



Civil Resolution Tribunal

Date Issued: March 22, 2022

File: SC-2021-000949

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hanson v. Kondola (dba Kondolas Furniture)*, 2022 BCCRT 320

BETWEEN:

DONALD HANSON

APPLICANT

AND:

PAUL KONDOLA (Doing Business As KONDOLAS FURNITURE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the sale of a power-reclining sofa. The applicant, Donald Hanson, bought the sofa from the respondent Paul Kondola (dba Kondolas

Furniture) on January 12, 2019 for \$1,904. Mr. Hanson says the sofa is defective and despite promising him repairs Mr. Kondola never completely did so. Mr. Hanson claims a \$1,904 refund.

2. As discussed further below, Mr. Kondola denies being advised of any concerns about the sofa, except for Mr. Hanson reporting it was uncomfortable in April 2020. Mr. Kondola says he inspected the sofa and found it in good condition, as he says it was on delivery in 2019. He denies the claim.
3. Mr. Hanson is self-represented, although from his submissions it appears his spouse LH assists him. Mr. Kondola 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). 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.
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. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

6. CRTA section 42 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.
7. 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.
8. I note the parties' submissions about a prior default decision being issued for this dispute, which Mr. Kondola successfully had cancelled. Under the CRTA, the effect of a cancellation is that the CRT dispute returns to the facilitation process, which is what happened here. In Mr. Hanson's final reply submission, he referenced a pending payment hearing in court in March 2022. I do not know whether that occurred or the status of that process. However, for clarity: under CRTA section 59, as the party that filed the CRT default order in court Mr. Hanson "must not take any further steps to enforce that order and must take the steps necessary to discontinue any enforcement process". Given that obligation under CRTA section 59, I find it is appropriate that I resolve this dispute without making further inquiries about the status of that payment hearing.

ISSUES

9. The issues in this dispute are whether Mr. Kondola sold Mr. Hanson a defective or not reasonably durable sofa, and if so whether Mr. Hanson is entitled to the claimed \$1,904 refund.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Hanson must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.

11. It is undisputed Mr. Hanson bought a “best sofa” brand sofa from Mr. Kondola on January 12, 2019 for \$1,904. It is also undisputed the sofa had a “limited lifetime” warranty on its frame and an 18-month warranty on the foam padding. Otherwise, the parties’ versions of events are almost entirely inconsistent.
12. Mr. Hanson says the sofa was delivered on January 12, 2019. He says when he sat on it, the frame broke. Mr. Hanson says Mr. Kondola promised to fix it but did not do anything until 6 months later when he allegedly replaced the sofa’s broken portion. However, Mr. Hanson says the new part had no padding in the seat or arm. He says Mr. Kondola promised to provide foam padding but never did so.
13. Mr. Kondola says he told Mr. Hanson that since comfort was his priority the chosen “best” model sofa was not the best option. He says Mr. Hanson bought it anyway given its measurements and his space options. Significantly, Mr. Kondola denies ever being told the sofa’s frame was broken and says he delivered it in good condition. Mr. Kondola says in April 2020, Mr. Hanson called saying only the sofa was uncomfortable. Mr. Kondola says on inspection the frame was not broken and the sofa was fully functioning. Mr. Kondola also denies ever replacing a part of the sofa as Mr. Hanson alleges. Mr. Kondola further denies ever promising to provide foam padding for the sofa as Mr. Hanson alleges.
14. Apart from warranty information, Mr. Hanson’s evidence is limited. He filed 2 black and white photos, and despite his submission, I cannot tell from the photos that there is insufficient padding. To the contrary, the quilted-appearance of the cloth-covered sofa appears to indicate there is padding, although one area of the sofa appears more worn than the rest. Given the passage of time, I cannot conclude this is anything other than normal wear and tear.
15. The only other evidence Mr. Hanson submitted was a December 2021 invoice for foam padding for the sofa, for \$1,280.98 from The Recovery Room. Given this was almost 3 years after the sofa’s purchase, I place no weight on this evidence. Notably, there is nothing critical in this invoice suggesting the sofa was likely defective on purchase.

16. As noted, Mr. Hanson says Mr. Kondola provided a replacement part that had the alleged broken frame. He supplied no evidence of this, and as noted Mr. Kondola denied this ever happened and says the sofa model does not come in parts. I find nothing turns on this since on Mr. Hanson's own evidence, the broken frame issue was fixed. In other words, while I find it unproven the sofa had a broken frame soon after purchase, nothing turns on it. Mr. Hanson does not argue the alleged broken frame (which I find unproven) was repaired negligently. I have found above that Mr. Hanson has not proved the sofa unreasonably lacks foam padding. I also find it unproven that Mr. Kondola promised to add additional padding and failed to do so.
17. As noted, Mr. Hanson has the burden to prove his claim. In short, I find Mr. Hanson has not proved the sofa was defective or not reasonably durable, as required under the *Sale of Goods Act*. The fact that Mr. Hanson may have found the sofa uncomfortable over a year after purchase (as shown in Mr. Kondola's submitted "house call list") does not mean Mr. Kondola sold a defective sofa.
18. Given the above, I dismiss Mr. Hanson's claim because I find he has not proved Mr. Kondola sold a defective or not reasonably durable sofa. So, I find Mr. Hanson is not entitled to the claimed refund.
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. As Mr. Hanson was unsuccessful, I find he is not entitled to reimbursement of CRT fees or expenses. Mr. Kondola did not pay fees or claim dispute-related expenses.

ORDER

20. I dismiss Mr. Hanson's claim and this dispute.

Shelley Lopez, Vice Chair