



Civil Resolution Tribunal

Date Issued: July 5, 2021

File: SC-2020-008515

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kashani v. Modern Home Furnishing Inc.*, 2021 BCCRT 736

B E T W E E N :

MAJID TANBAKUEI KASHANI

APPLICANT

A N D :

MODERN HOME FURNISHING INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a dispute about furniture. The applicant, Majid Tanbakuei Kashani, purchased a custom sofa and swivel chairs from the respondent furniture store, Modern Home Furnishing Inc. (Modern). Mr. Kashani claims that the furniture was poor quality and defective. Mr. Kashani claims \$3,900 for a refund of the purchase price inclusive of damage for allegedly poor customer service and moving fees.

2. Modern denies the claims. Modern says that the furniture was delivered in the same condition as the display models shown in the store and that the manufacturer repaired any defects. The manufacturer is not a party to this dispute.
3. Mr. Kashani is self-represented. Modern 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. 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.

ISSUES

8. The issues in this dispute are:
 - a. Did Modern breach the contract by supplying defective furniture? If so, what is the remedy?
 - b. Must Modern pay Mr. Kashani damages for allegedly providing poor customer service and moving expenses?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Kashani must prove his 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. Mr. Kashani purchased a custom sofa and two swivel accent chairs on August 31, 2019 and signed an invoice for \$3,900. As this is undisputed, I find that the terms stated on the invoice became the parties' contract. Based on the invoice and submissions, I find that Mr. Kashani paid a \$1,950 deposit on August 31, 2021 and the balance on October 4, 2021.
11. Modern says Mr. Kashani purchased the furniture based off of in-store floor samples and Mr. Kashani choose the fabric. Modern says it ordered the furniture from a manufacturer, who as noted is not a party to this dispute. Since Mr. Kashani does not dispute these submissions, I accept them as accurate.
12. Mr. Kashani says he received the furniture on October 22, 2019 and he sent Modern an email the same day complaining that it was defective and poor quality. The email included multiple photographs appearing to show areas of folded furniture fabric. Modern says that the fabric folding shown is normal and expected when thick fabric is applied to a curved furniture frame. I am unable to determine with ordinary knowledge whether the furniture was defective from these photographs. I discuss this further below.

13. Modern says the manufacturer picked up the furniture on November 20, 2019 for repairs and returned it to Mr. Kashani on December 27, 2019. Mr. Kashani says his original fabric complaints were not fixed and there was new fabric damage. Mr. Kashani does not describe this alleged new damage but he sent a photograph in a January 4, 2020 email appearing to show a small hole on the back of the sofa.
14. Mr. Kashani also says that one of the sofa legs was missing when the furniture was returned. Modern says it obtained a replacement leg from the manufacturer shortly after Mr. Kashani's complaint but it was unable to contact Mr. Kashani.

Breach of contract

15. Since Mr. Kashani purchased the furniture based off Modern's showroom furniture, I find that it is an implied term of the contract that Modern would supply furniture in the same condition as the store display furniture.
16. Modern says Mr. Kashani returned to the store in October 2019 and it showed Mr. Kashani that the fabric folding on his sofa was also visible on display model sofas with the same curved design and fabric. Since Mr. Kashani did not dispute this, I accept this as accurate and I find that the display models also had the same fabric folding. For the above reasons, I find that Mr. Kashani has not proved that the folded fabric is a defect. So, I find that Mr. Kashani has not proved that Modern breached the contract by supplying lower quality furniture than displayed in-store.
17. The contract says that Modern does not provide any warranties about the condition of the furniture and Mr. Kashani has not provided a copy of any manufacturer's warranty, if any. As such, I find that Mr. Kashani has not proved that Modern is responsible for the manufacturer's warranty repairs. So, I find that Mr. Kashani has not proved that Modern is responsible for any alleged loss or damage from the manufacturer's repairs in November and December 2019, including the small hole and missing leg.
18. I have also considered whether Modern breached any implied warranties under the SGA. Section 18(a) of the SGA says that if the buyer implies or says expressly

that goods are being purchased for a particular purpose, there is an implied condition that the goods are reasonably fit for that purpose. Section 18(c) says that there is an implied condition that goods will be durable for a reasonable period of time having regard to the normal use to which the goods are put. These warranties and conditions apply whether or not the company providing the goods is the manufacturer.

19. I find section 18 of the SGA applied to the sale and implied warranties on the purchased furniture that it would be reasonably fit for its purpose as a furniture and durable for a reasonable period of time.
20. Based on Mr. Kashani's photographs, I find that the furniture appeared to be in good condition and, as such, was reasonably fit for its intended purpose when delivered to Mr. Kashani. So, I find Kashani did not breach the implied warranty under section 18(a) of the SGA.
21. I also find that the furniture was durable for a reasonable period of time under section 18(c) of the SGA. Mr. Kashani sent a March 4, 2020 email saying that the swivel chairs were "deformed" after only using them 10 times. The email included several photographs of the chairs which, I find, do not show any apparent damage. Without further evidence, I find that Mr. Kashani has not proved that the chairs were not durable under section 18(c) of the SGA.
22. I note that even if I had found a contract breach, I would not have ordered a full refund as requested by Mr. Kashani. Section 56 of the SGA says the remedy for a breach of warranty is a reduction of the price or an action in damages, and that the measure of such damages is the estimated loss resulting directly from the breach. Without an expert opinion, I find that Mr. Kashani has not proven that the furniture was damaged beyond repair.
23. Mr. Kashani also claims unspecified damages for allegedly poor customer service and moving expenses. I find that Mr. Kashani has not proved that Modern had a contractual responsibility to provide customer service after the purchase. Further, since I find that Modern has not breached the contract, I find that Mr. Kashani has not

proved that his moving expenses are related to the allegedly defective furniture or that Modern is responsible for his moving expenses. Also, even if I had found that Modern breached the contract, I would dismiss Mr. Kashani's claim for moving expenses without supporting evidence.

24. For the above reasons, I dismiss Mr. Kashani's claims.
25. 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 Mr. Kashani was unsuccessful, I dismiss his claim for reimbursement of CRT fees. Since Modern was successful in this dispute, I find that Modern is entitled to reimbursement the \$25 CRT fee it paid for filing a paper dispute response. Modern did not request reimbursement of dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Kashani to pay Modern \$25 in CRT fees.
27. Modern is entitled to post-judgment interest, as applicable.
28. I dismiss Mr. Kashani's claims.
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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

Richard McAndrew, Tribunal Member