



Civil Resolution Tribunal

Date Issued: May 12, 2021

File: SC-2020-009630

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McCullough v. Clemente*, 2021 BCCRT 503

BETWEEN:

GINO MCCULLOUGH

APPLICANT

AND:

MICHAEL CLEMENTE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the private sale of collector Pokémon cards. The applicant, Gino McCullough, says he bought a complete base set of Pokémon cards from the respondent, Michael Clemente, for \$1,300. Mr. McCullough says the cards Mr. Clemente sent him were not what he purchased and are essentially worthless. Mr. McCullough seeks a full \$1,300 refund.

2. Mr. Clemente denies Mr. McCullough's claims. Mr. Clemente says he sent Mr. McCullough the complete base set of cards, as agreed.
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). 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 at paragraphs 32 to 28, 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. 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.
8. I note that some of Mr. McCullough's evidence was initially submitted in a format that I was unable to access. CRT staff asked Mr. McCullough to resubmit this evidence in a different format, and Mr. Clemente was advised of the new format and given an opportunity to review it. While Mr. Clemente requested an extension of time to make additional submissions, I declined that request. Mr. Clemente did not submit that he had previously been unable to access Mr. McCullough's evidence himself, and I find no new claims or arguments were raised by the re-submitted evidence. Given my conclusions below, I determined there was no prejudice to Mr. Clemente in proceeding without his further submissions.

ISSUE

9. The issue in this dispute is whether Mr. Clemente supplied McCullough with the agreed Pokémon card set, and if not, whether Mr. McCullough is entitled to a \$1,300 refund.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. McCullough must prove his claims 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.
11. It is undisputed that Mr. Clemente advertised his Pokémon card collection for sale on Facebook Marketplace. Mr. McCullough responded to Mr. Clemente's ad and the evidence shows they exchanged messages and emails about what cards Mr. McCullough wanted to purchase.

12. On December 3, 2020, Mr. McCullough told Mr. Clemente he was interested in a complete base set. The set included both hologram cards and non-hologram cards of various individual values. Mr. Clemente emailed him photos of the 102 cards in the set and said they are all “near mint or mint” with “no blemishes”. On December 4, 2020, the parties agreed on a \$1,300 purchase price for the set, which sum Mr. McCullough e-transferred to Mr. Clemente.
13. Mr. McCullough says he received a package from Mr. Clemente promptly after the sale, but that the package did not contain a single card he had purchased. Rather, Mr. McCullough says the cards he received are valued at pennies compared to the cards he purchased.
14. Mr. McCullough provided a chart he made of what I infer is a list of each card he says he received, along with its value. One of the cards in the chart was valued at \$2.00, with the others valued at \$1.15 or less. However, there is no evidence before me about how Mr. McCullough determined each card’s value. I find determining the value of any given Pokémon card would likely require expert evidence, and there is none here. I place no weight on Mr. McCullough’s chart.
15. Mr. McCullough also submitted a self-prepared document setting out the typical weight of hologram and non-hologram Pokémon cards. The document states that using average weights, a complete base set would weigh 0.178 kilograms. Mr. McCullough says that Canada Post weighed Mr. Clemente’s package at 0.227 kilograms, which Mr. McCullough says is proof he did not receive an authentic complete set. Mr. McCullough did not explain how he determined the typical card weight, and there is no independent or expert evidence before me how much Pokémon cards typically weigh. I place no weight on this argument.
16. Finally, Mr. McCullough filed photographs of the cards he says he received from Mr. Clemente. Some of the photographs show cards with creases, bent corners, worn edges, or other imperfections. I accept that the cards in the photographs are not in mint or near mint condition. I also accept that the cards in Mr. McCullough’s photographs look different than the cards in Mr. Clemente’s photographs of the set

that he sent to Mr. McCullough before the sale. However, Mr. Clemente says the cards in Mr. McCullough's photographs are not the cards that he sent Mr. McCullough, and that Mr. McCullough must have switched the cards he sent with other cards.

17. Mr. Clemente filed a signed witness statement from PK. Mr. Clemente's relationship to PK is not before me, but PK's statement said she was present when Mr. Clemente took the cards to the post office and sent them to Mr. McCullough. PK stated she is knowledgeable about Pokémon cards and confirmed that Mr. Clemente sent Mr. McCullough a "1999 base set unlimited". However, I place little weight on PK's statement because I cannot determine if she is an objective and impartial witness, and she does not directly address the condition of the cards Mr. Clemente sent.
18. In short, Mr. McCullough says he did not receive what he purchased, and Mr. Clemente says he did. I find the only evidence supporting either party's assertion is PK's statement that Mr. Clemente sent the cards that Mr. McCullough purchased. As noted, Mr. McCullough bears the burden of proving he did not receive what he purchased, and I find he has not met his burden. I find I must dismiss his claims.
19. 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. Mr. McCullough was unsuccessful. However, Mr. Clemente paid no CRT fees and did not claim any dispute-related expenses, so I make no order.

ORDER

20. I dismiss Mr. McCullough's claims, and this dispute.

Kristin Gardner, Tribunal Member