



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lebo v. Eller*, 2022 BCCRT 1249

BETWEEN:

BRAMWELL LEBO

APPLICANT

AND:

PETER ELLER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about a wooden rail shelving system. The applicant, Bramwell Lebo, undisputedly purchased the shelving system from the respondent, Peter Eller, for \$3,926.72.

2. Mr. Lebo says the shelving system was damaged when he received it. He further says the shelving system's wood finish had deficiencies. Mr. Lebo says Mr. Eller misrepresented the shelving system's quality and breached a warranty. Mr. Lebo seeks either a full \$3,926.72 refund plus \$1,000 to cover the cost of disassembling and shipping the shelving system back to Mr. Eller, or \$3,500 as compensation for Mr. Eller's alleged breach of warranty and misrepresentation.
3. Mr. Eller says the shelving system was not damaged when he sent it to Mr. Lebo. He further says Mr. Lebo caused the wood finishing issue. Mr. Eller denies Mr. Lebo is entitled to any refund or compensation.
4. The parties are each self-represented in this dispute.

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. Did Mr. Eller breach an implied warranty of sale?
 - b. Did Mr. Eller misrepresent the shelving system's quality?
 - c. If yes to either of the above, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant, Mr. Lebo must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
11. The parties did not provide a receipt or other evidence showing when Mr. Lebo purchased the shelving system. However, the following facts are undisputed. Mr. Lebo purchased the shelving system from Mr. Eller's website for \$3,926.72. The shelving system included 8 shelves, 2 small cabinets and 4 rails. Mr. Lebo received the shelving system by Canada Post on February 15, 2022.
12. Mr. Lebo says when he received the shelving system, he noticed it was not properly packaged, which caused the shelving system to be damaged during transit. The evidence includes photographs of the packaged shelving system as received by Mr. Lebo. The photographs show the shelving system was shipped in cardboard and

generously taped around almost the whole package. I do not find it obvious from these photographs that Mr. Eller's packaging was deficient or negligently done.

13. Mr. Lebo's evidence also includes photographs which I find show damaged corners on some pieces of the shelving system. Mr. Eller does not deny these photographs show damage. However, he says the shelving system was not damaged when he sent it to Mr. Lebo. Mr. Eller also says that he packaged the shelving system properly, in accordance with Canada Post's best practice instructions, so he is not responsible for any damage that occurred during transit. In any event, Mr. Eller says it is impossible to tell if the items were damaged in transit or when Mr. Lebo unpacked the items after delivery. I agree it is difficult to determine what caused the damage from the photographs. Though it is possible the pieces were damaged during transit, I find it is also just as likely that the damage occurred when Mr. Lebo unpacked the shelving system. So, I find it unproven that Mr. Eller is responsible for this damage.
14. Mr. Lebo also says the wooden rails for the shelving system were warped when they arrived. Mr. Eller says it is not uncommon for the wooden rails to warp slightly with changes in humidity and temperature. He says this is normal, not a defect, and the rails can still be installed properly. It is undisputed that Mr. Lebo was able to install the shelving system in his home. However, Mr. Lebo says that because the wooden rails were warped, he had to use very large bolts to affix them to the wall. He says the rails are still not straight at the ends so one of the shelving system's cabinets does not sit correctly. A picture of the installed shelving system is in evidence. I find the photograph does not show any obvious issues with the wooden rails.
15. As noted, Mr. Lebo further says the shelving system had issues with its wood finishing. In particular, he says about 1 week after receiving the shelving system, the finish on the wood pieces started to fade, leaving dry, mottled spots. Mr. Eller says the finish used on the wood is tung oil, which takes time to dry and can look uneven until fully dried which can take a few weeks. However, Mr. Lebo says the finish still has not evened out.

16. Based on various photographs in evidence, I find the shelving system's wood finish was uneven around the time Mr. Lebo received the shelving system in late February 2022, and was still uneven, faded and spotty months later. I find the photographs in evidence show that the issues with the wood finish worsened over time. As mentioned, Mr. Eller suggests that Mr. Lebo caused the damage to the shelving system's finish. However, I find this allegation speculative and unproven. Rather, based on the photographs in evidence, I find it more likely than not that the shelving system had deficiencies in its wood finish when Mr. Eller sent it to Mr. Lebo. I address this further below.

Did Mr. Eller breach an implied warranty of sale?

