



Civil Resolution Tribunal

Date Issued: December 6, 2021

File: SC-2021-004081

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. Jump Plus Stores ULC*, 2021 BCCRT 1277

BETWEEN:

JASON LEE

APPLICANT

AND:

JUMP PLUS STORES ULC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about the purchase of a mobile phone. The applicant, Jason Lee, paid the respondent, Jump Plus Stores ULC (JPS), for a new Apple iPhone 12. Mr. Lee says when he opened the box JPS gave him, it contained a different phone model that was used and damaged. Mr. Lee claims a refund of \$1,199 for the used phone but says he would also accept a new iPhone 12 as agreed. JPS says that it sold Mr.

Lee a new iPhone 12 in a sealed box that did not fit the damaged phone Mr. Lee returned, and that it owes nothing.

2. Mr. Lee is self-represented. JPS is represented by an authorized employee.

JURISDICTION AND PROCEDURE

3. 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.
4. 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. Although the parties' submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
5. 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.
6. 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

7. Did JPS provide Mr. Lee with a new iPhone 12 as agreed, and if not, must JPS refund \$1,199 or provide a new iPhone 12?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, as the applicant Mr. Lee must prove his claim 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.
9. An undisputed April 27, 2021 invoice in evidence shows Mr. Lee purchased a red Apple iPhone 12 and a power adapter from JPS. The phone cost \$1,199 plus GST, PST, and an “ECO Fee”, but Mr. Lee only claims \$1,199 in this dispute.
10. Photos and security video in evidence appeared to show a person I infer is Mr. Lee purchasing two small boxes, one with a photo of a red phone on it. I infer the person accompanying Mr. Lee in the video is his son, RL. I find both a salesperson and Mr. Lee handled the phone box, including lifting it by the top edges of its removable lid, but they did not open the box and the lid did not move. I find that in the submitted photos and video the box appeared to be completely closed, with the bottom edge of the lid flush with the box bottom, although the picture quality is imperfect.
11. Mr. Lee says that when he later opened the box at home, instead of a red iPhone 12 it contained what appeared to be a different-coloured used phone with a cracked screen. RL submitted a witness statement saying that the phone did not fit in the box properly. Mr. Lee returned to JPS with the phone and box, who investigated his complaint that the box contained the wrong phone. Submitted photos show, and Mr. Lee does not directly dispute, that the box lid did not close all the way when the used phone was in it, because the phone did not fit properly in the box’s plastic tray. JPS ultimately said that it had sold Mr. Lee a red iPhone 12 as agreed, so it could not

provide a refund or other remedy for the used phone Mr. Lee presented, which JPS determined was some sort of iPhone 11.

12. It is undisputed that if the box contained a new, red iPhone 12 when sold, Mr. Lee would not be entitled to a remedy. The parties also do not dispute that if the box contained a used, damaged iPhone 11 at the time of the sale, this would mean that JPS broke the parties' purchase agreement by providing an incorrect and damaged item. I find that if the box contained the used iPhone 11 at the time of purchase, JPS would owe Mr. Lee a refund or a new, red iPhone 12 as agreed. Unfortunately, neither party opened the box to verify its contents while in JPS's store in view of the security cameras, so there is no direct evidence of the box's contents when it was purchased.
13. JPS says, and Mr. Lee does not dispute, that the returned iPhone 11 was a refurbished non-Apple phone containing Apple phone parts, with various serial numbers scratched off. JPS says it never carried that model of iPhone 11 in the store Mr. Lee attended. JPS also says its salesperson recorded the serial number of the iPhone 12 sold to Mr. Lee, and JPS provided a screenshot showing that this iPhone 12 had been activated for use with an online service. The screenshot does not show the date and time of activation. Mr. Lee does not directly dispute that an iPhone 12 with that serial number may have been activated, but he says that he never received the iPhone 12 and did not activate it himself.
14. JPS says Mr. Lee told it he purchased the iPhone 12 as replacement for RL's iPhone 11. Mr. Lee and RL agree that the iPhone 12 was a replacement phone for RL, and they don't directly deny that RL's phone was an iPhone 11 model. However, Mr. Lee says he never told JPS this. I find JPS suggests that the used iPhone 11 returned by Mr. Lee might have been RL's old phone, but there is no proof of ownership in evidence.
15. JPS says the phone box was fully closed and sealed when it was sold. It says this is evidence that the box did not contain the used iPhone 11 at that time, because the box would not have been able to close fully, and swapping in a different phone would have broken the seal. As noted, the box appeared to be completely closed when the

phone was purchased, and its lid did not move or open when Mr. Lee and the salesperson lifted the box by its lid. I find no one mentioned any issues with the box when it was sold, even though both Mr. Lee and the salesperson handled and viewed the box. On balance, I find the box was fully closed and sealed when it was sold.

16. Both RL and Mr. Lee say that after purchasing the phone, the salesperson asked if they wanted to open the phone in the store, but they declined. RL and Mr. Lee both say that in hindsight they should have opened the box in the store. RL also said that after purchasing the phone he and Mr. Lee went to a restaurant for lunch for about an hour, then returned home and opened the box. Neither Mr. Lee nor RL directly say whether the box was still sealed and fully closed when they opened it at home, or whether they inspected the box before opening it. Mr. Lee emailed JPS on April 28, 2021 that the phone had not left his possession, but there is no further evidence about where Mr. Lee kept the phone between its purchase and opening the box at home.
17. The onus is on Mr. Lee to prove that the box did not contain a red iPhone 12 at the time he purchased it. Given my finding that the iPhone 12 box was fully closed and sealed when it was sold, I find JPS's statement that the box contained a new, red iPhone 12 to be credible. JPS says that Mr. Lee suggested the used iPhone 11 had been swapped into the box at the manufacturer level, but I find that is unlikely, for the reasons below.
18. I find Mr. Lee's and RL's version of events, that the box contained the used iPhone 11 when they purchased it, is slightly less credible. This is because of my finding that the box does not close completely around the used iPhone 11, yet no one noticed any issues with the box fit or seal before opening it, even though Mr. Lee personally handled and viewed the box in the store. I find that if the box had contained the used iPhone 11 at the time of purchase, Mr. Lee or the salesperson likely would have noticed the poorly fitting box, but there is no evidence that they did.
19. So, having weighed the evidence before me, I find it is slightly more likely than not that the box contained a new, red iPhone 12 when JPS sold it to Mr. Lee. It is not necessary for me to determine whether after the purchase the iPhone 12 was

swapped out for the used iPhone 11, either with or without Mr. Lee's knowledge, because in any event I find JPS had fulfilled its agreement to provide Mr. Lee with a new, red iPhone 12. I find Mr. Lee has not met his burden of proving that JPS broke their contract for the phone purchase. I dismiss Mr. Lee's claim.

CRT FEES AND EXPENSES

20. Under section 49 of the CRTA, and the 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. I find Mr. Lee was unsuccessful in his claim, but JPS paid no CRT fees, and the parties claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

21. I dismiss Mr. Lee's claim, and this dispute.

Chad McCarthy, Tribunal Member