



Civil Resolution Tribunal

Date Issued: December 3, 2021

File: SC-2020-008449

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rogers v. Fawcett Mattress Co. Inc.*, 2021 BCCRT 1274

B E T W E E N :

RUTH ROGERS

APPLICANT

A N D :

FAWCETT MATTRESS CO. INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This dispute is about an adjustable bed frame purchase.
2. The applicant, Ruth Rogers, purchased an adjustable bed frame from the respondent, Fawcett Mattress Co. Inc. (Fawcett). Ms. Rogers says the bed frame does not work because the bed frame's Micro-Hook™ system does keep her mattress in place when

she gets out of bed and the bed frame's mattress retaining bar keeps falling off. She asks for an order that Fawcett repair the bed frame, replace it, or refund her the \$3,708.56 she had paid for the bed frame. She also asks for an order for \$1,000 in compensation for pain and suffering.

3. Fawcett denies that the bed frame does not work. It says that the bed frame works, and the issue is with Ms. Rogers' mattress which is incompatible with the bed frame.
4. Leggett & Platt, Inc. (L&P) manufactured the bed frame and is not a party to the dispute.
5. Ms. Rogers is self-represented. Fawcett is represented by an organization contact JP.

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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in

Yas v. Pope, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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.

Preliminary Issues

10. Ms. Rogers raises 2 preliminary issues that I will first address.
11. First, as noted, Ms. Rogers asks for an order for Fawcett to repair or replace the bed frame. An order for someone to do something, like repair or replace the bed frame, is known as "injunctive relief". With exceptions that do not apply here, injunctive relief is outside the CRT's small claims jurisdiction under section 118 of the CRTA. As a result, I will only consider Ms. Rogers' \$3,708.56 claim for the bed frame's refund.
12. Second, in Ms. Rogers' evidence, she asks that her compensation claim for pain and suffering be increased to \$2,000. However, Ms. Rogers did not amend the Dispute Notice to reflect this increased amount. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondent of the claims against them and the remedies. I find it would be procedurally unfair to allow this larger claim at this late stage. I find Ms. Rogers is limited to her original \$1,000 claim for general damages. That said, given my conclusion below nothing turns on this limitation.

ISSUES

13. The issues in this dispute are:

- a. Whether the bed frame's Micro-Hook™ system failed, and if so, whether Fawcett is responsible for its failure?
- b. Whether the bed frame's retaining bar failed, and if so, whether Fawcett is responsible for its failure?
- c. Whether Ms. Rogers is entitled to \$1,000 compensation for pain and suffering?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicant, Ms. Rogers must prove her claims on a balance of probabilities (meaning "more likely than not"). 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.
15. On November 20, 2018, Ms. Rogers purchased a Prodigy Comfort Elite bed frame from Fawcett for \$3,705.86, which Fawcett delivered to her on the same day. Shortly after, Ms. Rogers complained to Fawcett that her existing mattress would not securely stay on the bed frame. None of this is disputed.
16. Ms. Rogers says that the Micro-Hook™ system failed to hold her mattress in place every time she gets off the bed, resulting in her having to reposition her mattress multiple times a day. She says on 1 occasion, the mattress even tipped over onto the floor. She further says the bed frame's retaining bar, which also keeps the mattress in place, constantly falls out of the anchor holes resulting in her having to "wedge [her] head and shoulders under the mattress in order to lift the mattress off the adjustable base".
17. As a result, Ms. Rogers says she has exacerbated a pre-existing injury from repositioning and replacing the mattress. So, as noted, she claims \$1,000 in compensation for pain and suffering.

18. Conversely, Fawcett denies that the mattress's Micro-Hook™ system or the retaining bar had failed. Fawcett says that it had inspected Ms. Rogers' bed frame on 3 occasions and determined that it had "no flaws or problems mechanically, or functionally". Fawcett says the issue was with Ms. Rogers' existing mattress being incompatible with the bed frame. Specifically, Fawcett says that Ms. Rogers' mattress was rigid and made of "very slippery material", resulting in the mattress not staying in place with the Micro-Hook™ system and pushing the retaining bar out of the anchor holes. Fawcett further says that the retaining bar is meant to be removable as a safety feature.
19. Fawcett also says that it advised Ms. Rogers at the time of her purchase that not all mattresses are compatible with the bed frame, and that it made no representations or guarantees to her about her third-party mattress's compatibility. Fawcett says it is their practice to tell all its clients this and recommend them to purchase a compatible mattress, since only 2 of its 6 Fawcett manufactured mattresses are compatible with the bed frame. Ms. Rogers denies she was ever told this.
20. In essence, Ms. Rogers says the bed frame does not work, while Fawcett says it does. Ms. Rogers says Fawcett never warned her about mattress compatibility with the bed frame, while Fawcett says it did. Ms. Rogers asks that I find Fawcett's submissions not credible because of an undisputed clerical error in Fawcett's records. However, I find the error is minor and nothing turns on it, since the parties agree the error did not apply to Ms. Rogers. So, I find that I am left with an evidentiary tie between the parties. As stated above, Ms. Rogers bears the burden to prove her claims on a balance of probabilities, and I find that she has failed to do so.
21. Ms. Rogers has provided no evidence to support her argument that the Micro-Hook™ system had failed. I find the issue about whether the Micro-Hook™ system had failed is a matter outside ordinary knowledge requiring expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). There is no expert evidence before me, and no evidence from anyone other than Ms. Rogers saying that the Micro-Hook™ system had failed. I find I am left with the possibility that the Micro-Hook™ system was not defective or

