



Civil Resolution Tribunal

Date Issued: May 28, 2021

File: SC-2020-007881

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Butovsky v. Moore*, 2021 BCCRT 580

BETWEEN:

EVGENY BUTOVSKY

APPLICANT

AND:

CHRISTOPHER ALLAN MOORE and KALWINDERJIT KAUR BATH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about the condition of a washing machine included in a townhouse sale. The applicant, Evgeny Butovsky, who asked to be referred to as Dr. Butovsky, purchased the townhouse from the respondents, Christopher Allan Moore and Kalwinderjit Kaur Bath. Dr. Butovsky says the washing machine is faulty in breach of the contract. He claims \$1,000 to repair or replace it.

2. The respondents deny that they are liable. They say that the washing machine was working properly when Dr. Butovsky received possession of the townhouse and any damage occurred later.
3. Dr. Butovsky is self-represented. Mr. Moore represents both himself and Ms. Bath.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided 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 is whether the respondents breached the contract by providing a faulty washing machine, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, Dr. Butovsky, must prove his claim 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 Dr. Butovsky purchased the respondents' townhouse, with possession on September 27, 2020. Although the parties did not provide the contract of purchase and sale, the parties agree that the contract warrants that the appliances, including the washing machine, will be in proper working condition on possession. A warranty is an enforceable contractual promise about the property's condition. Since the parties agree, I accept that the contract included this warranty.
11. The respondents say the washing machine was working properly when they used it for the last time on September 25, 2020. Dr. Butovsky received possession on September 27, 2020 and he says he moved in on October 1, 2020. Dr. Butovsky says that, when he used the washing machine for the first time on October 3, 2020, it made loud noises towards the end of its washing cycle, during the spin phase.
12. The principle of "buyer beware" generally applies to real estate transactions in BC. This means that a buyer is required to make reasonable enquiries about the property they wish to purchase. However, since the respondents warranted that the washing machine would be working properly on the September 27, 2020 possession date, they will be responsible for losses under the contract if they breached this warranty. So, did the respondents breach this warranty?
13. It is undisputed that Dr. Butovsky had the townhouse, including the washing machine, inspected by a property inspector several weeks before the possession date. Although the parties did not provide a copy of the property inspection report, the

parties agree that the property inspector checked the washing machine and reported no problems. Dr. Butovsky says the property inspector would not have noticed the loud noise because they would only run the wash cycle for a few minutes and they would have stopped their test before the washing machine got to the spin cycle. However, Dr. Butovsky does not say that he witnessed the washing machine inspection and he has not provided a statement from the property inspector. In the absence of supporting evidence, I find Dr. Butovsky's opinion that the property inspector did not check the spin cycle when they examined the washing machine to be speculative and unreliable, so I give it no weight. Based on the property inspection, I find that the washing machine was working properly when it was inspected several weeks shortly before possession.

14. Dr. Butovsky provided a video recorded with his phone showing the washing machine in use. He says the video shows that the washing machine was excessively loud. Based on the video, I accept Dr. Butovsky's statement that the washing machine was loud. However, I find the video does not establish that the washing machine's noise was excessive or prove that the washing machine was faulty. I am unable to determine from the video whether the machine's noise was significantly louder than that of a properly working machine or whether the noise indicates a mechanical problem. Further, I do not know what audio levels were used in the recording and I find there is no way to objectively assess how loud the recorded noise is based on the recording.
15. For the above reasons, I find that the washing machine's noise does not prove that it was faulty. Rather, I find that expert evidence is needed because the proper functioning of the washing machine is outside of the knowledge or expertise of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119).
16. Dr. Butovsky hired Unimaster Appliances & Food Equipment Services Inc. (Unimaster), to inspect the washing machine on October 3, 2020. Although Dr. Butovsky says that he is an appliance repairer, he says he hired Unimaster to provide an objective, independent inspection.

17. Unimaster provided an October 3, 2020 invoice that said the drum bearing was worn out and it recommended replacement. The invoice said the damage was possibly caused by overloading over a long period of usage. However, I do not give Unimaster's invoice any weight because this evidence does not satisfy the CRT rules' requirements for expert evidence. CRT rule 8.3 says an expert must state their qualifications in writing in order to provide expert evidence and I need to be satisfied that they have the sufficient education, training or experience to provide their expert opinion. However, there is no evidence of Unimaster's representative's credentials to provide an expert opinion. Dr. Butovsky did not provide Unimaster's representative's name, job title or any information regarding the person's appliance repair qualifications. I am not satisfied that Unimaster's representative has sufficient expertise to provide an expert opinion regarding the condition of the washing machine, as required by CRT rule 8.3. For these reasons, I do not admit Unimaster's representative's alleged opinions as evidence and I have not considered these opinions in my decision.
18. Dr. Butovsky also provided a November 11, 2020 Unimaster repair quote of \$1,344.47 to repair the washing machine. This included \$497.30 for replacement inner drum assembly parts and a \$750 flat rate labour charge. However, in the absence of evidence showing that Unimaster examined the washing machine again, I infer that Unimaster's November 11, 2020 repair quote is based on its October 3, 2020 inspection. However, since I have already found that Unimaster's opinions from that inspection do not qualify as expert evidence, I find that Dr. Butovsky has not proved that the November 11, 2020 quoted drum replacement repairs were needed.
19. Although I am satisfied that the washing machine made loud noise, I find that, for the above reasons, Dr. Butovsky has not provided sufficient evidence to prove that the washing machine was faulty as of the possession date. So, I find that Dr. Butovsky has not proved that the respondents breached the contract and I dismiss his claim.
20. 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. Since Dr. Butovsky was not successful, I find that he is not entitled to reimbursement of CRT fees. The respondents did not claim reimbursement of dispute-related expenses.

ORDER

21. I dismiss Dr. Butovsky's claims and this dispute.

Richard McAndrew, Tribunal Member