17. Mr. Lebo alleges Mr. Eller breached the implied warranties set out in the *Sale of Goods Act* (SGA). The SGA is legislation that applies to the sale of goods in British Columbia. Section 18(a) of the SGA says that if the buyer implies or says expressly that goods are being purchased for a particular purpose, there is an implied condition that the goods are reasonably fit for that purpose. Section 18(b) says that if goods are bought by description, there is an implied condition that the goods are of merchantable quality. Section 18(c) says that there is an implied condition that goods will be durable for a reasonable period of time having regard to the normal use to which the goods are put.

18. I find SGA section 18 applied to the sale and implied conditions on the shelving system that it would be reasonably fit for its purpose as a shelving system, of merchantable quality, and durable for a reasonable period of time.

19. I will first consider the implied warranty in SGA section 18(b). This implied warranty only applies to a sale by description. Since Mr. Lebo undisputedly purchased the shelving system online, I find the sale was a sale by description. "Merchantable quality", as that term is used in section 18(b), is not defined in the SGA. However, in *Clayton v. North Shore Driving School et al.*, 2017 BCPC 198 at paragraph 100, the court noted that based on a review of the case law, it is not possible to formulate an all-purpose definition of the term. Rather, the concept of merchantability is flexible,

and requires the goods to be of a quality reasonably expected, having regard to all circumstances of the case.

20. Mr. Lebo says Mr. Eller marketed the shelving system on his website as “heirloom quality”. Mr. Lebo did not provide a screenshot or other evidence showing what Mr. Eller’s website says. However, Mr. Eller does not deny marketing the shelving system as heirloom quality and also refers to his products being heirloom quality in his submissions.
21. Here, I find the fact the shelving system was undisputedly marketed as “heirloom quality” a relevant consideration. Considering this representation, and the almost \$4,000 Mr. Lebo paid for the product, I find a reasonable person would have expected the shelving system’s wood to be evenly finished, and for the finishing not to fade within weeks or months of purchase. Given the issues Mr. Lebo encountered with the shelving system’s wood finish, I find it was not of merchantable quality. So, I find Mr. Eller breached the implied warranty in SGA section 18(b).
22. Given this conclusion, I find I do not need to address whether Mr. Eller breached any other warranties in the SGA or misrepresented the shelving system.

What is the appropriate remedy?

23. As mentioned above, Mr. Lebo seeks either a full \$3,926.72 refund plus \$1,000 for the cost of disassembling and shipping the shelving system back to Mr. Eller or a \$3,500 price reduction for the breach of warranty.
24. Under SGA section 15(4) once a purchaser accepts the goods, the implied conditions under the SGA become implied warranties. This distinction matters because SGA section 56 sets out remedies for a breach of warranty. In particular, section 56 says that a buyer may make a claim for a reduction in the purchase price.
25. Since Mr. Lebo undisputedly still possesses the shelving system and has it installed in his home, I find he has accepted the goods and the SGA implied conditions are

implied warranties. So, under SGA section 56, Mr. Lebo is entitled to a reduction in the shelving system's purchase price.

26. How much of a price reduction is appropriate here? While it may not be heirloom quality due to the uneven wood finishing, there is no indication the shelving system does not work. So, I find it has some value. Mr. Lebo says the product he received is worth no more than \$500 and asks for a \$3,500 refund. However, he did not provide any evidence in support of this valuation, so I do not accept it.
27. On a judgment basis, I find Mr. Lebo is entitled to a 50% refund of the shelving system's purchase price. This equals \$1,963.36.
28. Even if I had found Mr. Lebo was entitled to a full refund, I would not have granted the alternative remedy he seeks for the full refund plus the \$1,000 for disassembling and shipping the shelving system. This would require me to also order Mr. Lebo to send the shelving system back to Mr. Eller. An order requiring someone to do something is known in law as "injunctive relief". Injunctive relief is outside the CRT's small claims jurisdiction, except in certain circumstances under CRTA section 118 that I find do not apply here. So, I could not order Mr. Lebo to return the shelving system.

CRT FEES, EXPENSES AND INTEREST

29. The *Court Order Interest Act* applies to the CRT. However, Mr. Lebo expressly waives any claim for pre-judgment interest, so I make no order for interest.
30. 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. Lebo is entitled to reimbursement of \$175 in CRT fees. Neither party claims any dispute-related expenses.

ORDERS

31. Within 21 days of the date of this decision, I order Mr. Eller to pay Mr. Lebo a total of \$2,138.36, broken down as follows:
 - a. \$1,963.36 in damages, and
 - b. \$175 for CRT fees.
32. Mr. Lebo is entitled to post-judgment interest, as applicable.
33. 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.

Nav Shukla, Tribunal Member