



Civil Resolution Tribunal

Date Issued: December 24, 2021

File: SC-2021-003744

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ko v. Visions Electronics Limited Partnership*, 2021 BCCRT 1344

B E T W E E N :

NICK YAN KO

APPLICANT

A N D :

VISIONS ELECTRONICS LIMITED PARTNERSHIP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a television (TV) purchase and warranty. In February 2019, the applicant Nick Yan Ko bought a TV from the respondent Visions Electronics

Limited Partnership (Visions). Visions replaced that TV under warranty in August 2020. Mr. Ko says the replacement TV failed in March 2021 and says it should be replaced under warranty. Mr. Ko claims \$1,900, including punitive damages for alleged “breach of contract”.

2. Visions denies liability and says the replacement TV’s warranty was provided by its manufacturer, Hisense Canada (Hisense), not Visions. Visions also says the replacement TV’s issue is physical damage and so would not be covered by a warranty in any event. Hisense is not a party to this dispute.
3. Mr. Ko is self-represented. Visions is represented by its manager, TL.

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.

ISSUES

8. The issues are:
 - a. What warranty applies to the replacement TV?
 - b. To what extent, if any, is the applicant entitled to \$1,900, as a refund and for punitive damages?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Mr. Ko has the burden of proving his 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.
10. There is no formal written contract in evidence. However, the parties agree to the following facts:
 - a. Mr. Ko bought a Sharp TV with a 5-year warranty from Visions in February 2019.
 - b. Through no fault of Mr. Ko, the Sharp TV broke.
 - c. On August 1, 2020, Visions gave Mr. Ko a replacement TV, which was a Hisense TV.
 - d. The Hisense replacement TV later became damaged.
11. Mr. Ko admits Hisense determined that Mr. Ko caused the damage to the replacement TV. Again, Hisense is not a party to this dispute.

12. The Visions receipt shows Mr. Ko bought a 5-year extended service plan on the Sharp TV, which I find is the 5-year warranty the parties agreed to above. Based on the evidence before me, I find this receipt sets out the terms of the Sharp's 5-year warranty agreement.
13. The receipt shows Visions had the right to provide a "new or similar" unit as the replacement. Apart from his own assertion, Mr. Ko submitted no evidence to show the Hisense TV was not "similar" to the Sharp TV. Significantly, the receipt for the Sharp TV also clearly states the Sharp's 5-year warranty ended on replacement of the product. So, contrary to Mr. Ko's assertion, I agree with Visions that the 5-year warranty ended when Visions replaced the Sharp TV with the Hisense TV on August 1, 2020.
14. I turn then to what warranty applied to the Hisense TV, and whether Mr. Ko is entitled to a refund for its damage. The Visions receipt in evidence for the Sharp TV indicates only defects are covered and not wear and tear. I have no other evidence before me to indicate any different terms applied to the Hisense TV. I note Mr. Ko undisputedly did not purchase an extended warranty for the Hisense TV.
15. Visions says only a 1-year warranty applied to the Hisense replacement TV, and that it was offered by Hisense, not Visions. I have no evidence to the contrary. However, the *Sale of Goods Act* (SGA) applies to Vision's sale of both the Sharp TV and the Hisense replacement. This is because Visions supplied the TVs, even though it did not manufacture them. In other words, Visions cannot entirely escape liability simply because it was Hisense that offered the 1-year warranty.
16. In particular, SGA section 18 says there are 3 implied warranties: fitness for purpose, saleability or merchantability, and durability in all the surrounding circumstances. Durability is the relevant warranty here. I find it within ordinary knowledge that a new TV should operate normally more than 7 months before failing, absent misuse or physical damage. I say 7 months, because the Hisense TV was provided in August 2020 and Mr. Ko says it was damaged in March 2021.

17. However, the difficulty for Mr. Ko is that he has not proved the TV was defective. Mr. Ko submitted photos of the damaged TV, and these photos are reproduced in an email in evidence from Hisense to Visions. Hisense wrote that the screen was cracked “right in the center” and the photos show what appears to be a crack. Mr. Ko’s complaint is that the TV has blurry horizontal lines. These lines appear to track that crack line. This crack is why Hisense refused the warranty coverage, because it found the TV was damaged rather than being defective. Mr. Ko did not deny the crack and provided no contrary evidence about the physical damage and no evidence that the blurry lines were caused by a defect or lack of durability.
18. So, I find Mr. Ko has not proved Visions sold him a TV that was defective or not reasonably durable. So, I find Visions did not breach the SGA and Mr. Ko is not entitled to a refund, either based on the SGA or any warranty. So, I find Mr. Ko’s claim must be dismissed. I therefore do not need to address in any detail the claimed damages, with around \$1,300 of the claimed \$1,900 representing a refund for what Mr. Ko paid for the TV and the rest for punitive damages and Mr. Ko’s claimed mental anguish and loss due to not watching TV for a period of time. I would note that punitive damages are reserved for particularly malicious and oppressive conduct, which I find did not occur here.
19. 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. Mr. Ko was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Visions did not pay fees or claim expenses.

ORDER

20. I dismiss Mr. Ko’s claims and this dispute.

Shelley Lopez, Vice Chair

