



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Leung v. Sherban*, 2022 BCCRT 232

B E T W E E N :

TED LEUNG

APPLICANT

A N D :

BRAYDEN SHERBAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about the sale of a used computer.
2. The applicant, Ted Leung, purchased a used computer from the respondent, Brayden Sherban, through “Craigslist”. Mr. Leung says Mr. Sherban represented the computer was “working” but immediately after the sale he found out the computer’s

motherboard would not boot up. He says Mr. Sherban misrepresented the computer's condition and breached the implied warranty of durability under the *Sale of Goods Act* (SGA). Mr. Leung says the computer has no value and he seeks a refund of the \$600 purchase price, plus reimbursement of \$77.28 he paid for the diagnosis.

3. Mr. Sherban says the computer was working when he sold it to Mr. Leung. He says he sold it "as is" and provided Mr. Leung with the manufacturer's warranty, which should have covered any repairs free of charge. Mr. Sherban says he does not owe Mr. Leung a refund.
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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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 *Yas v. Pope*, 2018 BCSC 282, 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.

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. Did Mr. Sherban misrepresent the computer's condition or breach the implied warranty under the SGA?
 - b. If either are so, did Mr. Leung reasonably mitigate his damages and what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Leung must prove his claims on a balance of probabilities (which means "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.
11. Mr. Sherban was selling a used Dell gaming computer with no video card through Craigslist. The advertisement is not in evidence.
12. On September 23, 2021, Mr. Leung emailed Mr. Sherban with an offer to buy the computer from Mr. Sherban for \$600 "if everything is working and all it needs is a new video card". Mr. Sherban texted, "yes everything is working fine". Later, Mr. Sherban again assured Mr. Leung that the computer was in working order and that "literally only the graphics card has been taken out, then it was stored in my closet". Mr.

Sherban also texted that he would send the original purchase receipt after Mr. Leung bought the computer from him “in case of warranty, but I doubt you will need it”. Mr. Leung texted: “All Good. \$600 tomorrow as is. I am ok with that”. In the context of their communication, I find “as is” meant a working computer with no video card. I note the lack of a video card is not a disputed issue.

13. The parties agree that Mr. Leung bought the computer from Mr. Sherban and paid \$600 in cash on September 24, 2021.
14. It is undisputed that Mr. Leung did not have a video card and did not test the computer before, or at the time of sale. Mr. Sherban says he offered Mr. Leung to test the computer at his home, but I find the texts show he only offered Mr. Leung to look inside the computer. As I discuss below, Mr. Sherban did not have a video card either.
15. Mr. Leung says he brought the computer straight to “PC Doctor” to install a new video card within the hour and PC Doctor told him the computer was not working. As shown in the texts, Mr. Leung immediately contacted Mr. Sherban to let him know the computer was not working and that PC Doctor was trying to diagnose the problem. According to PC Doctor’s September 25, 2021 invoice, it diagnosed the problem was that the motherboard was not “booting”. Mr. Leung says PC Doctor told him it might need a new motherboard, plus \$400 or more in repairs. Mr. Leung immediately texted Mr. Sherban about the problem and told him he wanted to return the computer for a refund because it was not working. Mr. Sherban refused to accept the computer back or give any refund.

Misrepresentation

16. In a consumer transaction such as this one for used goods, a principle called “buyer beware” often applies. It means that the buyer assumes the risk that the purchased good might be either defective or unsuitable to their needs: see *Connors v. McMillan*, 2020 BCPC 230, citing *Rushak v. Henneken* [1986] B.C.J. No. 3072 (BCSC) affirmed 1991 CanLII 178 (BCCA). This principle has some exceptions, including fraudulent

or negligent misrepresentation. A seller is not entitled to rely on the principle of “buyer beware” if they either fraudulently or negligently misrepresented the sold good.

17. Fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer is induced by the false representation to buy the item: see *Ban v. Keleher*, 2017 BCSC 1132 and *Anderson v. Liu*, 2020 BCCRT 989, a persuasive, non-binding CRT decision that is also about a used computer sale.
18. A negligent misrepresentation occurs where a seller fails to exercise reasonable care to ensure representations are accurate and not misleading. If a buyer relies on that misrepresentation in making the purchase, the seller may be responsible for any losses arising from that misrepresentation: *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC).
19. Mr. Leung says Mr. Sherban bought the computer based on Mr. Sherban’s representation that the computer would work once he installed a video card and it did not. He says Mr. Sherban was not honest with him about the computer’s actual condition or functionality and so, he cannot rely on the “buyer beware” principle.
20. Mr. Sherban denies misrepresenting the computer. He says Mr. Leung bought the computer “as is” and the computer was actually working when he sold it to Mr. Leung.
21. Based on the submitted evidence, I prefer Mr. Leung’s position that the computer was not working when he bought it from Mr. Sherban. I find Mr. Sherban’s evidence is internally inconsistent and that he lacks credibility. My reasons follow.
22. As shown in the original purchase receipt and the parties’ texts following the sale, Mr. Sherban did not buy the computer new. He bought it second hand from a private seller “TG” who is not a party to this dispute. Afterwards, Mr. Sherban admitted in his post-sale texts that he had never actually tested the computer himself because he did not have the video card. At the time of the sale, there is no suggestion that Mr. Sherban told Mr. Leung that he was not the original owner and never tested it himself.

