



Civil Resolution Tribunal

Date Issued: June 6, 2022

File: SC-2021-008298

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Potyka v. Future Furniture Ltd.*, 2022 BCCRT 660

BETWEEN:

JAROSLAVA POTYKA

APPLICANT

AND:

FUTURE FURNITURE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This small claims dispute is about a new sofa bed that the applicant, Jaroslava Potyka, bought from the respondent, Future Furniture Ltd. (Future). Ms. Potyka says the sofa's frame and fabric "disintegrated" shortly after purchase and it does not "work as it should". She says the sofa was not durable for a reasonable period of time or fit for its purpose and seeks \$1,006.88 as a refund for the purchase price.

2. Future says when Ms. Potyka bought the sofa it told her there were no returns or refunds because of COVID-19. However, Future says it offered to repair the fabric for free if Ms. Potyka delivered the sofa to Future at her expense, which she rejected. Future says the sofa was “good and reliable” and denies the refund claim.
3. Ms. Potyka is self-represented. Future is represented by an employee or principal, SW.
4. For the reasons that follow, I find Future breached the implied warranty under the *Sale of Goods Act* (SGA) and must refund Ms. Potyka the claimed \$1,006.88.

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 Future breach the implied warranty under the SGA?
 - b. If so, to what extent is Ms. Potyka entitled to a refund?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Potyka as the applicant must prove her claims on a balance of probabilities. I have read all the parties' argument and evidence, including the evidence and submissions the parties sent in late in this proceeding. However, I refer only to what I find relevant to provide context for my decision.
11. The following facts are not disputed. Future is in the business of selling furniture and sold Ms. Potyka a sectional sofa bed in June 2021 for \$1,006.88. The sofa bed was not in the store at time of sale. Ms. Potyka paid a \$450 deposit on June 30, 2021 after viewing a sample or floor model. The sofa arrived at Future's store on July 25, 2021. Ms. Potyka paid Future the remaining \$556.88 and picked up the sofa bed.
12. The only documents about the sale are Ms. Potyka's 2 credit card receipts for the payments. There is no evidence that Future provided an invoice or that the parties signed a written contract. So, I find there was likely nothing in writing documenting the sale apart from credit card receipts. I come back to this point later.

13. In September 2021, Ms. Potyka says she noticed the fabric tearing or separating at several seams in the sofa's seats and that the armrest was "wiggly".
14. As a result, Ms. Potyka texted Future's representative, SW, about the sofa's issues and sent in some photographs. SW initially declined by text to address any issues and said the issues were not covered under a warranty. However, the parties agree that SW later told Ms. Potyka verbally that Future would repair the torn fabric "for free" so long as she disassembled the sofa and returned it to Future at her own cost.
15. Ms. Potyka says she rejected the offer because it was "not feasible or physically possible" for her to return the sofa at her cost. Further, she says she could not see how the sofa could be properly fixed and did not want a repaired sofa, given she had bought it new only 2 months prior. Ms. Potyka insisted on a full refund, which SW rejected on Future's behalf.
16. SW says that at the time of the sale he "repeatedly" told Ms. Potyka that the sale was final with no returns or refunds, which Ms. Potyka disputes. From the parties' texts, I find SW only told Ms. Potyka about Future's policy after the sale. SW says this "final sale" term is also on Future's website. However, the evidence does not indicate that SW directed Ms. Potyka to any terms or conditions on the website.
17. A general legal principle is that parties will not be bound by contractual terms that they did not agree to. Since there was no written contract, I find it more likely than not the parties had not agreed to any specific terms or conditions other than price and pick-up or delivery. Even if Future's website had the terms and conditions at the time of sale, it does not mean that they became part of the contract. Ms. Potyka did not buy the sofa online and the evidence does not establish that Future took any reasonable steps to bring the online terms to Ms. Potyka's attention before the parties entered into the contract: See *Kobelt Manufacturing Co. Ltd. v. Pacific Rim Engineered Products (1987) Ltd.*, 2011 BCSC 224. So, I find the website terms are not part of this sale's contract. I find the contract was not a "final sale".

