



Civil Resolution Tribunal

Date Issued: July 11, 2022

File: SC-2021-007664

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pastorin dba Beddepot.ca v. Guzzo*, 2022 BCCRT 786

B E T W E E N :

ZENAIDA PASTORIN (Doing Business As BEDDEPOT.CA)

APPLICANT

A N D :

CHIARA GUZZO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This is a small claims dispute about a custom ordered murphy bed. The applicant, Zenaida Pastorin (Doing Business As Beddepot.ca) (Beddepot), says that it delivered a custom murphy bed to the respondent, Chiara Guzzo, but has not received payment in full. Beddepot claims Ms. Guzzo still owes it \$810.20 for the murphy bed.

2. Ms. Guzzo says that the murphy bed she received was not built to the custom measurements she provided and that it came with 2 right-facing legs instead of 1 right-facing leg and 1 left-facing leg. She says that she was required to purchase a new mattress and re-weld the bed leg in order to be able to use the murphy bed and does not owe Beddepot anything further as a result.
3. Beddepot is represented by Michael Mortimore, a non-legal representative. Ms. Guzzo 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. 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. 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 in the interests of justice.
6. 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.

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.

ISSUE

8. The issue in this dispute is what amount, if any, does Ms. Guzzo owe Beddepot for the murphy bed?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, Beddepot must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. It is undisputed that on June 16, 2021, Ms. Guzzo ordered a custom murphy bed from Beddepot that would fit a 16-inch-thick mattress. The evidence before me includes text messages between Mr. Mortimore and Ms. Guzzo. On June 29, 2021, Mr. Mortimore informed Ms. Guzzo by text message that the murphy bed’s price was \$1,520.40. Ms. Guzzo responded and agreed to pay 50% (\$760.20) before delivery and 50% “as soon as” she saw the bed. Based on the text messages, I find that Ms. Guzzo made the first 50% payment on June 29, 2021.
11. The text messages in evidence show that on or about July 4, 2021, Ms. Guzzo began to install the murphy bed and the parties realized that the bed had not been customized to fit Ms. Guzzo’s 16-inch-thick mattress. At around this time, it was also discovered that Beddepot had incorrectly sent 2 right-facing legs for the bed. Beddepot admits that the murphy bed was not customized to Ms. Guzzo’s stated measurements and does not deny that it incorrectly sent 2 right-facing legs.
12. Beddepot says that it made efforts to rectify the issues, but Ms. Guzzo unreasonably refused all of its proposed solutions. It says it offered reductions to the purchase price

as well as to have its team attend at Ms. Guzzo's residence and install the murphy bed with new parts that would fit her mattress. Ms. Guzzo says that Beddepot had originally offered to send her replacement pieces that she could install herself but then retracted that offer. As a result, and based on her dealings with Mr. Mortimore, says she lost confidence in Beddepot's ability to resolve the issues, which she needed resolved immediately due to her personal circumstances. She says Beddepot left her with no choice but to purchase a replacement mattress to fit the murphy bed that she had been sent. It is undisputed that Ms. Guzzo has kept the murphy bed but has not paid Beddepot the remaining \$760.20.

13. While the parties did not mention it, the *Sale of Goods Act* (SGA) applied to this sale. I find that the murphy bed's sale was what is called a "sale by description" under SGA section 17(1). Section 17(1) says that in a contract for the sale of goods by description, there is an implied condition that the goods must correspond with their description. As mentioned, it is undisputed that the murphy bed Ms. Guzzo received did not meet the description Ms. Guzzo had provided. Specifically, that it would fit a 16-inch-thick mattress.
14. So, I find that what was received did not comply with that description and Beddepot breached the implied condition that the murphy bed would correspond with its description when ordered.
15. Section 15(4) of the SGA states that if a purchaser accepts the goods, they have to treat the breach of condition as a breach of warranty. This distinction matters because section 56 of the SGA sets out remedies for a breach of a warranty. In particular, section 56 states that a buyer may make a claim for a reduction in the purchase price.
16. Since it is undisputed that Ms. Guzzo kept and used the murphy bed, I cannot find that she has received no value from Beddepot. As noted, Ms. Guzzo says she had to buy a new mattress to use with the bed she was delivered. Ms. Guzzo also says that she had to engage the help of a family member to re-weld the second right-facing bed leg so that it could be installed on the bed. The evidence includes a July 5, 2021 receipt for \$1,079.20 for a mattress as well as a photograph of the welding work done

on the bed leg. Ms. Guzzo says that because the mattress she purchased cost more than the amount Beddepot claims and because of all the time she and her family members spent rectifying the issues with the murphy bed, she owes Beddepot nothing. I do not agree. Instead, I find that reducing the purchase price is the appropriate remedy for Beddepot's breach of section 17(1) of the SGA.

17. As mentioned above, the evidence shows that Ms. Guzzo had originally agreed to pay \$1,520.40 for the custom murphy bed and she had already paid half this amount before she received the bed, leaving \$760.20 owing. I note that this amount is less than the \$810.20 that Beddepot claims in this dispute. Since this discrepancy has not been addressed by the parties, I rely on the undisputed evidence which is that \$760.20 remained owing for the murphy bed. In order to determine what amount to reduce the purchase price by, I turn to the relevant evidence. The evidence before me includes a July 5, 2021 text message from Mr. Mortimore to Ms. Guzzo. In this text message, Mr. Mortimore proposed to reduce the purchase price by \$200 due to the inconvenience Ms. Guzzo had faced. Though Ms. Guzzo refused this offer, on a judgment basis I find a \$200 reduction to the \$760.20 that Ms. Guzzo refused to pay Beddepot is appropriate. So, I find Ms. Guzzo must pay Beddepot \$560.20 for the murphy bed.
18. The *Court Order Interest Act* (COIA) applies to the CRT. Beddepot is entitled to pre-judgment interest on the \$560.20 from July 5, 2021, the date I find Ms. Guzzo decided to keep the murphy bed, to the date of this decision. This equals \$2.49.
19. 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 Beddepot is entitled to reimbursement of \$125 in CRT fees. Beddepot did not claim any dispute-related expenses.

ORDERS

20. Within 14 days of the date of this order, I order Ms. Guzzo to pay Beddepot a total of \$687.69, broken down as follows:
- a. \$560.20 in debt,
 - b. \$2.49 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
21. Beddepot is entitled to post-judgment interest, as applicable.
22. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Nav Shukla, Tribunal Member