



Civil Resolution Tribunal

Date Issued: August 2, 2022

File: SC-2022-000405

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kang v. New Country Appliances Inc.*, 2022 BCCRT 873

BETWEEN:

LAMBER KANG

APPLICANT

AND:

NEW COUNTRY APPLIANCES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about appliance defects. The applicant, Lamber Kang, bought a washing machine, drying machine, and accessories from the respondent appliance retailer, New Country Appliances Inc. (New Country). Mr. Kang claims the washing and drying machines are defective and he claims a \$2,100 refund.

2. New Country denies Mr. Kang's claim. It admits that the washing machine leaked. However, it says this defect was not covered by its warranty because Mr. Kang left the appliances exposed to the outdoors. New Country says the drying machine is not defective.
3. Mr. Kang is self-represented. New Country is represented by an employee or principal.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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 whether New Country must refund \$2,100 to Mr. Kang for allegedly defective appliances.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Kang, as the applicant, must prove his claims on a balance of probabilities, which means “more likely than not.” I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. New Country is an appliance retailer and it sold Mr. Kang a washing machine, a drying machine, and some accessories on February 15, 2021 for \$2,100. Though Mr. Kang says he thought that he was buying new appliances, it is undisputed that the appliances he received were actually used. In contrast, New Country says Mr. Kang knew that he was buying used appliances. This is discussed further below.
11. It is undisputed that the washing machine leaked. Mr. Kang says the drying machine was also defective. New Country says the drying machine worked properly but Mr. Kang was not using the proper settings. New Country offered to replace the washing machine with another used washing machine. Mr. Kang has refused the exchange and he has returned both appliances to New Country, demanding a full refund.

Misrepresentation

12. Though Mr. Kang does not specifically say this, I find that he is essentially claiming that New Country misrepresented the appliances’ used condition.

13. A misrepresentation is a false statement of fact made during negotiations or an advertisement that has the effect of inducing a reasonable person to enter the contract: see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308. The usual remedy is rescission, or cancellation of the contract. This means the contract is set aside and the parties are restored to their original positions. I find that by returning the appliances to New Country and demanding a refund, Mr. Kang has effectively requested rescission of the contract.
14. A negligent misrepresentation occurs when the seller fails to exercise reasonable care to ensure representations are accurate. The buyer must have reasonably relied on the negligent misrepresentation to enter into the contract to their detriment: see *Queen v. Cognos Inc.*, [1993] 1 SCR 87. A fraudulent misrepresentation occurs when the 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 is induced by the false representation to buy the item: see *Ban v. Keleher*, 2017 BCSC 1132.
15. In the Dispute Notice, Mr. Kang says New Country's salesperson told him that the appliances were brand new. However, in his submissions, Mr. Kang only says that the salesperson did not disclose that the appliances were used. Mr. Kang says that he believed that the appliances were new because they were priced about the same as new appliances at other sellers. However, I give this submission little weight because Mr. Kang did not provide any quotes or price listings showing the comparable retail price for new appliances at other retailers.
16. Mr. Kang provided supporting statements from his relatives, MSD and TSM. Both MSD and TSM say that they were present at New Country when Mr. Kang bought the appliances and that the salesperson did not say that the appliances were used. Though both MSD and TSM say that Mr. Kang believed that the appliances were new, neither of them said that the salesperson told Mr. Kang they were new.
17. In contrast, New Country says that it always tells customers that its appliances are used. New Country provided a photograph of a large sign posted in the store that

says that New Country's products are reclaimed goods from manufacturers and include freight damage, overstocks, floor models, and customer returns. Mr. Kang says that he could not read this sign because he cannot read English. New Country's invoice also says that its products are reclaimed goods. However, Mr. Kang says that he also did not read the invoice, which was not signed.

18. Overall, I find that Mr. Kang has not proved that New Country misrepresented the condition of the appliances. Based on Mr. Kang's submissions, MSD's and TSM's statements, and the absence of a statement from New Country's salesperson, I am satisfied that New Country's salesperson did not specifically tell Mr. Kang that the appliances were used. However, I also find that Mr. Kang has not proved that New Country falsely represented that the appliances were new. On balance, I find that Mr. Kang incorrectly assumed that the appliances were new but he has not proved that New Country induced this assumption.
19. For the above reasons, I find that Mr. Kang has not proved that New Country misrepresented the appliances' used condition.

Warranties

20. Apart from the alleged misrepresentations discussed above, the principle of "buyer beware" largely applies to purchases. This means that the buyer assumes the risk that the purchased product might be unsuitable to their needs (*Connors v. McMillan*, 2020 BCPC 230 (CanLII)). However, in British Columbia the "buyer beware" principle is limited by the warranties set out in section 18 of the *Sale of Goods Act* (SGA).
21. Since New Country is in the business of selling appliances, the implied warranties in SGA sections 18(a), 18(b) and 18(c) apply. These provisions say that goods must be reasonably fit for their express or implied purpose, that they are of merchantable quality, and that they will be durable for a reasonable period in normal use.
22. New Country argues that its warranties are limited by the invoice's terms. However, it is undisputed that Mr. Kang did not sign the invoice. Further, New Country does not dispute Mr. Kang's submission that he did not read the invoice or the store signage.

So, I find that Mr. Kang did not agree to waive the implied warranties under SGA section 18 and I find that these warranties apply to this transaction.

