



# Civil Resolution Tribunal

Date Issued: June 30, 2021

File: SC-2021-000443

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. High End Resale Inc.*, 2021 BCCRT 717

BETWEEN:

LING LIU

**APPLICANT**

AND:

HIGH END RESALE INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a second-hand fur vest. The applicant, Ling Liu, says she purchased a fur vest from the respondent, High End Resale Inc. (High End). Mrs. Liu says she discovered a hole in the vest the evening she purchased it. She tried to

speak with High End's manager, but they were on vacation. She says when the manager returned, they said it was too late to return the vest. Mrs. Liu also says High End misrepresented the vest's quality. Mrs. Liu seeks a refund of \$1,842.40 for the vest. She also claims \$1,000 for transportation and other costs related to this matter.

2. High End says Mrs. Liu was aware of the hole when she purchased the fur vest, and High End discounted the purchase price by \$150, from \$1,795 to \$1,645, plus tax. High End says Mrs. Liu called complaining of another hole, and High End advised her to return the vest the next day for a refund. High End says Mrs. Liu failed to return the vest the next day, and did not seek a refund of the vest until 22 days later, when High End had already paid its consignor for the vest. High End says Mrs. Liu is no longer entitled to a refund. High End denies misrepresenting the vest's quality.
3. Mrs. Liu is self-represented. High End is represented 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.

### ***Late evidence***

8. Mrs. Liu provided late evidence which consisted of several photographs of the fur vest and duplicate copies of two tailors' assessments of the fur vest, all of which I find are relevant to this dispute. High End did not object and had the opportunity to review the evidence and provide submissions in response. Consistent with the CRT's mandate that includes flexibility, I find the late evidence does not result in any prejudice to High End, and as it is relevant, I allow it.

### ***Evidence in another language***

9. Portions of the parties' evidence are in a language other than English. High End's evidence included translations as required by CRT rule 1.7(5). I will consider only those portions of the parties' evidence that are in English or that are translated into English. I also pause here to note that Mrs. Liu did not object to or dispute any of High End's translated evidence, which consisted mainly of translated WeChat messages between the parties.

## **ISSUES**

10. The issues in this dispute are:
  - a. Whether High End misrepresented the vest's quality,
  - b. Whether Mrs. Liu is entitled to a \$1,842.40 refund for the fur vest, and

- c. Whether Mrs. Liu is entitled to \$1,000 for transportation and other costs.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Mrs. Liu must prove 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.
12. It is undisputed that Mrs. Liu purchased the fur vest from High End on December 21, 2020 for \$1,842.40. Mrs. Liu did not say that there was a hole in the vest at the time of purchase in her Dispute Notice, or that she received a discount. However, in her submissions she confirms that she discovered a hole in the chest area before purchasing the vest and the purchase price was discounted by \$150. Mrs. Liu says once she got the vest home, she discovered 3 additional holes. She says that the vest has continued to further decay and she has now found "over 30 rotting holes" in the vest and it is unwearable. High End disputes this and says the vest is high quality and was not "decomposing" when it left High End's store.

### ***Did High End misrepresent the vest's quality?***

13. Mrs. Liu says High End misrepresented this vest's quality. In support of this, she submitted photographs of the vest and the sign advertising the vest in High End's consignment store, which states "super soft fine quality woven genuine chinchilla fur jacket made in Canada". Here, I find that I do not need to determine whether High End misrepresented the vest's quality. I say this because I find that even if High End did misrepresent the vest's quality, it was not reasonable for Mrs. Liu to rely on this representation. My reasons follow.
14. It is undisputed that High End has a "no refunds or exchanges" policy, and Mrs. Liu was aware of this policy when she bought the vest. A photograph in evidence of the sign at High End's cash register confirms this. The sign also advises customers to examine their purchases carefully. Prior to purchasing the vest, Mrs. Liu undisputedly examined the vest, found a hole in it, and negotiated a discounted price on that basis.

I find the fact that Mrs. Liu undisputedly purchased the damaged vest for a discounted price shows that she knew or ought to have known that there were quality issues with the vest. As noted, she was told to examine the vest carefully. So, I find Mrs. Liu did not reasonably rely on High End's representation about the vest's quality.

