Civil Resolution Tribunal

Date Issued: December 21, 2021

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Only Stereo Warehouse (1990) Ltd. v. Beadle,* 2021 BCCRT 1333

B E T W E E N :

THE ONLY STEREO WAREHOUSE (1990) LTD.

APPLICANT

A N D :

ROBERT ERNEST BEADLE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for a king mattress, king bedframe, 2 twin box springs, mattress protector, and a pillow (collectively, the items). The applicant, The

Only Stereo Warehouse (1990) Ltd., which does business as Sisters Sleep Gallery, claims $5,000 from the respondent Robert Ernest Beadle for the items' value.

2. The respondent says they should not have to pay because they say the applicant misled them about the king mattress model and failed to provide them with the mattress they wanted, despite offering a guarantee and trial period. Apart from the mattress, the respondent does not say there is any issue with the other items in their possession.

3. The applicant is represented by MS, an employee or principal. The respondent is self-represented.

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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.

5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. I note the applicant values its claim at $5,282.01 but expressly limited its claim to $5,000, which is the CRT's small claims monetary limit.

ISSUES

9. The issues are:

    a. Did the applicant provide the respondent with the king mattress they ordered?

    b. Did the applicant breach a contractual guarantee or trial period?

    c. To what extent, if any, is the applicant entitled to the claimed $5,000?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant has the burden of proving its claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.

11. There is no formal written contract in evidence. However, it is undisputed the respondent bought the mattress and related bed items from the applicant in November 2020. This undisputedly followed the respondent's 2016 satisfied purchase of a queen-sized mattress from the respondent.

12. The respondent undisputedly told the applicant in 2020 that they wanted to buy the exact same mattress they had bought in 2016, but in king size. One issue in this dispute is what MS told the respondent about the extent to which that was possible. More on this below.

13. The mattress' manufacturer, which is not a party to this dispute, undisputedly rebranded and renamed its products between 2016 and 2020. From firmest to softest, the relevant name changes were undisputedly as follows:

    (2016) Achieve = Align Firm (2020)

    (2016) Distinct = ProAlign Firm (2020)

    (2016) Venue = LuxAlign Firm (2020)

14. The applicant says in 2016 it sold the respondent a Distinct mattress, which a month later the respondent exchanged for a Venue mattress. There are no receipts or other documentation in evidence for the 2016 purchase or exchange. However, the respondent submitted no evidence they bought or exchanged different items in 2016. I accept the applicant's undisputed evidence about the 2016 transactions.

15. The evidence shows the respondent in 2020 bought a ProAlign Firm (formerly Distinct), which they exchanged about a month later for a LuxAlign Firm (formerly Venue).

16. In particular, the November 2020 sales order included $3,360 for a "Pro-Align Firm King" Tempurpedic mattress plus $279.98 for 1 king frame and 2 twin box springs. The sales order says the respondent would pay for the king frame and box springs but return the items if they found a different bedroom suite and then the $279.98 charge would be credited. The respondent undisputedly never returned those items. Added to the bill was $150 for "protector fusion", which I infer is the claimed mattress protector. The sales order also gave a $279.98 credit for "pillows not taken", leaving a $4,014.01 balance.

17. A December 22, 2020 sales order in evidence reflects the applicant's "one time exchange" of the Pro-Align Firm King mattress for a "Lux King" mattress. The sales order shows the price difference was $1,100, plus $168 for a king pillow, bringing the total owing to $1,268. There is a handwritten note from the respondent on the

sales order copy in evidence that exchange and pillow delivery occurred on December 20, but the price difference was supposed to be $1,000, not $1,100.

18. On November 16, 2020, the respondent paid the applicant $4,014.01 by Visa. However, in March 2021, the respondent obtained a charge-back from Visa and was credited the $4,014.01. The fact that Visa allowed the charge-back is not binding on me. So, I find the products the respondents ultimately received were valued at $5,272.01 if not $5,372.01. Nothing turns on this $100 difference given the applicant has limited its claim to the CRT's $5,000 monetary limit in small claims.

19. I find the respondent essentially alleges MS misrepresented the mattress the applicant sold in 2020. MS says she told the respondent that she could not guarantee the re-named mattress sold in 2020 would be exactly the same as the one sold in 2016. The respondent says they have a witness to every conversation they had with MS. However, the respondent submitted no witness statements. At the same time, MS says she has witnesses, but also submitted no witness statements.

20. Ultimately, I find the respondent has the burden to prove the applicant promised a mattress that would be exactly the same as their 2016 model. The respondent has not submitted any evidence to support their assertion MS made this promise. There is no evidence that the mattresses sold and exchanged in 2020 are not the ones described on the 2020 sales orders. For instance, the respondent did not submit any photos of either the 2016 mattress or the 2020 mattresses with any identifying tag or product number. I find it unproven that MS misrepresented the mattress or that the mattress the respondent received was not as described on the sales orders.

21. The respondent also argues MS misled them by suggesting they keep the LuxAlign Firm mattress for 30 days, which put the respondent outside the 60-day trial period the respondent alleges. Yet, apart from the respondent's assertion, there is no evidence a 60-day trial period was part of the parties' contract. Rather, the sales order refers to a "one-time" exchange, which I find the respondent received when they exchanged the ProAlign for the LuxAlign. While I accept the respondent and

their spouse were ultimately unhappy with the LuxAlign, I find this does not show the applicant provided a mattress inconsistent with the respondent's purchase instructions.

22. I acknowledge the respondent says MS refused to contact the "factory rep". MS says even if she had, the answer would have been to say the rebranded name for the 2016 Venue mattress is the LuxAlign Firm, which is what the evidence shows the respondent received. I find MS calling the factory rep would have made no difference. I find no breach of any guarantee, warranty, or trial period term.

23. As noted, the respondent does not address the items apart from the mattress nor the valuation of them. The respondent undisputedly retained all the items. I find the applicant had no obligation to accept the return of the LuxAlign Firm or refund it, given the one-time exchange had already occurred. So, I find the applicant is entitled to the claimed $5,000 for all of the items sold in 2020 to the respondent.

24. The *Court Order Interest Act* (COIA) applies to the CRT. It is exclusive of the CRT's monetary limit. I find the applicant is entitled to pre-judgment interest on the $5,000 from December 22, 2020 (the exchange invoice date) to the date of this decision. This interest equals $22.44.

25. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant was successful and so I find it is entitled to reimbursement of the $175 it paid in CRT fees. The applicant did not claim dispute-related expenses.

ORDERS

26. Within 30 days of this decision, I order the respondent to pay the applicant a total of $5,197.44, broken down as follows:

    a. $5,000 in debt,

b. $22.44 in pre-judgment interest under the COIA, and

c. $175 in CRT fees.

27. The applicant is entitled to post-judgment interest, as applicable.

28. 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.

29. 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.

Shelley Lopez, Vice Chair