18. Instead, I find the implied warranties set out in the SGA applied to this commercial sale of goods. Those implied warranties included that the sofa would be in merchantable or saleable condition, fit for its purpose, and durable for a reasonable period of time.
19. There is no expert or professional evidence before me about the quality of the sofa. Future argues that only Future and the manufacturer can give professional opinions about the sofa's quality. As mentioned, SW says the quality was "good and reliable" and not as Ms. Potyka describes. I find SW's own opinion about the sofa's quality is not impartial and without supporting evidence, I put no weight on it. There is no evidence from the manufacturer about the sofa.
20. Ms. Potyka provided multiple photographs and 2 videos about the quality issues with the sofa's fabric and its components or design. I find Ms. Potyka's videos and photographs are objective evidence documenting defects in the sofa and I find they are plain to see without expert opinion evidence. The photographs show multiple small tears along the seams where the fabric strands have pulled apart. The video shows the fabric is puckered or bunched-up on the seats. Since Ms. Potyka texted pictures of the problems to SW within 2 months of the sale, I accept these fabric issues developed within that time. As there is no evidence or allegation of any unusual use, I find there was likely none. I find it is within an ordinary person's knowledge that a new sofa's fabric should not come apart, tear at the seams, or bunch-up within that short period of time from normal use. I find the sofa fabric was not reasonably durable.
21. I find there were 2 other defects that are apparent from observing the sofa in videos. One defect is that the right armrest is "wiggly", and the other is a defect with the trundle that impacts the sofa's functionality when converting it into a sofa bed.
22. The videos demonstrate that the armrest is attached to the sofa frame by metal brackets and the arm can be removed from those brackets. The video documents a person putting pressure on the brackets and this causes no movement in the brackets themselves. So, I find the brackets are likely screwed tightly to the frame. Yet, after the person inserts the right armrest into the brackets, the videos show the person can

easily wiggle or move it back and forth. The video shows the left armrest does not similarly wiggle. So, I find the wiggle is not a design feature, nor is that argued. I find the “wiggle” is more likely than not a defect in the armrest’s component or design.

23. Turning to the sofa bed conversion, each time the person shown in the video pulled out the trundle part of the sofa to turn it into a bed, the trundle popped out of its metal track on the left side and left a large gap. The person appeared to open it with normal use, not awkwardly or with excessive force. To finish making the sofa bed, the person had to lift the trundle up, insert it into its position on the track, and then push it back onto position. The person demonstrated the issue a couple of times and I accept it is a defect that should not happen when converting the sofa into a bed.
24. I find Future breached the implied warranties of durability and merchantability by selling a sofa with fabric that tore and bunched within 2 months and defects with the armrest and sofa bed conversion.
25. SGA section 56 says a consumer (Ms. Potyka) can sue a supplier (Future) for damages, even if it was not the manufacturer, for a breach of the SGA implied warranties. The next question is whether Mr. Potyka is entitled to the claimed, full refund, for the breach.
26. Though it does not use this legal term, Future argues that Ms. Potyka failed to mitigate her damages by not having it repair the sofa’s fabric for free. It says it offered to repair the fabric at no cost if Ms. Potyka brought the sofa into Future and that Ms. Potyka should not have rejected that offer. It says another customer had the same or similar fabric issues and it fixed them. I note Future did not provide any support for this.
27. Future has the burden to prove failure to mitigate and it has not done so here. First, Future gave no specifics about how it planned to repair the torn fabric or evidence it could be done, such as about the alleged repair for the other customer. Second, the fabric was only 1 of the sofa’s issues and Future says nothing about repairing the armrest and other mechanisms. Considering these factors and that it expected Ms. Potyka to pay for delivery, I find it was reasonable for Ms. Potyka to decline its offer.

I find Future has not proven Ms. Potyka failed to mitigate her damages by not allowing it to repair the fabric. Instead, I find Future should have accepted the returned sofa for a full refund.

28. Ms. Potyka still has the sofa but given the number of defects, as noted above, I find the sofa has little to no resale value. I am satisfied that Ms. Potyka is entitled to a full refund of the purchase price. I find Future must pay Ms. Potyka \$1,006.88 in damages because of its breach of the SGA warranties.
29. Given my conclusion, I find no need to consider Ms. Potyka's arguments that she is also entitled to a refund under the *Business Practices Consumer Protection Act*.
30. The *Court Order Interest Act* applies to the CRT. Ms. Potyka is entitled to pre-judgment interest on the \$1,006.88 damages award from the date of the breach to the date of this decision. The interest equals \$3.20.
31. 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 Ms. Potyka is entitled to reimbursement of \$125 in paid CRT fees. She did not claim any dispute-related expenses.

ORDERS

32. Within 15 days of the date of this order, I order Future to pay Ms. Potyka a total of \$1,135.08, broken down as follows:
 - a. \$1,006.88 in damages,
 - b. \$3.20 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 CRT fees.
33. Ms. Potyka is entitled to post-judgment interest, as applicable.

34. 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.
35. 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