



Civil Resolution Tribunal

Date Issued: July 13, 2022

File: SC-2022-000340

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rule v. Active Life Maintenance Inc.*, 2022 BCCRT 799

BETWEEN:

ILONA RULE and FRED SUCHODOLSKI

APPLICANTS

AND:

ACTIVE LIFE MAINTENANCE INC. and SONYA CHOCHAN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the purchase of a massage bed. The applicants, Ilona Rule and Fred Suchodolski, say the respondents, Active Life Maintenance Inc. (ALM) and Sonya Chohan, sold them a fake massage bed. The applicants seek a refund of the \$3,000 they paid for the bed. The respondents say the bed was not fake and the applicants are not entitled to any refund.

2. Ms. Rule represents the applicants. ALM is represented by its owner, Sunny Chohan. Miss Chohan represents herself.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. The issue in this dispute is to what extent, if any, the applicants are entitled to a refund for the allegedly fake massage bed.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
9. It is undisputed that the applicants responded to an advertisement on Facebook Marketplace for a “Ceragem Master V3 massage bed” posted by Miss Chohan. The applicants admit Miss Chohan was either acting on ALM’s behalf, or on behalf of her father, Sunny Chohan. There is no indication Miss Chohan contracted with the applicants in her personal capacity. So, I dismiss the applicants’ claims against Miss Chohan.
10. After communicating their interest in the massage bed with Miss Chohan through Facebook, Ms. Rule paid a \$200 deposit by e-transfer directly to Mr. Chohan. Miss Chohan then arranged to deliver the bed to the applicants’ home. The applicants paid the remaining \$2,800 in cash when Miss Chohan delivered the bed on January 13, 2022. Miss Chohan provided the applicants with an invoice from ALM for the \$3,000 purchase price.
11. The parties agree the purchase was for a brand new Ceragem massage bed. ALM says Miss Chohan had to remove the box to fit the bed in her car, but ultimately the parties agree the bed was new. The advertisement in evidence describes a “CERAGEM Master V3” massage bed in “New” condition for sale for \$3,000.
12. The applicants say the next day, on January 14, 2022, they unpacked the bed to assemble it and discovered it was not an official Ceragem branded bed, but rather an imitation massage bed. Ms. Rule says she immediately contacted Mr. Chohan who offered her a full refund if she returned the bed, which she agreed to. Mr. Chohan advised Ms. Rule to facilitate the return through Miss Chohan. When contacted, Miss Chohan advised Ms. Rule that Mr. Chohan did not agree to a refund and the bed was Ms. Rule’s to keep, but Ms. Rule was free to sell the bed herself.

13. The evidence before me about the bed's authenticity includes photos showing the difference between an official Ceragem branded bed and the one purchased by the applicants. The applicants also submitted emails from various Ceragem employees who reviewed photos of the bed sent by Ms. Rule. The employees indicated the bed shown in the photos was not a Ceragem bed.
14. The respondents argue the bed is an authentic Ceragem and provided ALM's purchase order invoice from 2014 as well as the original advertisement ALM based its purchase on. The advertisement submitted by the respondents for the beds it purchased in 2014 describe the beds as "Aspverve v3" beds, and notes they are "ceragem v3 type".
15. On balance, given the photos, emails from Ceragem employees, and the details surrounding ALM's original purchase of the bed, I find the bed ALM sold the applicants was not an authentic Ceragem massage bed. The applicants say ALM misrepresented the bed in the advertisement. A misrepresentation is a false statement of fact made during negotiations or in an advertisement that induces a reasonable person to enter into the contract. The seller must have acted negligently or fraudulently in making the representation, the buyer must have reasonably relied on the misrepresentation to enter into the contract, and the reliance "must have been detrimental in the sense that damages resulted" (see: *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110).
16. Fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer was induced by the false representation to buy the item.
17. The applicants submit that ALM knew the massage bed was not an authentic Ceragem and that ALM is in the business of selling massage beds and chairs so would have known it was fake. However, I find the evidence falls short of proving that submission. Because fraud is a very serious allegation, which carries a stigma, it requires evidence that is clear and convincing proof of the elements of fraud, including

the mental element (see: *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7). I find there is insufficient evidence before me to establish ALM's intention to commit fraud in this case.

18. However, I do find ALM negligently misrepresented the massage bed. My reasons follow.
19. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure their representations are accurate and not misleading to the buyer. I find that ALM should have suspected the massage beds it purchased in 2014 were not authentic, given the unclear advertisement ALM based its original purchase on. I find ALM failed to exercise reasonable care to ensure the representations it made about the massage bed were accurate when selling it to the applicants.
20. While the parties did not argue it, I have also considered the *Sale of Goods Act* (SGA), which applies to this sale. I find the massage bed's sale was what is called a "sale by description" under SGA section 17. Section 17(1) of the SGA says that in a contract for the sale of goods by description, there is an implied condition that the goods must correspond with the description. As noted above, ALM undisputedly advertised the massage bed as a Ceragem, which I find it was not.
21. So, I find what the applicants received did not comply with the description as advertised and therefore ALM breached the implied condition that the massage bed would correspond with its description.
22. In summary, I find ALM breached both the implied condition under the SGA and it negligently misrepresented the massage bed to the applicants, inducing them to buy it.
23. Section 15(4) of the SGA states that if a purchaser accepts the goods, they have to treat the breach of implied condition as a breach of warranty. This distinction matters because section 56 of the SGA sets out remedies for a breach of warranty. In particular, section 56 says that a buyer may make a claim for a reduction in the purchase price.

24. Damages for negligent misrepresentation are based on the principle of putting the innocent party in the position they would have been in had the misrepresentation not been made (see: *O'Shaughnessy v. Sidhu*, 2016 BCPC 308). I find that the applicants would not have purchased the massage bed at all if they knew it was an imitation, so refunding the purchase price of \$3,000 is appropriate.
25. However, the applicants still possess the massage bed. Under SGA section 56 and damages for misrepresentation, I find it would overcompensate the applicants if I ordered a full refund of the massage bed. While it is not authentic, there is no indication it does not work. So, I find it has some value. Ms. Rule says an authentic Ceragem sells for around \$5,000, which the respondents do not disagree with. Given the applicants paid \$3,000 for the new, but imitation, massage bed, I find the applicants already paid a discounted price. On a judgment basis, I find the applicants are entitled to a further discount, amounting to a refund of 50% of the bed's purchase price. I order ALM to pay the applicants \$1,500.
26. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$1,500 from January 13, 2022, the purchase date, to the date of this decision. This equals \$4.03.
27. 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 rule. As the applicants were generally successful, I find they are entitled to reimbursement of \$125 in tribunal fees. Ms. Chohan did not pay any tribunal fees. No dispute-related expenses were claimed.

ORDERS

28. Within 21 days of the date of this decision, I order the respondent, Active Life Maintenance Inc., to pay the applicants, Ilona Rule and Fred Suchodolski a total of \$1,629.03, broken down as follows:

- a. \$1,500 in damages,
- b. \$4.03 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$125 in tribunal fees.

29. The applicants are also entitled to post-judgment interest, as applicable.

30. The applicants' claims against the respondent, Sonya Chohan, are dismissed.

31. 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.

Andrea Ritchie, Vice Chair