniture. The transaction is documented in an invoice of the same date. Ms. Todd purchased a bedroom set that included a bed, dresser, mirror, chest, and nightstand, for \$4,568.48. The invoice and 2 transaction receipts show that Ms. Todd paid a \$768.48 deposit, leaving a \$3,800 balance. The invoice said, "ALL SALES ARE FINAL NO REFUND".
14. The invoice shows Ms. Todd was the only customer. Consistent with this, the parties' submissions indicate Mr. Johnson did not participate in the sale. As noted above, I find he was not a party to the contract and I therefore dismiss Mr. Johnson's claims against AFW.
15. On July 29, 2020, Mr. Johnson went to AFW's business and said Ms. Todd wished to cancel the sale. AFW refused to return the deposit.

Are any applicants entitled to cancel the contract under the BPCPA, and if so, what is the appropriate remedy?

16. As noted above, the applicants say that the contract was a future performance contract under the BPCPA. Section 17 of the BPCPA says a future performance contract means a contract between a supplier and a consumer for the supply of goods or services for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Section 17 lists certain exclusions but these do not apply.

17. It is undisputed that AFW is a supplier and Ms. Todd is a consumer under the BPCPA, and that they were involved in a consumer transaction. Ms. Todd did not pay in full at the time the contract was made, nor did AFW deliver any of the furniture. The invoice only said that AFW would deliver the furniture at some point before October 30, 2020. Given these facts, I find that the parties entered into a future performance contract.
18. I next consider whether Ms. Todd could cancel the contract under the BPCPA. Sections 19 and 23(2) require future performance contracts to contain certain information. Section 23(5) says that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than 1 year after the date the consumer receives a copy of the contract, if the contract does not contain the information required in sections 19 and 23(2). The information required includes, under section 19(f), an itemized purchase price for the goods or services to be supplied under the contract. The applicants say that AFW failed to itemize the purchase price of the bedroom set.
19. In the non-binding decision of *Sikandar v. J.R. Furniture Place Ltd.*, 2020 BCCRT 303, the CRT member found that the respondent furniture supplier did not properly itemize the purchase price for a bed frame and mattress set under BPCPA section 19(f). The supplier separately listed both items on an invoice and provided a total price of \$1,700. However, it did not provide a breakdown in price for each item. They were \$1,000 and \$700 respectively.
20. In the invoice before me, AFW wrote that Ms. Todd had purchased the bedroom set. It also listed the individual set items: a bed, dresser, mirror, chest, and nightstand, but did not provide a price breakdown for each. It only said the total price for all items was \$3,899. As such, I find that AFW breached BPCPA section 19(f).
21. I might have reached a different conclusion if AFW had explained why it did not provide a price breakdown of the set items. However, it did not do so, despite being aware from the applicants' submissions that price itemization under BPCPA section 19(f) was an issue. It did not, for example, say that unique pricing applied to buying the set, making a breakdown impractical.

22. In reaching this conclusion I have also considered the particular circumstances of this case. Ms. Todd provided a copy of her message to AFW, sent before the purchase and through AFW's online contact form. She asked AFW to provide prices for both the bedroom set and the individual pieces. In AFW's July 17, 2020 email to Ms. Todd, AFW said the "set" was on sale for \$2,399. AFW did not say how much the individual pieces cost. After the purchase, Mr. Johnson asked AFW to explain the price discrepancy between the invoice and the email quote. He says AFW explained that the \$2,399 quote was for a partial set of the same furniture.
23. AFW did not dispute Mr. Johnson's account so I accept it as accurate. Given this, I find that AFW did not have to sell the furniture as a complete set. I find that BPCPA section 19(f) is meant to apply in such circumstances to provide price clarity. As noted in *Koubi v. Mazda Canada Inc.*, 2012 BCCA 310 at paragraph 63, the BPCPA is directed to both protection of consumers and fairness and consistency for all parties in the consumer marketplace. I find my conclusion is consistent with these goals.
24. The next question is whether Ms. Todd gave notice of cancellation to AFW within 1 year of receiving a copy of the contract. Section 54 of the BPCPA requires a consumer who wishes to cancel a future performance contract to give notice by any method that creates evidence of their intention to cancel the contract on a specific date. I find that Ms. Todd had until July 22, 2021 to provide notice of cancellation, and she did so through filing this CRT dispute, which AFW responded to on October 6, 2020.
25. Section 27 of the BPCPA says that if a consumer cancels a contract, the supplier must refund to the consumer all money received, without deduction, within 15 days after the notice of cancellation has been given. Section 55 says the consumer may recover the refund from the supplier as a debt due. Given this, I find that AFW must pay Ms. Todd \$768.48 in debt.
26. As Ms. Todd has proven her claim, I find it unnecessary to determine whether AFW engaged in unconscionable acts or practices, misrepresented the furniture's warranty

or availability, or whether the contract could be cancelled because it was an agreement to sell under section 6(6) of the SGA.

27. The *Court Order Interest Act* applies to the CRT. Ms. Todd is entitled to pre-judgment interest on the deposit of \$768.48 from October 6, 2020 to the date of this decision. This equals \$1.88.
28. 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. Todd is entitled to reimbursement of \$125 in CRT fees. The parties claimed no dispute-related expenses, so I do not order any reimbursement.

ORDERS

29. Within 14 days of the date of this order, I order AFW to pay Ms. Todd a total of \$895.36, broken down as follows:
 - a. \$768.48 in debt,
 - b. \$1.88 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
30. Ms. Todd is entitled to post-judgment interest, as applicable.
31. I dismiss all of Mr. Johnson's claim.
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.

David Jiang, Tribunal Member