Civil Resolution Tribunal

Date Issued: May 28, 2021

File: SC-2020-002571

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fernandez v. Ghaffari dba A Plus Appliances*, 2021 BCCRT 578

B E T W E E N :

VICTORIA FERNANDEZ and JASON DANIEL

APPLICANTS

A N D :

HASSAN GHAFFARI (Doing Business As A PLUS APPLIANCES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This dispute is about a damaged appliance and an alleged settlement agreement about the damage.

2. The applicants, Victoria Fernandez and Jason Daniel, hired the respondent, Hassan Ghaffari (doing business as A Plus Appliances), to service their refrigerator. During that service, the respondent damaged an internal gas line in the refrigerator.

3. The respondent undisputedly told the applicants that the refrigerator could be repaired but he was not qualified to do it, and offered $1,000 as compensation. The applicants accepted that offer but later learned the refrigerator could not be repaired and needed to be replaced. The applicants seek $4,332.88 for a new refrigerator and lost food.

4. The respondent admits he damaged the refrigerator, but says the applicants accepted $1,000 as settlement of all claims. He says the applicants' claim should therefore be dismissed.

5. Victoria Fernandez represents the applicants. The respondent is self-represented.

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.

ISSUES

10. As noted above, the respondent does not dispute that he damaged the applicants' refrigerator. He also does not dispute that the refrigerator could not be repaired and had to be replaced.

11. So, the issues in this dispute are:

    a. Did the parties reach a binding settlement agreement about the damaged fridge?

    b. If not, what amount of damages is appropriate?

EVIDENCE AND ANALYSIS

12. In a civil dispute like this one, the applicants must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

13. The essential facts are undisputed. On February 21, 2020, Victoria Fernandez called the respondent because the refrigerator's ice maker was not properly working. The respondent assured her that he could fix the refrigerator. Shortly after the respondent's departure, the applicants observed water collecting in the fridge, food in the freezer compartments thawing, and a foul odour. The respondent returned and advised that he had damaged the gas line when removing the ice maker for diagnosis.

He said he did not do gas line repairs, so the applicants would need to call another company.

14. The applicants say the respondent told them that the gas line repair would be approximately $600, so he offered $1,000, with the balance to cover food spoilage. Victoria Fernandez was not home at the time, but Jason Daniel accepted this offer without negotiation. These facts are undisputed.

15. The applicants asked another appliance repair company, Totem Appliance (Totem), to repair the refrigerator. The Totem invoice says, "fridge in freezer system can not be repaired." As noted above, the respondent does not dispute Totem's assessment.

16. After Totem's assessment, the applicants decided not to deposit the $1,000 cheque and reached out to the respondent. The parties were unable to agree on compensation.

Did the parties enter a binding settlement agreement?

17. The respondent provided a signed invoice that it says documents the parties' settlement of the applicants' potential claims. The invoice says Victoria Fernandez was paid $1,000 "for damages to ice maker and breaking the gas line, and she will have no complaints in the future." The applicants did not dispute the respondent's assertion that Jason Daniel signed the invoice and accepted the cheque.

18. The applicants say the respondent's $1,000 offer was based on the misleading information that the fridge could be repaired for approximately $600. Jason Daniel also says that before signing the agreement, he said, "as long as that covers it." I find nothing turns on whether Jason Daniel made that remark because I find the agreement unenforceable for other reasons explained below.

19. There are a number of issues with the alleged settlement agreement that the parties do not squarely address. One is whether Jason Daniel's claim is barred by the alleged settlement agreement, which on its face only refers to Victoria Fernandez's future

complaints, not Jason Daniel's. Another is whether the agreement's terms are certain enough to be a full and final settlement of all claims.

20. However, the applicants allege that the respondent made a misrepresentation, and I find that issue determinative. A misrepresentation is a false statement of fact made during negotiations to induce a reasonable person to enter a contract: *Van Beek v. Dodd,* 2010 BCSC 1639. It is undisputed that the respondent represented that the fridge could be repaired for around $600. It is also undisputed that the fridge could not be repaired at all, so the respondent's representation was false.

