



Civil Resolution Tribunal

Date Issued: May 3, 2021

File: SC-2021-000015

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thomson v. The Brick Warehouse LP*, 2021 BCCRT 471

B E T W E E N :

JANE THOMSON

APPLICANT

A N D :

THE BRICK WAREHOUSE LP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about the quality of a chair purchased by the applicant, Jane Thomson, from the respondent, The Brick Warehouse LP (The Brick). Mrs. Thomson says the chair was not genuine leather, as represented by The Brick when she purchased it in

2015. Mrs. Thomson also says she declined the extended warranty but was still charged for it. Mrs. Thomson says the chair arms are peeling because the chair is not genuine leather and seeks a refund of \$1,209.57 for the chair's purchase price and warranty.

2. The Brick does not dispute that it sold Mrs. Thomson the chair or that the chair's arms are peeling. However, The Brick says the chair it sold to Mrs. Thomson was genuine leather and the wear is normal. The Brick says Mrs. Thomson's claim has no merit and should be dismissed.
3. Mrs. Thomson is self-represented. The Brick is represented by an employee.

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. 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.
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 The Brick misrepresented the chair or breached an implied condition in selling it, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mrs. Thomson has the burden of proving her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. It is undisputed that Mrs. Thomson purchased a chair from The Brick in October 2015. The invoice and sales orders in evidence confirm Mrs. Thomson paid \$1,209.57 for a chair and 3 year furniture warranty.
11. Mrs. Thomson says after 5 years, the chair's material began peeling on the area under the armrests, which she says would not occur with genuine leather. She says she emailed the manufacturer, who confirmed with her that the chair's peeling material was not genuine leather. The Brick does not dispute that the chair's material was peeling.
12. Mrs. Thomson says The Brick misrepresented the chair's material to her and she thought she was purchasing a genuine leather chair. Mrs. Thomson says The Brick's salesperson did not say anything about any "faux leather" on the chair when she purchased it.

Misrepresentation

13. 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.
14. I find there is no evidence here to indicate fraudulent misrepresentation occurred. 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.
15. However, for the following reasons, I find The Brick negligently misrepresented the chair’s material. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure their representations are accurate and not misleading to the buyer.
16. The original sales order indicates that Mrs. Thomson purchased a “Genuine Leather Rocker Recliner”. The Brick, in its Dispute Response, confirmed that it sold Mrs. Thomson a genuine leather chair, and said this was verified by their purchasing department. The Brick said that wear of “frequently touched areas” on genuine leather was normal.
17. Contradictorily, in its submissions, The Brick says that the chair was made of genuine leather “everywhere the body touches” and “the non-contact parts of the chair are faux leather”. The Brick says it does not hide this information from its customers, and it is noted on sales tags and on the website. The Brick also says its employees are trained to explain this to customers. The Brick did not provide evidence of the sales tag for the chair in issue, or the information from the website. Given The Brick’s inconsistent submissions about the chair’s material, I find The Brick’s submissions on

what it represented to the applicant about the chair's material at the time of purchase are not credible.

18. In addition, I note that The Brick also submitted a "fact sheet" for the chair at issue. The fact sheet confirms that the chair was available in three materials: fabric, leather-look fabric, or genuine leather. It is undisputed that Mrs. Thomson purchased the genuine leather material for the chair, which was custom ordered. The fact sheet does not provide any indication that the genuine leather version of the chair would be partially covered in faux leather.
19. On balance, and considering all the evidence, I find that The Brick misrepresented the chair's material to Mrs. Thomson at the time of purchase.

Sale of Goods Act

20. 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. The chair was described as a "genuine leather rocker recliner" on the sales order. Given that the Brick submits that the chair is partially faux leather, I find the chair does not correspond with the description, and I find The Brick breached this implied condition in the contract for the chair's sale.
21. In summary, I find The Brick breached the implied condition of the sales contract that the chair described in the sales order matched the chair sold to Mrs. Thomson, and The Brick negligently misrepresented the chair's material to Mrs. Thomson, inducing her to purchase the chair.

What is the Appropriate Remedy?

22. 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, Mrs. Thomson would have a genuine leather chair. Mrs. Thomson claims a refund of the \$1,209.57 she paid The Brick for the chair and warranty, which I find is an appropriate measure of damages in this case.

23. 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 Mrs. Thomson would not have purchased the chair at all if the misrepresentations had not been made, so, again, refunding the \$1,209.57 she paid for the chair and associated warranty is appropriate.
24. However, I note that Mrs. Thomson still has the chair, and undisputedly has used it for the past five years. It would over-compensate Mrs. Thomson if I ordered a full refund and she kept the chair. In her submissions, Mrs. Thomson says that it is unlikely the chair could be donated for charity. I do not place any weight on this submission. While it is undisputed that the chair is not entirely made of genuine leather and the faux leather is peeling, the video of the chair in evidence shows that it is still functional despite the wear and tear. So, I find the chair has residual value. On a judgment basis, I find that residual value to be \$100. Therefore, I reduce the chair's purchase price by its \$100 residual value, and I order The Brick to refund Mrs. Thomson \$1,109.57. Given that I have ordered a refund, I do not need to address whether Ms. Thomson agreed to pay for the warranty when she purchased the chair.
25. The *Court Order Interest Act* applies to the CRT. Mrs. Thomson is entitled to pre-judgment interest on the \$1,109.57 from October 11, 2015, the date of payment, which I find reasonable in the circumstances, to the date of this decision. This equals \$68.98.
26. 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 Mrs. Thomson is entitled to reimbursement of \$125 in CRT fees. Mrs. Thomson has not claimed any dispute-related expenses, and so I award none.

ORDERS

27. Within 30 days of the date of this order, I order The Brick to pay Mrs. Thomson a total of \$1,303.55, broken down as follows:

- a. \$1,109.57 in damages for the chair and warranty refund,
- b. \$68.98 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

28. Mrs. Thomson is entitled to post-judgment interest, as applicable.

29. 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.

30. 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.

Leah Volkens, Tribunal Member