



# Civil Resolution Tribunal

Date Issued: November 9, 2022

File: SC-2022-002496

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Timmers v. Accents@Home Furniture Inc.*, 2022 BCCRT 1230

B E T W E E N :

TED TIMMERS

**APPLICANT**

A N D :

ACCENTS@HOME FURNITURE INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about a sectional sofa. The applicant, Ted Timmers, purchased the sectional from the respondent, Accents@Home Furniture Inc. (Accents). Mr. Timmers say the sectional is defective and Accents is obligated to provide a refund under 1) a written guarantee, and 2) the implied conditions and warranties of the *Sale of Goods Act* (SGA). He claims a full refund of \$2,520.

2. Accents admits that one piece of the sectional has “structural issues”. It says Mr. Timmers unreasonably refused Accents’ offer to replace the damaged part. It submits that Mr. Timmers seeks compensation for additional damage that Accents is not responsible for. Accents disagrees that it should pay any part of Mr. Timmers’ claim.
3. Mr. Timmers represents himself. Accents’ owner, Deepak Uppal, represents it.
4. For the reasons that follow, I find Mr. Timmers has proven his claim.

## **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. Some of the evidence in this dispute amounts to a “he said, they said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT’s process and found that oral hearings are not necessarily required where credibility is an issue.

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 as follows:
  - a. Did Accents breach the implied warranty of durability under section 18(c) of the SGA or the written guarantee?
  - b. Are any remedies appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Timmers as the applicant must prove his claims on a balance of probabilities. This 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.
11. I begin with the undisputed background. Accents is in the business of selling furniture. Mr. Timmers purchased a sectional sofa from Accents on February 20, 2021. Accents' February 20 invoice shows Mr. Timmers paid \$2,520 in full for the sectional. The sectional consisted of 2 corner seats, 2 armless sections, and an ottoman.
12. The invoice included contract terms on page 2 that I find were binding on the parties. The contract said that any damage or defects reported after 24 hours of delivery would be subject to inspection prior to exchange or return. It also said that all items came with a 1-year manufacturer's warranty for "Frame Construction Only".

13. It is undisputed that Accents delivered the sectional to Mr. Timmers on April 9, 2021. On December 13, 2021, Mr. Timmers' family member emailed Accents to complain that 1) the fabric on the sectional was pilling, 2) the back frame sections did not align, 3) the front frame sections were pronounced and showed through the fabric, and 4) filling was misplaced and pooling in areas.
14. Mr. Timmers' main complaints about the sectional in this dispute are somewhat different. He says that 1) an armless midsection piece has a faulty backrest that moves further back than the others, and 2) a corner piece with an armrest has a faulty seat that sits 5 inches lower than the others. Accents admits the corner piece is faulty. I find the midsection piece is also faulty based on the photos in evidence and Mr. Timmers' submissions about the technicians' visit, discussed immediately below. I find the other allegations about the fabric or filling unproven, but ultimately nothing turns on this. I find the evidence unclear on whether the midsection piece had a "frame construction issue" as the term is used in the warranty. However, I find nothing turns on this for the reasons discussed below.
15. In December 2021 or January 2022, Accents sent its technicians to examine the sectional. There is no evidence from the technicians, such as a report or statement. So, I find Mr. Timmers' submissions about the visit to be undisputed and accurate. Mr. Timmers says the technicians acknowledged the midsection backrest was faulty and they tried, unsuccessfully, to fix it by tightening screws. They also saw that the corner piece was sagging. They cut open its bottom but could not repair it.
16. There is no evidence or argument that Mr. Timmers misused the sofa.
17. In a January 20, 2022 email to Mr. Timmers, Accents denied the sectional had any structural defects. It refused to take further action. Mr. Timmers disagreed in his correspondence. This included a February 21, 2022 demand letter sent to Accents. At this point Mr. Timmers focused his complaints on the midsection backrest and the bottom of corner piece, which as noted are his main complaints in this dispute.

18. Accents decided in a February 24, 2022 email that the corner piece did indeed have a defective frame, and it would replace it. Accents did not explain why it changed its mind. However, Accents disagreed that it should replace the midsection piece. It said it did not “cover the cushion pilling in the warranty”. Notably, Accents did not address Mr. Timmers’ complaint about the midsection’s backrest. Also, I have found that by this time Mr. Timmer’s complaints had shifted away from fabric pilling.
19. Mr. Timmers replied in a March 2, 2022 letter that Accents’ offer was unacceptable. He applied for dispute resolution at the CRT the next month.

