



Civil Resolution Tribunal

Date Issued: April 27, 2022

File: SC-2021-007207

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Majer v. Kaffka dba Seacoast Homewares*, 2022 BCCRT 490

BETWEEN:

GEORGE MAJER also known as AL MAJER; ALVIN MAJER

APPLICANT

AND:

ERICK JAMES KAFFKA (Doing Business As SEACOAST HOMEWARES)
and ALICIA KAFFKA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a deposit for a fire table.
2. The applicant, George Majer aka Al Majer; Alvin Majer, says he paid a \$680 deposit towards a fire table made by the respondent, Erick James Kaffka (dba Seacoast

Homewares), which he never received. The respondent Alicia Kaffka is Mr. Kaffka's wife.

3. Mr. Majer seeks a refund of his deposit because Mr. Kaffka refused to complete the fire table's sale. Mr. Kaffka says he refused to complete the sale due to Mr. Majer's behaviour, and agrees Mr. Majer is entitled to a refund, minus material and labour costs, and various other expenses. Mrs. Kaffka says she should not be named in this dispute.
4. The parties are each 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.
7. Section 42 of the CRTA says that 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.

ISSUE

9. The issue in this dispute is whether Mr. Majer is entitled to a refund of his \$680 deposit.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Majer must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. It is undisputed that on May 6, 2021, Mr. Majer responded to a Facebook Marketplace advertisement for a made-to-order fire table from Mr. Kaffka. The parties arranged for Mr. Majer to attend the Kaffkas’ home and view Mr. Kaffka’s workmanship. When Mr. Majer attended at the Kaffkas’ home, only Mrs. Kaffka was present. Mr. Majer says Mrs. Kaffka told him it was a 4-week delivery time, and Mr. Majer asked if it would be okay to pick up the fire table in 6-8 weeks to line up with when they moved into their new home. Although the Kaffkas now say the general timeline for their fire table business is minimum 6-8 weeks, in her statement Mrs. Kaffka does not deny the conversation with Mr. Majer took place. Given Mr. Majer did not follow up with the Kaffkas until 8 weeks after ordering anyway, I find nothing turns on this. In any event, it is undisputed Mr. Majer agreed to buy a fire table for a total price of \$1,380. Later that day he paid a \$680 deposit via e-transfer to Mr. Kaffka.
12. Mr. Majer says approximately 8 weeks later, on July 3, 2021, he began following up with Mr. Kaffka about his fire table. Text messages in evidence show that Mr. Majer attempted to contact Mr. Kaffka between July 3 and 6, 2021 with no response. Mr. Majer says that because the Kaffkas’ home is where he initially viewed the tables and

made the agreement to purchase, he and his wife went back to their home to follow up about the fire table.

13. The parties disagree about what happened at the home on July 6, 2021. Mr. Majer says he knocked on the door and no one answered, though he could hear people in the home and the Kaffkas' car was in the driveway. Mr. Majer says he eventually left after speaking to a neighbour and leaving a note on the Kaffkas' vehicle and subsequently a text message to Mr. Kaffka. On the way home, Mr. Majer was contacted by police, who were called by Mrs. Kaffka. The Kaffkas allege Mr. Majer acted violently and with "psychotic behaviour" while at their home, which Mr. Majer vehemently denies. The police report in evidence notes there was insufficient evidence to prove Mrs. Kaffka's claims. Despite Mr. Kaffka telling Mr. Majer and noting in his Dispute Response that Mr. Majer's behaviour was recorded on their security cameras, the Kaffkas failed to provide any such evidence. Parties are told to submit all relevant evidence and clearly the video is relevant. I draw an adverse inference against the Kaffkas and find if the video showed the alleged "psychotic behaviour" they would have submitted it. Because the Kaffkas allege the incident occurred, the burden is on them to prove it. On balance, I prefer Mr. Majer's version of events about what happened on July 6, 2021.
14. After the events of July 6, 2021, Mr. Majer and Mr. Kaffka exchanged some text messages. Mr. Majer requested either a full refund or for Mr. Kaffka to complete the sale and Mr. Majer would pay the remaining balance. Mr. Kaffka refused to complete the sale and told Mr. Majer he could have a \$400 refund, with the remainder paid if the fire table sold. Mr. Majer declined this option and seeks the return of his full deposit.
15. Mr. Kaffka acknowledges Mr. Majer is entitled to a refund, but says material and labour costs, CRT expenses, and expenses for his family member's counselling need to be deducted. Notably, Mr. Kaffka did not provide any evidence for these alleged expenses. In any event, I find Mr. Majer is entitled to a full refund of the \$680 for Mr. Kaffka's breach of the agreement for unreasonably refusing to complete the sale.

16. I find Mr. Kaffka is responsible to pay the \$680 refund, and I dismiss Mr. Majer's claim against Mrs. Kaffka. I say this because the evidence is that although Mrs. Kaffka initially met with Mr. Majer, she was merely assisting Mr. Kaffka in his business, and the deposit was paid to Mr. Kaffka.
17. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Majer is entitled to pre-judgment interest on the \$680 from May 6, 2021, the date he paid, to the date of this decision. This equals \$2.98.
18. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Majer was successful, I find that he is entitled to reimbursement of the \$125 he paid in tribunal fees. Mr. Majer also claims \$16.36 in dispute-related expenses for obtaining the police report and sending Mr. Kaffka a registered letter because Mr. Kaffka blocked his phone calls. I find the \$5 paid for the police report was reasonable and necessary, and I allow it. However, I find the cost for registered mail pre-dated the start of this proceeding and is not a proper dispute-related expense so I do not allow reimbursement for it.

ORDERS

19. Within 21 days of the date of this decision, I order the respondent, Erick James Kaffka, to pay the applicant, George Majer aka Al Majer; Alvin Majer, a total of \$812.98, broken down as follows:
 - a. \$680 in debt,
 - b. \$2.98 in pre-judgment interest under the *Court Order Interest Act*,
 - c. \$125 in tribunal fees, and
 - d. \$5 in dispute-related expenses.
20. Mr. Majer is also entitled to post-judgment interest, as applicable.

21. Mr. Majer's claims against the respondent, Alicia Kaffka, are dismissed.
22. 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.
23. 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.

Andrea Ritchie, Vice Chair