



Civil Resolution Tribunal

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File: SC-2022-002248

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Anadarko v. Steal the Deal Liquidators Ltd.*, 2022 BCCRT 1117

B E T W E E N :

TESSARES S. ANADARKO

APPLICANT

A N D :

STEAL THE DEAL LIQUIDATORS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Tessares S. Anadarko bought a sectional couch from Steal the Deal Liquidators Ltd. Ms. Anadarko claims that the couch was defective and broke soon after she bought it. She asks for a \$2,100 refund or a replacement couch. She is self-represented.

2. Steal the Deal denies that the couch was defective. It says that Ms. Anadarko misused the couch. Steal the Deal also says it provided no warranty. It asks me to dismiss Ms. Anadarko's claims. Steal the Deal is represented by its owner, Angelo Bottiglieri.

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 the dispute's parties that will likely continue after the CRT process has ended.
4. 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.
5. 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
7. I will briefly address Ms. Anadarko's claim for a replacement couch. Ordering a party to do something is called an injunction. Under section 118 of the CRTA, the

CRT can only order injunctions in small claims dispute in very narrow circumstances which are not present here. I therefore find that the CRT does not have jurisdiction, or the legal authority, to order Steal the Deal to provide a replacement couch.

ISSUES

8. The issues in this dispute are:
 - a. Is there an express or implied warranty that applies to the couch?
 - b. If so, did Steal the Deal breach the warranty?
 - c. If so, what are Ms. Anadarko's damages?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Ms. Anadarko as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Ms. Anadarko bought the couch for \$1,875 plus tax, for a total of \$2,100. The invoice is dated October 8, 2021, but Ms. Anadarko says she bought it on November 15, 2021. I infer that this later date was the delivery date, since the invoices shows she paid in instalments. The invoice says that "all sales are final".
11. Before turning to the parties' arguments about the couch itself, I will address the applicable law. As a starting point, the law generally treats any sale of goods as final. This is sometimes called the "buyer beware" principle. However, there are exceptions to this rule. One exception is if there is an applicable warranty, which is a contractual term that provides a guarantee about the product. It is undisputed that the parties did not explicitly agree to any warranties for the couch.

12. However, that does not end the matter because the *Sale of Goods Act* (SGA) creates implied warranties in certain circumstances. This means that these warranties apply even though the parties did not agree to them.
13. There are 2 potentially relevant implied warranties in the SGA. The first is found in section 18(a). It says that there is an implied warranty that goods will be reasonably fit for their purpose. However, this warranty only applies in certain circumstances. One requirement is that the seller must rely on the buyer's skill and judgment in buying the goods. There is no evidence in this dispute about the sale process, so I find that this warranty does not apply.
14. The second is found in section 18(c). It says that there is an implied warranty that the goods will be durable for a reasonable period of time having regard to the use the goods would normally be put. This implied warranty applies to all sales of goods, with limited exceptions that do not apply here.
15. Steal the Deal relies on the statement in its invoice that "all sales are final". Steal the Deal essentially says that this statement means that it provided no warranty. However, under section 20(2) of the SGA, commercial sellers like Steal the Deal cannot contract out of the section 18 implied warranties unless the sale is for used goods. There is no suggestion here that the couch was used. So, I find that the implied warranty in section 18(c) applies to the couch. With that, I turn to the facts.
16. Ms. Anadarko says that on January 27, 2022, she leaned on one of the couch's backrests and heard a crack. She contacted Steal the Deal to report the damage and Seal the Deal agreed to send a repairperson to look at the couch. As discussed in more detail below, Steal the Deal alleges that Ms. Anadarko's, or someone else in her household, sat on the backrest.
17. The repairperson attended on February 12, 2022. Ms. Anadarko says that the repairperson initially did not believe her that the couch frame was damaged, but eventually attempted to fix it with "random pieces of wood". She says that the couch was still unstable after these attempted repairs.