***Is Mrs. Liu entitled to a refund?***

15. High End says it is a consignment store that does not offer refunds or discounts. In support of this, it submitted a photograph of a sign at the cash register, also discussed above, which states "due to the nature of our business, there will be no discounts, exchanges, or refunds. Please examine your purchases carefully. Thank you." Mrs. Liu does not dispute this policy. However, despite this policy, High End acknowledges that it provided Mrs. Liu with a \$150 discount on the fur vest's purchase price after the hole was found, and conditionally offered to provide Mrs. Liu with a refund if she returned the vest the day after she purchased it. Mrs. Liu does not dispute this. So, the question then is whether Mrs. Liu accepted High End's refund offer.
16. Mrs. Liu says she discovered the additional holes in the vest the same day she purchased it. She says she called High End's employee, G, that night. She says the only option G gave her was to come in the next day, December 22, 2020, "with no negotiations". High End agrees that it offered to provide a refund if Mrs. Liu returned the vest on December 22, 2020, the day after she purchased it. This discussion is supported by WeChat messages in evidence between Mrs. Liu and G on December 21, 2020, including the following:
  - a. Mrs. Liu wrote to G, advising that after she got the vest home, she discovered another problem on one shoulder and loose stitches. She also wrote "I didn't look at the shoulders when I was in your store. The loose stitches are so bad. Please talk to your manager". Mrs. Liu asked to meet with a manager the next day to "talk about this".
  - b. G advised Mrs. Liu to bring the vest back to the store the next day for a refund and stated "no more bargain necessary".

- c. In response to this offer for a refund, Mrs. Liu insisted that G make an appointment with the manager, stating “how dare your store is selling goods broken like this. Why shouldn’t I be conducting a further negotiation? What kind of attitude is this?” (reproduced as written).
  - d. Mrs. Liu then proceeded to send two further messages insisting that she meet with the manager the next day and stated “You called yourself a secondhand store. Are you selling garbage? Are you actually a garbage store selling garbage?”.
  - e. G again advised Mrs. Liu to return the vest to the store the following day for a refund.
  - f. Mrs. Liu sent two further messages to G questioning their competence, which I will not reproduce here. However, Mrs. Liu did not confirm whether she would attend at the store to return the vest for a refund.
17. Mrs. Liu admits that she did not return the vest to the store on December 22, 2020. Mrs. Liu says she was unsure G would provide a full refund because upper management would not be there. She says she decided to wait until after New Year’s Day to revisit the store and hopefully speak with a manager. She says when she tried to return the vest in mid-January 2021, she was told that all sales are final.
18. I find that on December 21, 2020, High End offered to provide Mrs. Liu a refund if she returned the vest to the store on December 22, 2020. Here, I find High End’s offer to refund Mrs. Liu was conditional on Mrs. Liu returning the vest to the store on December 22, 2020, which Mrs. Liu admittedly chose not to do. While Mrs. Liu may have hoped to re-negotiate a lower price for the vest so she could keep it and repair it herself, this does not extend the deadline for her to return the vest for the refund offered by High End. It is undisputed that Mrs. Liu did not attend at High End’s store on December 22, 2020 to return the vest and accept the refund. As noted, it is undisputed that apart from High End’s December 21 offer, a “no refund” term was included in the parties’ contract. So, I find High End has no obligation to provide Mrs. Liu with a refund.

## ***Sale of Goods Act***

19. Mrs. Liu also argues that the Sale of Goods Act (SGA) applies and the “horrible decaying condition” of the vest “should void the contract causing the refund policies to be irrelevant”. I find the parties entered into a sale which would typically be subject to section 18 of the SGA. Section 18 implies certain warranties regarding fitness for a specific purpose, merchantable quality, and durability for a reasonable period. I considered whether these warranties applied here. There is no evidence Mrs. Liu told High End the particular purpose for the vest, so I find there was no section 18(a) implied warranty that the vest was reasonably fit for a particular purpose. I also find the vest was not purchased by description, and was instead specifically selected by Mrs. Liu, so there was no section 18(b) implied warranty that the vest was “of merchantable quality”.
20. Under section 18(c), there is an implied warranty that goods sold will be durable for a reasonable period of time, having regard to the use to which they would normally be put and all the surrounding circumstances of the sale. I find this implied warranty could apply here. However, a seller of used goods can exclude this implied warranty through a contract term, but the seller must do so in clear and unambiguous language: *Conners v. McMillan*, 2020 BCPC 230 at paragraphs 63 to 65.
21. In this dispute I find High End excluded the implied warranty in section 18(c). High End used clear and unambiguous wording in their sign posted at the cash register to advise customers, including Mrs. Liu, to examine their purchases carefully because High End did not provide returns or exchanges. Based on this, I find Mrs. Liu purchased the vest on a “buyer beware” basis and the implied warranty of durability did not apply to the sale.

## ***Is Mrs. Liu entitled to her claimed transportation and other matter-related costs?***

22. Mrs. Liu was unsuccessful in her claim for a refund from High End. So, I find she is not entitled to the claimed \$1,000 for transportation and other matter-related costs. I also note that even if Mrs. Liu had been successful in obtaining a refund for the vest,

she did not provide any evidence or submissions to support her claim for transportation costs or any other matter-related costs. So, I find she has not proven this claim in any event.

### ***CRT Fees and Expenses***

23. 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. As Mrs. Liu was unsuccessful, I dismiss her claim for CRT fees. I have discussed Mrs. Liu's expenses claim above. High End did not pay any CRT fees or claim any dispute-related expenses, and so I award none.

### **ORDER**

24. I dismiss Mrs. Liu's claims and this dispute.

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Leah Volkens, Tribunal Member