



# Civil Resolution Tribunal

Date Issued: July 9, 2021

File: SC-2020-008776

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stochnoff v. Pourmokhtari dba Glass House Optical*, 2021 BCCRT 753

**B E T W E E N :**

LAURENCE STOOCHNOFF

**APPLICANT**

**A N D :**

SHAHIM POURMOKHTARI (Doing Business As GLASS HOUSE  
OPTICAL)

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

## **INTRODUCTION**

1. This dispute is about allegedly defective eye glass lenses.
2. The applicant, Laurence Stochnoff, purchased a set of graduated lenses (original lenses) from the respondent, Shahim Pourmokhtari (doing business as Glass House Optical) in January 2020. Mr. Stochnoff says the original lenses were defective

because they did not contain the exact prescription he had provided and did not match Mr. Stoochnoff's measured line of sight. Mr. Stoochnoff also says Mr. Pourmokhtari misrepresented the brand of lenses as better than the brand Mr. Stoochnoff usually purchased. Finally, Mr. Stoochnoff claims the original lenses caused him eye strain, headaches, and neck pain. He claims \$800 as reimbursement for the original lenses cost, \$949 for the cost of new lenses, and \$1,000 in non-pecuniary damages for his alleged eye strain symptoms and possible permanent eye damage.

3. Mr. Pourmokhtari denies the original lenses were defective but agrees that the lenses were "set a little high". Mr. Pourmokhtari says he will refund the lenses and that he ordered another set of lenses, but Mr. Stoochnoff failed to pick them up. Mr. Pourmokhtari says he owes Mr. Stoochnoff nothing more and denies that the original lenses caused any permanent damage.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.

7. 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.
8. 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**

9. The issues in this dispute are:
  - a. Whether Mr. Pourmokhtari sold Mr. Stoochnoff defective eyeglass lenses and, if so, what is the appropriate remedy, and
  - b. Whether the lenses caused Mr. Stoochnoff headaches, neck pain or eye strain and, if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one Mr. Stoochnoff, as the applicant, must prove his claim on a balance of probabilities. I have reviewed the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.
11. Mr. Stoochnoff picked up his glasses from Mr. Pourmokhtari, with the original lenses installed, on January 24, 2020. Mr. Stoochnoff returned to see Mr. Pourmokhtari several weeks later and advised that he was having difficulty seeing clearly through the lenses. Mr. Pourmokhtari told Mr. Stoochnoff to continue wearing the glasses so his eyes could adjust. Mr. Stoochnoff continued to have difficulty and returned to Mr. Pourmokhtari, who bent the bottom of the glasses frame inward, toward Mr. Stoochnoff's face, so that Mr. Stoochnoff could more easily look through the upper part of the glasses. Mr. Stoochnoff returned to see his optometrist, Dr. Yurchevich, on April 8, 2020. None of this is disputed.

***Are the original lenses defective?***

12. Mr. Stoochnoff says the line of sight on the original lenses did not match his line of sight, or distance from the bottom of the eyeglass frame to his pupil. I infer that he argues Mr. Pourmokhtari mismeasured his line of sight for the original lenses.
13. Mr. Stoochnoff says that Dr. Yurchevich measured his line of sight in the glasses with the original lenses on April 8, 2020 and told Mr. Stoochnoff that the lenses' line of sight was approximately 3 mm higher than Mr. Stoochnoff's actual line of sight. However, I find I cannot rely on Mr. Stoochnoff's second-hand account of what Dr. Y said.
14. Although Mr. Stoochnoff attempted to provide a copy of Dr. Y's April 8, 2020 email which, presumably, sets out these findings, the email was unreadable. CRT staff provided Mr. Stoochnoff with an opportunity to resubmit the email in a readable format, but Mr. Stoochnoff did not do so. So, I find I have no direct evidence from Dr. Y about his findings.
15. In his Dispute Response, Mr. Pourmokhtari agrees that the original lenses were "set a little high" and that Mr. Stoochnoff could not adjust. Further, Mr. Pourmokhtari ordered a replacement set of lenses for Mr. Pourmokhtari. The February 26, 2020 order form for the replacement lenses says the reason for the replacement lenses is because the "Doctor" changed the "seg height" which, I infer means the line of sight was changed for the replacement lenses. For these reasons I find Mr. Pourmokhtari agrees with Mr. Stoochnoff that the original lenses' line of sight was incorrect.
16. On balance, I find the original lenses were defective, because the line of sight did not match Mr. Stoochnoff's line of sight.
17. Mr. Stoochnoff also argues the prescription in the original lenses was incorrect. Although he provided copies of the prescription used to make the lenses, he did not provide a copy of Dr. Y's prescription. So, I find he has not proven that the original lenses' prescription was incorrect. However, given my conclusion that the original lenses were defective because of an incorrect line of sight, I find nothing turns on Mr.

