



# Civil Resolution Tribunal

Date Issued: October 3, 2022

File: SC-2022-002023

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chang v. Greater Vancouver Associate Stores Ltd.*, 2022 BCCRT 1078

B E T W E E N :

EDWARD CHANG

**APPLICANT**

A N D :

GREATER VANCOUVER ASSOCIATE STORES LTD.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about the sale of winter tires. The applicant, Edward Chang, ordered 4 winter tires online from the respondent, Greater Vancouver Associate Stores Ltd., which was doing business as Canadian Tire (Canadian Tire). Mr. Chang claims Canadian Tire misrepresented the tires' availability. Mr. Chang claims \$873.98 for missed work and lost benefits while waiting for the tires.

2. Canadian Tire denies Mr. Chang's claims. It says that it is not responsible for Mr. Chang's missed work and that there is no guarantee that merchandise sold on its website will be immediately available. Further, Canadian Tire says that Mr. Chang should have purchased winter tires earlier in the season.
3. Mr. Chang is self-represented. Canadian Tire is represented by a general manager.

## **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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Canadian Tire misrepresent its online inventory to Mr. Chang? If so, what is the remedy?
  - b. Did Canadian Tire negligently process Mr. Chang's tire order? If so, what is the remedy?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Mr. Chang must prove his claims on a balance of probabilities (meaning "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. The following facts are not disputed:

- Mr. Chang ordered 4 WinterTrek tires online from Canadian Tire at 10:36 pm on December 30, 2021.
- There was a snow storm in late December 2021 and early January 2022 in the lower mainland area where Mr. Chang ordered the tires.
- Canadian Tire's December 30, 2021 sales invoice said that the tires would be available for pickup at its retail store on January 3, 2022.
- Canadian Tire sent Mr. Chang a January 2, 2022 email saying that his tire order was delayed.
- On January 5, 2022, Canadian Tire told Mr. Chang that only 3 of the 4 ordered tires were in stock at the store. Canadian Tire said it was waiting for the final tire's delivery to the store.

- On January 7, 2022, Canadian Tire told Mr. Chang that the fourth tire was still on its way to the store.
- On January 7, 2022, Mr. Chang cancelled his tire order and he ordered another set of winter tires from a different Canadian Tire store.
- Canadian Tire did not charge Mr. Chang for the original tire order.

### ***Misrepresentation***

11. Although Mr. Chang does not specifically use these words, I find he is essentially claiming misrepresentation. A “misrepresentation” is a false statement of fact, made in the course of negotiations that has the effect of inducing a reasonable person to enter into the contract. If a seller misrepresents the product, the buyer may be entitled to compensation for losses arising from that misrepresentation (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)). There are 2 types of misrepresentation: fraudulent and negligent misrepresentation.
12. 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 is induced by the false representation to buy the item (see *Ban v. Keleher*, 2017 BCSC 1132).
13. Based on Canadian Tire’s December 30, 2021 sales invoice, I find that Canadian Tire represented that the tires ordered by Mr. Chang would be available for pickup at its retail store on January 3, 2022. Since it is undisputed that the tires were not available for pickup by that date, I find that this representation was inaccurate.
14. However, I find that Mr. Chang has not proved that Canadian Tire made this incorrect representation intentionally or recklessly. Canadian Tire says that it can have inventory discrepancies between its online inventory information and the instore availability. It says this can occur when an instore customer buys the same product as an online customer. Canadian Tire says that such inventory discrepancies occur more frequently when seasonal products, such as winter tires, are in very high

demand during a winter storm. In the absence of evidence showing that Canadian Tire was aware that its tires were not available when ordered by Mr. Chang, I find Canadian Tire's explanation that its online inventory was inadvertently inaccurate to be plausible and reasonable. So, I find that Mr. Chang has not proved that Canadian Tire fraudulently misrepresented its tire availability.

