



Civil Resolution Tribunal

Date Issued: October 27, 2022

File: SC-2022-002311

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cereghini v. Imagewear Canada Co. Ltd.*, 2022 BCCRT 1175

B E T W E E N :

MITCHELL CEREGHINI

APPLICANT

A N D :

IMAGEWEAR CANADA CO. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about allegedly defective boots.
2. The applicant, Mitchell Cereghini, say the respondent, Imagewear Canada Co. Ltd., sold him a defective pair of boots. The applicant says the boots ripped, causing the applicant to fall and injure their hand. The applicant says they already signed

paperwork for a settlement, but the settlement amount was insufficient. The applicant collectively claims \$4,999 in damages for the substantial pain they say they endured, one month of missed work, and the boots' cost.

3. The respondent disputes the applicant's claims. Although the respondent initially said that the parties had agreed to resolve the claims, in submissions it concedes there is no binding settlement agreement. However, the respondent denies that it is responsible for any of the applicant's claims.
4. Mr. Cereghini is self-represented. The respondent is represented by an authorized employee of its insurer, who is a lawyer.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issues in this dispute are:
 - a. Have the parties already agreed to settle the issues in this dispute?
 - b. If not, to what extent, if any, is the respondent responsible for the applicant's claimed damages?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities (meaning more likely than not). The applicant did not provide any documentary evidence nor any final reply submissions despite being provided the opportunity to do so. I have reviewed the parties' submissions and the respondent's evidence but refer only to what I find relevant to provide context for my decision.

Have the parties already agreed to settle the issues in this dispute?

11. In their application for dispute resolution the applicant said they signed paperwork for a settlement, but the settlement amount was insufficient. Similarly, in its Dispute Response, the respondent said the applicant had signed a release, and said the claim was resolved. Another tribunal member considered the alleged settlement agreement in a preliminary decision, but found the alleged settlement agreement was not a basis to refuse to resolve this dispute. The tribunal member did not make any findings about whether the settlement agreement itself was legally binding.
12. In submissions prior to this final decision, the applicant said they declined the settlement offer, and the respondent conceded that there was no binding settlement agreement. No settlement agreement was submitted in evidence. Therefore, based

on the available evidence and submissions, I find the parties have not agreed to settle any of the issues in this dispute. I now turn to the merits of the dispute itself.

To what extent, if any, is the respondent responsible for the applicant's alleged damages?

13. The applicant alleges that the respondent sold them defective boots that caused them to fall and suffer a hand injury. Messages between the parties show that the applicant told the respondent they broke the base of their right thumb. The respondent submitted one photograph of a ripped boot and one photograph of what I infer is the applicant's right hand. I find the photograph of the right hand does not show any obvious injury.
14. As noted, the applicant claims a total of \$4,999 in damages for the cost of the boots, their pain and suffering, and one month's missed work. For the following reasons, I find the applicant has not proved any of their claimed damages. So, I find it is unnecessary for me to determine whether the boots were defective and whether the defective boots caused the alleged hand injury.
15. As noted, the applicant did not provide any documentary evidence, and their submissions were extremely brief. They did not detail or breakdown their claimed damages. There is no evidence to prove when the applicant purchased the boots, or to prove the boots' cost. There are no medical records such as a physician's note or medical chart records to show that they suffered any hand injury, or provide any details of the scope and extent of the alleged injury or its impacts. There is also no evidence to prove that the applicant was unable to work, or lost any income or opportunity to earn income. There are no statements in support of their claims.
16. As noted, the applicant bears the burden of proving their claims. Here, I find they have not met their burden. During the CRT process, parties are told to submit all relevant evidence and the applicant submitted nothing. I find the limited available evidence does not support any of their claimed damages. So, I dismiss the applicant's claims.

17. 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. However, neither party paid any CRT fees or claimed any dispute-related expenses, so I award none.

ORDER

18. I dismiss the applicant's claims and this dispute.

Leah Volkers, Tribunal Member