broken but there may have been a compatibility issue with her mattress as Fawcett alleges. In short, I am not persuaded that the bed frame did not work or was defective.

22. Ms. Rogers denies that her mattress was the problem. She says that L&P told her that the bed frame will “accommodate any mattress designed [to] work with an adjustable base”, but she has again provided no evidence about this, such as a statement from L&P or the bed frame’s specifications. She also says that the retaining bar comes out because the anchor sockets have broken loose from the adjustable base, but again, she has provided no evidence of this, such as a photo of the broken anchor sockets.
23. While Ms. Rogers provided a screenshot from her mattress’s manufacturer’s website indicating that her “mattress is designed to be used with a metal grid, platform, slat, box spring, or adjustable base”, I do not find this evidence is enough to show that her mattress was indeed compatible with L&P’s bed frame. Or put another way, I am not satisfied from this evidence alone that Ms. Rogers has met her burden of proof that the bed frame did not work as specified. I am also unable to reconcile a Better Business Bureau statement submitted in evidence by Fawcett from its employee DF. In DF’s statement, they say they had inspected Ms. Rogers’ bed twice and found it was “level, supportive and functioning 100%”, was “100% normal”, and that there were “zero issues with the adjustable [bed frame] we sold her”.
24. Ms. Rogers argues that section 18 (a), (b), and (c) of the *Sales of Goods Act* applies to her claim. These sections set out an implied warranty that goods sold by a commercial seller must be reasonably “durable”, “fit for their purpose” and of “merchantable quality”, taking into consideration the use to which the goods would normally be put and to all the sale’s surrounding circumstances. I accept that Ms. Rogers’ mattress would not remain secured on the bed frame. However, that fact alone does not mean that Fawcett sold Ms. Rogers a bed frame contrary to SGA section 18, particularly where there is no proof that the bed frame did not work, was not of a saleable quality, or was not reasonably durable.

25. There is no evidence or suggestion that Ms. Rogers made it known to Fawcett that the bed frame must be compatible with her existing mattress as a condition of the sale. Ms. Rogers only asserts that she told Fawcett she wanted the bed frame to help reduce her chronic back pain. So, I find whether her existing mattress would be compatible with the bed frame was not a term of the sale. In such a circumstance, I find Ms. Rogers has not established she relied on Fawcett's skill and judgement about her existing mattress's compatibility with the bedframe. I also find it more likely than not that Fawcett would have warned Ms. Rogers about mattress compatibility given that only 2 Fawcett designed mattresses were compatible with the bed frame. For all the above reasons, I find the weight of the evidence does not establish any breach of the SGA.
26. Last, Ms. Rogers appears to suggest that Fawcett was negligent in not informing her to make a warranty claim with L&P. It is clear from the L&P warranty in evidence, which Ms. Rogers undisputedly received, that "All warranty claims require notice from [Ms. Rogers] to be given to L&P". The warranty informed Ms. Rogers "NOT TO CONTACT YOUR RETAILER OR ANY OTHER SERVICE PERSONNEL" for a warranty claim. Therefore, contrary to Ms. Rogers' assertion, I find that she had the onus to advance a warranty claim with L&P, and not Fawcett.
27. In summary, I find Ms. Rogers has not proved the bed frame was defective or broken in any way. I dismiss Ms. Rogers' claim for the bed frame's refund because I find it is unproven.
28. For the same reason, I also dismiss Ms. Rogers' compensation claim for pain and suffering, given that I find she has failed to prove that the bed frame was defective or broken. I would have also dismissed this aspect of Ms. Rogers' claim because she has not provided any medical evidence to support her injury claim.
29. 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 Ms. Rogers was unsuccessful, I dismiss her claim for reimbursement of CRT fees and expenses.

ORDER

30. I order Ms. Rogers' claims and this dispute dismissed.

Roy Ho, Tribunal Member