21. The applicants must show that the misrepresentation was material, meaning it must relate to a matter that a reasonable person would consider relevant to the decision to enter the agreement. Given that the agreement was about the amount of money to compensate for the damage, I find the anticipated cost of repairing the damage was very relevant.

22. The applicants must also show that they reasonably relied on the representation as an inducement to enter the contract. I am satisfied that the applicants entered the agreement for $1,000 because they accepted the respondent's statement the refrigerator could repaired for around $600. It is undisputed that the applicants were not aware that the refrigerator could not be repaired until Totem's assessment, after signing the agreement. The refrigerator's initial cost was close to $4,000 and it was only 6 years old, so had the applicants known the refrigerator could not be repaired, I find they likely would not have accepted $1,000. I find it was reasonable for the applicants to rely on the respondent's representation that the repair cost would be around $600 given his undisputed 17 years in the appliance repair industry.

23. I find the applicants have established that the alleged settlement agreement should be set aside for misrepresentation. As the respondent has not disputed liability, the only remaining issue is damages.

Damages

24. The applicants claim $4,332.88, which they say is the replacement cost of their refrigerator plus an unspecified amount for the cost of lost food.

25. In *Robertson v. Stang,* 1997 CanLII 2122 (BC SC), the BC Supreme Court considered how to assess damages for lost property. I agree with the court's approach, which attempts to determine the property's actual value at the time of loss, considering the original purchase price, the retail value, the cost of replacement, and the estimated market value, which includes a consideration of depreciation in value of used goods.

26. The applicants purchased the refrigerator from Sears Canada on June 4, 2016. It is a stainless steel, double door model. The invoice says the price was $4,199.99 less a $600 price adjustment, plus GST and PST, amounting to $4,031.99.

27. I accept the applicants' undisputed evidence that before the respondent damaged their refrigerator, the fridge and freezer components worked "perfectly fine" but they had an occasional issue with the icemaker.

28. The applicants say they purchased a replacement that is an "upgraded version" of the same make and model. They provided an April 24, 2020 receipt from the Brick for $4,418.38, but the receipt does not indicate the make or model of appliance purchased, or even whether it was a refrigerator. It would be unfair to make the respondent pay for upgrades, and the evidence does not allow a determination of what amount of the price represents an upgrade.

29. Considering the damaged refrigerator was in good shape except the icemaker, but was 6 years old and would have depreciated somewhat in value and would have needed replacing eventually, on a judgment basis, I find the refrigerator's value at the time of loss was $2,500.

30. As for the spoiled food, the applicants did not provide a list of the spoiled food or any photos, but I accept the undisputed evidence that food was spoiled. The applicants

provided evidence that the Brick provides food loss coverage "up to" $200 for fridges and $500 for freezers, but I find this is not particularly helpful in determining the actual value of the applicants' spoiled food. I find the best evidence is the undisputed evidence that the respondent anticipated the repairs would cost around $600 but offered $1,000 with the balance representing compensation for spoiled food. The respondent was present to witness the spoiled food when he made that offer. On a judgment basis, I allow $300 in damages for the spoiled food, recognizing that the offer was a round number and not a precise calculation.

31. It is undisputed that the applicants have not cashed the respondent's $1,000 cheque, which I infer is dated on or around February 21, 2020, and is likely stale-dated. So, I order the respondent to pay the applicants $2,800 in damages.

32. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the $2,800 from February 21, 2020, when the damage occurred, to the date of this decision. This equals $31.06.

33. 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. The applicants claim $200, including $25 for requesting a default decision. The respondent claims $50 for its successful request to set aside the default decision. Given the respondent was unsuccessful in this dispute but I have ordered it to pay less than it was ordered to pay in the default decision, I set off half the $50 against the applicants' $200, meaning the respondent must reimburse the applicants $175 for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

34. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of $3,006.06, broken down as follows:

    a. $2,800.00 in damages,

    b. $31.06 in pre-judgment interest under the *Court Order Interest Act*, and

c. $175.00 in CRT fees.

35. The applicants are entitled to post-judgment interest, as applicable.

36. 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.

37. 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.

Micah Carmody, Tribunal Member