As there is also no witness statement from TG or information about that other sale, I find the computer may or may not have been working when Mr. Sherban bought it from TG.

23. Mr. Leung's unrefuted evidence is that he took the computer straight to PC Doctor after purchase without using it. I accept PC Doctor's written diagnosis that the computer's motherboard was not booting up immediately after the sale. As it is common knowledge that a computer's motherboard is the central and essential part of a working computer system, I find the computer was not working when Mr. Sherban sold it to Mr. Leung. So, I find the representation that the computer was working was incorrect.
24. Again, prior to the sale, Mr. Sherban assured Mr. Leung more than once that the computer was "working" and only the video card had been removed. I agree with Mr. Leung that Mr. Sherban said these things to convince him the computer would work with a new card and this was misleading. I find Mr. Sherban failed to take reasonable care in ensuring his representation that the computer was "working" was in fact correct, given that he admittedly never tested the computer himself with a video card. I find Mr. Leung was reliant on these representations because he could not test the computer either until he bought and installed a new video card. I am satisfied Mr. Leung relied on Mr. Sherban's misrepresentations and would not have purchased the computer had he known the motherboard was not working. On balance, I find Mr. Sherban negligently misrepresented the computer.
25. Given this conclusion, I find no need to discuss the implied warranty of durability under the SGA.

Damages

26. In an action for negligent misrepresentation, the applicant is entitled to be put in the position they would have been in if the misrepresentation had not been made: *Ban v Keleher*, 2017 BCSC 113.

27. Mr. Sherban says it is his “understanding” that the Dell warranty was transferred to Mr. Leung because he emailed him TG’s original purchase receipt after the sale. He argues that if Mr. Leung had used the Dell warranty he could have repaired or replaced the computer free of cost. Mr. Leung disagrees and says the Dell warranty was void because the computer was tampered with by removing the video card.
28. Though he does not use these words, I find Mr. Sherban argues that Mr. Leung failed to mitigate his damages by not attempting to repair the computer under the warranty or at all. To establish this, Mr. Sherban has the burden of proving that Mr. Leung failed to make reasonable efforts to mitigate and that mitigation was possible: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51 (CanLII), at paragraph 24.
29. The only evidence about the warranty is in TG’s original receipt that says its hardware had a “Dell Limited Hardware Warranty Initial Year”. Mr. Sherban submitted no additional evidence about the warranty itself and I am not persuaded by Mr. Sherban’s assertion alone that the warranty was transferable or valid. I find Mr. Sherban has not established that Mr. Leung could have mitigated his damages by repairing or replacing the computer under this warranty.
30. Mr. Leung says that in addition to the \$800 video card and \$600 purchase price, it would cost \$1,100 or more to repair the computer, which was cost prohibitive. Mr. Sherban disagrees. He says Mr. Leung would have bought the video card anyways and he could have replaced the new motherboard for only \$100.
31. There is no quote in evidence from PC Doctor and no evidence about the cost to buy a new motherboard for this gaming computer. However, the computer’s original purchase price from Dell was \$2,549.99 and so, I find it is not an inexpensive computer. Also, Mr. Leung’s invoice for the video card shows it cost him \$700, plus \$100 for the installation. I find Mr. Leung is the more credible of the 2 parties and a quoted repair cost of \$1,100 is more consistent with these other prices. So, I accept the repairs for this computer would be at least \$600. In these circumstances, I find it was reasonable that Mr. Leung did not to attempt to repair the computer.

32. Given the repair costs, I accept Mr. Leung's submission that this computer, without a working motherboard, has no little or no value given its function. I find Mr. Leung is entitled to reimbursement of the \$600 purchase price.
33. Mr. Sherban does not request the computer be returned to him and he rejected Mr. Leung's earlier offers and so I make no order for Mr. Leung to return the computer, which as noted above I find has no value in its unrepaired state.
34. Mr. Leung also claims reimbursement of \$77.28 for PC Doctor's diagnosis as a dispute-related expense, which is supported by a receipt. This expense is not actually a dispute-related expense. Instead, I find it is part of Mr. Leung's damages caused by Mr. Sherban's misrepresentation about the computer. I find Mr. Sherban must also reimburse Mr. Leung \$77.28 for the diagnosis.
35. Mr. Leung did not claim reimbursement for the video card or the installation cost and so, I make no order about it.
36. The *Court Order Interest Act* applies to the CRT. Mr. Leung is entitled to pre-judgment interest on the \$677.28 damages award from date of loss to the date of this decision. The interest equals \$1.34.
37. 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. I find Mr. Leung is entitled to reimbursement of \$125.00 for his paid CRT fees. Mr. Leung did not claim any actual dispute-related expenses.

ORDERS

38. Within 30 days of the date of this order, I order Mr. Sherban to pay Mr. Leung a total of \$803.62, broken down as follows:
 - a. \$677.28 as reimbursement for the computer and diagnosis,

- b. \$1.34 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

39. Mr. Leung is entitled to post-judgment interest, as applicable.

40. 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.

41. 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.

Trisha Apland, Tribunal Member