



Civil Resolution Tribunal

Date Issued: April 21, 2022

File: SC-2021-008534

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Benrabah v. Nellist*, 2022 BCCRT 456

BETWEEN:

MOHAMMED BENRABAH

APPLICANT

AND:

GRAYSON NELLIST

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a boat sale. The respondent, Grayson Nellist, sold the applicant, Mohammed Benrabah, a boat in September 2021. Mr. Benrabah says when he later

received the keys in November 2021 the boat was inoperable. Mr. Benrabah claims \$4,331 for the cost of boat repairs.

2. Mr. Nellist says the boat “ran perfectly” when he sold it to Mr. Benrabah, including when he started it up for Mr. Benrabah.
3. The parties are each 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). CRTA section 2 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, the parties in this dispute call into question each other’s credibility. Credibility of 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.

ISSUES

8. The issues in this dispute are:
 - a. Whether Mr. Nellist misrepresented the boat he sold Mr. Benrabah or whether the boat was defective or not reasonably durable, and
 - b. If so, whether Mr. Benrabah is entitled to the claimed \$4,331.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Benrabah 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. I note Mr. Benrabah did not provide any documentary evidence or any final reply submission, despite having the opportunity to do so.
10. In August 2021, Mr. Benrabah texted Mr. Nellist about his advertisement for a used boat, a 2001 Bayliner Capri for \$1,750. Mr. Benrabah offered to buy the boat without having yet seen it.
11. Based on a text exchange in evidence, Mr. Benrabah viewed the boat on September 3, 2021 and sent a \$300 deposit for it. At Mr. Benrabah’s request, Mr. Nellist sent him 2 videos of the boat on the water. Mr. Benrabah replied, “Thanks” and what appears to be “looks good.” The parties texted back and forth and as of October 12, 2021, Mr. Benrabah had made further payments but still owed \$200 for the boat.
12. On October 12, 2021, Mr. Benrabah texted Mr. Nellist saying he was “about to send you some cash” but he cleaned out the boat and could not find any PFDs (personal flotation devices) or keys. Mr. Nellist texted he had forgotten to deliver the keys and

the parties ultimately agreed that Mr. Nellist should mail the keys. Mr. Benrabah also promised to send the outstanding \$200. I infer Mr. Benrabah paid the \$200 before he picked up the boat.

13. On October 27, 2021, Mr. Benrabah texted Mr. Nellist that he tested the boat “for winter prep and cleaning” but it would not start up. Mr. Benrabah said a mechanic was coming the next day to provide a diagnosis. Mr. Nellist advised Mr. Benrabah the boat would not start if the choke was not engaged. Mr. Benrabah said he “literally spent 3 hours messing around” but did not address whether he used the choke.
14. Further, while Mr. Benrabah argues that he found problems with “garbage, grease” when he opened the boat hull, he did not say this in the October 2021 texts with Mr. Nellist. Similarly, in his October 2021 texts he did not mention a dead battery or that the “carb and gaskets” needed to be replaced.
15. Significantly, Mr. Benrabah submitted no evidence from any mechanic in support of his claim. Parties are told to submit all relevant evidence, and proof of damages is clearly relevant. So, given the above I find it unproven the boat was defective or not reasonably durable when sold. I also find Mr. Benrabah has not proven his claimed \$4,331 in damages. I dismiss his claim.
16. 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. No CRT fees were paid and no dispute-related expenses were claimed.

ORDER

17. I dismiss Mr. Benrabah’s claim and this dispute.

Shelley Lopez, Vice Chair