18. Ms. Anadarko says that she immediately phoned Steal the Deal to tell them that the repairperson had not fixed the couch. She says Steal the Deal told her that it would ask the repairperson for a report.
19. Ms. Anadarko says that Steal the Deal did not report back about what the repairperson said. On March 22, 2022, she emailed for an update. She told Steal the Deal that she had opened the bottom of the couch and saw that the manufacturer's workmanship was poor. She said that many of the internal joists were "not fastened properly". She gave Steal the Deal several photos of the couch's interior.
20. Steal the Deal responded that it would send the photos to the repairperson and wait to hear back from them. Steal the Deal offered to "fix anything that isn't right". In response, Ms. Anadarko refused to allow the repairperson to return and instead demanded either a refund or a new couch. Steal the Deal refused a refund and told her that according to the repairperson the damage was from misuse.

Was the couch reasonably durable?

21. Ms. Anadarko essentially makes 2 allegations about the couch's quality or durability. The first relates to manufacturing defects. Ms. Anadarko provided several photos of the couch's frame that she says show manufacturing errors, mainly the way the wood joists were fastened (or insufficiently fastened) with nails and staples. Notably, these photos show places where Ms. Anadarko believes that the couch is at risk of breaking, even though it has not broken yet. I find that these photos do not prove that the couch is not reasonably durable. I say this because there is no expert evidence, for example from a furniture repairperson, that the manufacturing quality was below a reasonable standard. Expert evidence is generally required to prove something that is outside an ordinary person's knowledge, which I find includes furniture manufacturing standards. The exceptions to this rule are when the work is obviously substandard or the allegation is about something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at

paragraph 112. I find that neither exception applies here. I find that Ms. Anadarko has not proven that manufacturing defects have affected the couch's durability.

22. I come to a different conclusion about the cracked frame. Ms. Anadarko provided a video showing that one of the couch's backrests still wobbles on contact. As mentioned above, she says it broke when she leaned on it. She provided photos of where the frame broke.
23. Steal the Deal says that the repairperson concluded that the crack was due to misuse. Steal the Deal says that Ms. Anadarko told the repairperson someone in her household had climbed up on the back of the couch. Ms. Anadarko says that she lives alone, and she did not climb on the back of the couch. Steal the Deal did not provide the repairperson's report or a statement from the repairperson. I find that Steal the Deal has not proven that Ms. Anadarko misused the couch by climbing on it. I agree with Ms. Anadarko that leaning on a couch's backrest is a normal use that the couch should be able to withstand.
24. The couch cracked just over 2 months after Ms. Anadarko bought it. I find that this is not a reasonable period of time. I find that Steal the Deal therefore breached the implied warranty by selling a couch that was not reasonably durable.

What are Ms. Anadarko's damages?

25. I decline to award Ms. Anadarko a full refund. I find that this would overcompensate Ms. Anadarko. When a party breaches a contract, they are only entitled to pay the amount it would take to put the innocent party in the position they would be in if the contract had been performed. Ms. Anadarko bears the burden of proving her claims, and she provided no evidence to suggest that the couch cannot be repaired. Based on the photos of the damage, I find that it likely can be repaired by reinforcing the wood frame. I therefore find that Ms. Anadarko is entitled to the likely repair cost. In the absence of any evidence about the likely cost, on a judgment basis I find that \$400 is a reasonable sum for this repair.

26. While the parties did not raise the issue, I considered whether Ms. Anadarko failed to mitigate her damages by refusing to allow the repairperson to return. The law requires people to act reasonably to limit or minimize their losses when someone else breaches a contract. In the circumstances here, I find that it was reasonable for Ms. Anadarko to refuse to have the same repairperson return. I say this based on the repairperson's failure to fix the issue the first time.
27. I order Steal the Deal to pay Ms. Anadarko \$400.
28. The *Court Order Interest Act* (COIA) applies to the CRT. However, Ms. Anadarko waived her interest claim, so I award none.
29. 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. Ms. Anadarko was partially successful so I find she is entitled to reimbursement of half of her \$125 in CRT fees, which is \$67.50. She did not claim any dispute-related expenses. Steal the Deal did not claim any dispute-related expenses or pay any CRT fees.

ORDERS

30. Within 30 days of the date of this order, I order Steal the Deal to pay Ms. Anadarko a total of \$467.50, broken down as follows:
 - a. \$400 in damages, and
 - b. \$67.50 in CRT fees.
31. Ms. Anadarko is entitled to post-judgment interest, as applicable.

32. 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.

Eric Regehr, Tribunal Member