15. I turn then to negligent misrepresentation. A seller must exercise reasonable care to ensure representations are accurate and not misleading. A failure to exercise this reasonable care is negligent misrepresentation (*Cognos*, cited above). Specifically, in order to prove the tort of negligent misrepresentation, Mr. Chang must show that Canadian Tire owed Mr. Chang a duty of care, its representation was untrue, inaccurate, or misleading, Canadian Tire made the representation negligently, Mr. Chang reasonably relied on it and his reliance resulted in damages (*Cognos*).
16. I find that Canadian Tire owed customers such as Mr. Chang a duty of care. Further, as discussed above, I find that Canadian Tire inaccurately represented its tires' availability online. However, I find that Mr. Chang has not proved that Canadian Tire negligently did so for the following reasons.
17. As discussed above, Canadian Tire says its online inventory records are not necessarily accurate and that there can be discrepancies between its store inventory and its online records. Further, Canadian Tire says that there is no guarantee that a product ordered online will be immediately available. Rather, Canadian Tire's website says that it receives inventory information from its stores typically once a day and inventory changes during the day are not reflected in the website information.
18. Based on Canadian Tire's undisputed submissions about its online inventory system, as disclosed on its website, I find that the standard of care does not require Canadian Tire to continuously and precisely maintain accurate online records. Rather, I find that reasonable care in the circumstances would only require Canadian Tire to provide its available inventory information, pending instore inventory updates.

19. Here, Mr. Chang ordered his tires at 10:36 pm on December 30, 2022. Canadian Tire says that its stores had shortened holiday operating hours at that time. Though Canadian Tire did not provide its specific holiday hours, I am satisfied that its store location was likely closed at 10:36 pm when Mr. Chang placed its order. Further, Canadian Tire says that the store was closed on January 1, 2022 as a holiday. Since January 1, or New Year's Day, is designated as a statutory holiday under section 1 of the *Employment Standards Act*, I am satisfied that Canadian Tire's store was likely closed on January 1, 2022 as it submits. Based on this timing, I find that Canadian Tire acted reasonably by notifying Mr. Chang on January 2, 2022, that his tire order was delayed. So, I find that Canadian Tire did not negligently provide inaccurate inventory information.
20. Further, even if I had found that Canadian Tire had acted negligently, I find that Mr. Chang has not proved that he suffered damages from reasonably relying on the inaccurate online inventory information for the following reasons.
21. First, Canadian Tire notified him on January 2, 2022 that his order was delayed, before Mr. Chang allegedly missed work. Mr. Chang does not explain why he did not cancel his tire order at that time and order alternative tires if he urgently needed the winter tires to commute to work.
22. Further, I find that Mr. Chang has not proved that Canadian Tire's delay in providing the winter tires prevented him from going to work. I infer that Mr. Chang claims that he was unable to drive to work in snowy conditions between January 5 to 7, 2022 without the ordered winter tires. However, Mr. Chang has not explained why he could not take alternative transportation methods to commute to work, such as public transit, taxicabs or ride share services. Based on the above, I find it unnecessary to consider Canadian Tire's allegation that Mr. Chang should have purchased winter tires earlier in the season.
23. Further, even if Mr. Chang had reasonably relied on Canadian Tire's online availability representations, I find that he has not proved the amount of his alleged damages. Though Mr. Chang says that he lost \$873.98 from missing 3 days of work and loss of

benefits, he has not provided any supporting evidence such as work timesheets or pay statements showing that he missed work or the amount of his lost pay.

24. For all of the above reasons, I find that Mr. Chang has not proved that Canadian Tire negligently misrepresented its online inventory and I dismiss this claim. To the extent Mr. Chang argues Canadian Tire was negligent in handling his order, I find this unproven for the same reasons set out above.

25. For the above reasons, I dismiss Mr. Chang's claims.

### ***CRT fees and expenses***

26. 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 he was not successful, I find Mr. Chang is not entitled to reimbursement of his CRT fees. Neither party requested reimbursement of dispute-related expenses, so none are ordered.

### **ORDER**

27. I dismiss Mr. Chang's claims and this dispute.

---

Richard McAndrew, Tribunal Member