23. So, did New Country breach these warranty terms? Mr. Kang says the washing machine leaked and the drying machine did not properly dry clothes. I will consider the warranties relating to each appliance separately.

Washing Machine

24. Mr. Kang says he complained to New Country about the water leaking from the washing machine about 2 weeks after buying it. Since New Country does not dispute this submission, I accept this as accurate.
25. Mr. Kang provided a photograph and video showing water leaking from the washing machine. He also provided a statement from his neighbour, SSL. SSL wrote a May 2, 2022 statement saying that they saw water leaking from the washing machine early in the summer of 2021. Further, New Country sent a technician to check the appliances multiple times and it admits that the washing machine leaked and that this defect was not repairable. Based on the above, I am satisfied that the washing machine was defective.
26. However, New Country says that it is not responsible for the water leak defect because Mr. Kang allegedly kept the appliances in an uninsulated location with outdoor exposure. New Country says this caused the washing machine's housing to freeze, causing a water leak. However, New Country has not provided expert evidence supporting this allegation so I give this submission little weight.
27. In contrast, Mr. Kang says the appliances were kept on a covered, heated veranda with a door protecting them from outdoor exposure. Mr. Kang provided a photograph that appears to show the washing machine placed on a concrete floor on the inside of an exterior wall. Though the photograph appears to show an outdoor opening next to the washing machine, I am unable to determine from the photograph whether this opening can be closed with a door.

28. On balance, I find that New Country has not proved that Mr. Kang installed the washing machine in an improper location. Further, in the absence of expert evidence, I find that New Country has not proved that Mr. Kang caused the damage by exposing the appliance to the cold.
29. Since New Country admits the washing machine was defective, I am satisfied that the washing machine was not reasonably fit for its purpose or was of merchantable quality. Further, since Mr. Kang complained of the water leak within 2 weeks of buying it, I find that the washing machine was not durable for a reasonable period of time under normal use. For the above, reasons, I find that New Country has breached the warranties implied by SGA section 18.
30. Since New Country breached SGA section 18, I find that Mr. Kang is entitled to the remedy in section 56 of the SGA. Section 56(2) says the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty. Since New Country says the washing machine is not repairable, I find that Mr. Kang's losses equal the washing machine's purchase price of \$850, plus \$102 tax. So, I find that New Country owes Mr. Kang \$952 for breaching the implied warranties relating to the washing machine.
31. Mr. Kang also claims \$150 in laundry expenses. Though Mr. Kang claims this amount as a dispute-related expense in the Dispute Notice, I find that Mr. Kang is essentially claiming that this expense was incurred because the washing machine was defective. So, I will consider Mr. Kang's claim for laundry expenses here. However, I find that this claim is unproven because Mr. Kang has not provided any evidence such as receipts or invoices supporting his alleged laundry expenses. So, I dismiss this claim.

Drying machine

32. Mr. Kang says the drying machine was also defective. He says the machine took excessive time to dry clothes and left the clothes damp. New Country says the drying machine was not defective. Rather, New Country says that Mr. Kang's clothing was

drying slowly because he was improperly using the timed dry setting instead of the sensor heat setting.

33. New Country says it tested the drying machine in the store and its tests showed that the drying machine was working properly. However, Mr. Kang provided conflicting statements from his tenants, RK and HK. Both RK and HK say that they went to New Country in January 2021 and watched the store employees demonstrate how to use the machines. RK and HK both say that the drying machine did not work properly even when New Country used the dryer's sensor settings.
34. On balance, I find that Mr. Kang has not proved that the drying machine was defective. I reach that conclusion because both parties have provided conflicting statements about whether the drying machine was working properly and I find both parties' submissions to be equally likely. So, I find that Mr. Kang has not satisfied his burden of proving that the drying machine was defective.
35. For the above reasons, I find that Mr. Kang has not proved that New Country breached the implied warranties under SGA section 18 and I dismiss this claim.

Accessories

36. Mr. Kang also requests a refund for accessories purchased with the appliances, and the environmental handling fee. These accessories included a stacking kit, hoses and a wall mount. However, since Mr. Kang did not provide any supporting submissions or evidence, I find that this claim is unproven and dismiss it.

CRT fees, expenses and interest

37. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Kang is entitled to pre-judgment interest on the \$952 in damages from the date he initially complained of the washing machine leak. Since he purchased the washing machine on February 15, 2021, and he complained of the defect approximately 2 weeks later, I find that the pre-judgment interest starts on March 1, 2021. This interest continues to the date of this decision. This equals \$7.08.

38. 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. Since Mr. Kang is partially successful in this dispute, I find that he is entitled to reimbursement of one-half of the CRT fees. This equals \$67.50.
39. As discussed above, Mr. Kang claims \$150 in laundry expenses as a dispute-related expense. However, I find that Mr. Kang has not proved that this expense was related to his participation in this dispute. So, I dismiss Mr. Kang's request for dispute-related expenses. New Country did not claim dispute-related expenses.

ORDERS

40. Within 30 days of the date of this order, I order New Country to pay Mr. Kang a total of \$1,026.58, broken down as follows:
- a. \$952 as damages,
 - b. \$7.08 in pre-judgment COIA interest, and
 - c. \$67.50 in CRT fees.
41. Mr. Kang is entitled to post-judgment interest, as applicable.
42. 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.

Richard McAndrew, Tribunal Member