Stochnoff's failure to prove that Mr. Pourmokhtari used an incorrect prescription for the lenses.

18. I further find I need not consider whether Mr. Pourmokhtari misrepresented the benefits of the new brand of lenses he sold to Mr. Stochnoff, given my conclusion above.
19. I now turn to consider the remedy.
20. It is undisputed that Mr. Pourmokhtari ordered a replacement set of lenses for Mr. Stochnoff. However, Mr. Stochnoff says that he never agreed to a replacement set of lenses and that Mr. Pourmokhtari never communicated to him that the lenses had been ordered. As Mr. Pourmokhtari does not address this in his submissions, or provide any contrary evidence, I accept Mr. Stochnoff's statement as true. Given this, I find Mr. Stochnoff is not required to accept the replacement lenses at this time. I find he is entitled to reimbursement of the cost of the defective original lenses.
21. Based on a January 9, 2020 invoice, I find the original lenses cost \$800, but that Mr. Stochnoff only paid \$320 toward that cost, as \$480 was paid through Mr. Stochnoff's insurance provider. Based on the invoice, I find Mr. Stochnoff's loss was only \$320 and so I find he is entitled to reimbursement of that \$320 for the original lenses.
22. I find Mr. Stochnoff is not entitled to reimbursement of the \$949 cost of the new lenses he purchased from another provider, as that would result in Mr. Stochnoff receiving double recovery for the original lenses. Even if it would not result in double recovery, Mr. Stochnoff submitted no evidence that he paid \$949 for new lenses so I would have found he had not proven his damages. I dismiss Mr. Stochnoff's \$949 claim for the cost of new lenses.

### ***Non-Pecuniary Damages***

23. Mr. Stochnoff claims the original lenses strained his eyes, which caused headaches. He also says that, because he was constantly bending his head forward to look

through the top of his glasses, he developed neck pain for which he sought chiropractic treatment. Mr. Stoochnoff claims damages for his symptoms over the course of approximately 4 months, and for possible permanent damage to his eyes.

24. Mr. Pourmokhtari agrees that the original lenses likely caused Mr. Stoochnoff eye strain because the lenses were “a little off” but denies the possibility of any permanent damage. It is undisputed that Mr. Pourmokhtari is an optician and has experience with eyeglass lenses. I accept his opinion, given against his own interest, that the original lenses likely caused Mr. Stoochnoff’s eye strain. On balance, I find it likely that the original lenses caused Mr. Stoochnoff’s headaches.
25. Although Mr. Stoochnoff says he received chiropractic treatment, he did not submit copies of those records. Nor did Mr. Stoochnoff submit any medical opinion linking his reported neck pain to the original lenses. So, I find Mr. Stoochnoff has failed to prove that his reported neck pain was caused by the original lenses. I also find Mr. Stoochnoff’s claim for possible permanent damage is unproven and speculative and so I make no award for possible permanent damage.
26. I find it reasonable that Mr. Stoochnoff relied on Mr. Pourmokhtari’s repeated advice to continue wearing the original lenses from the day he received them on January 24, 2020, up to the day he discovered the line of sight was incorrect on April 8, 2020. So, I find Mr. Stoochnoff is entitled to compensation for eyestrain headaches for approximately 2.5 months. On a judgment basis, I find \$250, is an appropriate award for Mr. Stoochnoff’s eyestrain headaches.

### ***Interest, CRT Fees and Expenses***

27. The *Court Order Interest Act* (COIA) applies to the CRT. On a judgment basis, I find Mr. Stoochnoff is entitled to pre-judgment interest on the \$320 from February 24, 2020, which is one month after he picked up and paid for the original lenses, to the date of this decision. This equals \$1.98. Under COIA section 2, Mr. Stoochnoff is not entitled to pre-judgment interest on the \$250 non-pecuniary damages award.

28. 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. As Mr. Stoochnoff was only partially successful in his dispute, I find he is entitled to reimbursement of \$62.50, which is half his CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

29. Within 30 days of the date of this order, I order Mr. Pourmokhtari to pay Mr. Stoochnoff a total of \$634.48, broken down as follows:

- a. \$320 as reimbursement for the original lenses,
- b. \$250 in non-pecuniary damages,
- c. \$1.98 in pre-judgment interest under the COIA, and
- d. \$62.50 in CRT fees.

30. Mr. Stoochnoff applicant is entitled to post-judgment interest, as applicable.

31. I dismiss Mr. Stoochnoff's \$949 claim for replacement lenses.

32. 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.

33. 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.

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Sherelle Goodwin, Tribunal Member