***Did Accents breach the implied warranty of durability under section 18(c) of the SGA or the written terms of the parties’ contract?***

20. I will first consider the SGA. Accents is in the business of selling furniture, so I find the implied warranties in 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. Mr. Timmers expressly relies on section 18(c) of the SGA, and I find it appropriate to start there. Section 18(c) requires that the goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale’s surrounding circumstances.
21. Several CRT decisions have considered the application of SGA section 18(c) in connection with couches, sofas, and other furniture. Although CRT decisions are not binding, I find the reasoning in these decisions persuasive. For example, in *Anadarko v. Steal the Deal Liquidators Ltd.*, 2022 BCCRT 1117, the CRT found that a couch frame cracked just over 2 months after applicant bought it. The CRT held that the couch was not reasonably durable. Similarly, in *Potyka v. Future Furniture Ltd.*, 2022 BCCRT 660, the CRT found a sofa was not reasonably durable because of several problems that developed within 2 months. In *Shevchenko v. J.R. Furniture Place Ltd.*, 2018 BCCRT 606, the CRT found that a new sofa and loveseat would be reasonably expected to be “durable for longer than a few months”.

22. In *Mayahi v. 0965658 B.C. LTD. (dba Aldergrove Furniture Warehouse)*, 2020 BCCRT 764, the CRT found that a couch had purely cosmetic cracks and dismissed the applicant's claim. The CRT commented that if the cracks first began to show 2 years after purchase, the couch would still have been reasonably durable.
23. Finally, I note that in *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court set out a number of factors to consider when assessing a used vehicle's reasonable durability, including, age, mileage, nature of use, price paid, reasons for defects, and the parties' expectations as shown by any express warranties. By analogy, I find the sectional's age, nature of use, price, reasons for defects, and express warranties are relevant to this dispute.
24. Here, I find the sectional was not reasonably durable. Mr. Timmer purchased the sectional when it was new. The defects appeared at around 8 months, which I find falls short of the standard of durability of "longer than a few months", as referred to in *Shevchenko*. The deficiencies also appeared within the 1-year manufacturer's warranty for frame construction. I find this suggests the sectional's structure should have lasted about 1 year, and I find the sectional falls short of that standard.
25. I find the defects at issue are serious as they affect the sectional's structure and the seating posture of anyone using it. As noted above, the corner piece has a defective and sagging frame. Photos show the midsection's backrest reclines too far, and its angle does not match the other sections. I find these are significant issues, regardless of whether they were caused by faulty frame construction or something else. I find both problems are more severe than, for example, fabric pilling, or the cosmetic cracks referred to in *Mayahi*. I find the sectional's price was modest, but not to the point that the parties would have reasonably expected it to break down when it did.
26. Given the above, I find Mr. Timmers has proven that Accents breached the implied warranty of durability under section 18(c) of the SGA. The question that remains is what remedy is appropriate.

27. Based on the submissions and evidence before me, I find it likely the sagging corner piece and midsection backrest are both unreparable. This is because 1) Accents offered to replace and not repair the corner section and 2) the technicians tried without success to repair the midsection. So, I find the cost of repairs is not an appropriate measure of damages.
28. Although Mr. Timmers kept the sectional, I find this is not a situation where I should reduce the amount awarded to him. In *Potyka*, the CRT held that a new sofa bed that cost \$1,006.88 had little to no resale value. The sofa had 1) multiple fabric problems, 2) a “wiggly” armrest, and 3) a trundle defect that affected its ability to turn into a bed. The CRT ordered the respondent to provide a full refund. I find a similar analysis applies here. Although I find a person can still sit on the sectional, I find its deficiencies are serious enough to reduce its resale value to little or nothing. Further, no party suggests that the sectional has any particular resale value. So, I order Accents to pay Mr. Timmers \$2,520 as a refund.
29. As noted earlier, Mr. Timmers refused Accents’ February 24, 2022 email offer to replace the corner piece. I considered whether by doing so Mr. Timmers failed to mitigate his damages. However, the emails show that Mr. Timmers treated Accents’ offer as a full and final settlement of all his claims. I find Mr. Timmers acted reasonably because Accents still refused to replace or repair the midsection backrest at the time. Further, Accents did not respond after February 24, 2022 to Mr. Timmers’ multiple letters and emails. It did not suggest replacing the corner piece so that only the midsection backrest would remain at issue in this dispute. Accents has the burden to prove Mr. Timmers failed to mitigate his damages and I find it has not met that burden here.
30. Mr. Timmers expressly waived his claim for prejudgment interest. So, I decline to order any.
31. 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.

I find Mr. Timmers is entitled to reimbursement of \$125 in CRT fees. No parties claimed reimbursement for any specific dispute-related expenses.

## **ORDERS**

32. Within 30 days of the date of this order, I order Accents to pay Mr. Timmers a total of \$2,645, broken down as follows:

- c. \$2,520 as damages for breach of contract, and
- d. \$125 in CRT fees.

33. Mr. Timmers is entitled to post-judgment interest, as applicable.

34. 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.

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David Jiang, Tribunal Member