



# Civil Resolution Tribunal

Date Issued: November 28, 2022

File: SC-2022-003212

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Steele v. Yaletown Interiors (Richmond) Ltd.*, 2022 BCCRT 1279

**B E T W E E N :**

DARRIN STEELE and DANIEL DESJARDINS

**APPLICANTS**

**A N D :**

YALETOWN INTERIORS (RICHMOND) LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about an allegedly defective sectional sofa. The applicants, Darrin Steele and Daniel Desjardins, bought the sofa from the respondent, Yaletown

Interiors (Richmond) Ltd. (Yaletown). The sofa was manufactured by Palliser Furniture Ltd. (Palliser). Palliser's account manager MS undisputedly repeatedly promised the applicants some refund but never provided it. The applicants claim a \$3,273.76 refund from Yaletown.

2. Yaletown denies the sofa was defective and says Palliser's promises do not bind them. Yaletown says it owes nothing. Palliser is not a party to this dispute.
3. Mr. Steele represents the applicants. Yaletown is represented by an employee or principal.

## **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). CRTA section 2 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. CRTA section 39 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. 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. CRTA section 42 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.

## **ISSUE**

8. The issues in this dispute are:
  - a. Whether the sofa Yaletown sold the applicants was defective,
  - b. Whether Palliser's promises to the applicants are binding on Yaletown, and
  - c. To what extent, if any, are the applicants entitled to the claimed \$3,273.76 refund.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicants must prove their claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. In a Statement of Facts, the parties agree:
  - a. The applicants ordered the sectional sofa from Yaletown in either late December 2020 or early January 2021.
  - b. The applicants had viewed a Yaletown floor model but ordered their sofa based on their own choices of fabric and legs.
  - c. On February 9, 2021, the applicants paid Yaletown \$3,273.76 for the sofa.
  - d. Around the end of April 2021, Yaletown delivered the sofa to the applicants.
11. The applicants say the sofa, a burgundy coloured sectional, was not the same quality as the model they viewed in Yaletown's showroom. Yaletown denies this. The

applicants submitted no evidence or explanation about how the delivered sofa differed from the floor model, apart from the alleged “sagging” defects discussed below. So, I have limited my analysis to that sagging allegation.

12. I return to the relevant chronology. The undisputed evidence is that the applicants complained to Yaletown sometime in August 2021, saying the sofa’s foam seats were not supportive and that they lean to one side when sitting in the middle of the seat. This is consistent with the applicants’ complaints in this CRT dispute where they rely on photos they say show the sofa cushions sag to one side when seated upon and even when no one is sitting on them.
13. In response to the applicants’ complaints, Yaletown sent a technician who took 2 photos of the sofa and determined there were no defects and that the fact the sofa was more worn in some areas was the result of normal wear and tear. More on these 2 photos and the applicants’ photos below.
14. After Yaletown’s assessment, it is undisputed Yaletown referred the applicants to Palliser’s account manager, MS. Text messages in evidence show that between September 2021 and March 2022, MS made various promises to the applicants about addressing the sofa’s issues, including a new sofa at a 50% discount. Nowhere in these messages does MS say Yaletown agreed to provide any compensation or a replacement sofa. The applicants say the sofa was picked up by a technician “Emmanuel” in late October 2021. There is no evidence before me about who Emmanuel worked for, whether it was Palliser, Yaletown, or someone else, and no evidence about which entity received the sofa back from the applicants.
15. In late February 2022, the applicants accepted MS’ offer to borrow a loaner sofa (loaner) from Yaletown, which MS agreed in text messages would help until they received a new sofa that MS said had been ordered. The applicants received the loaner on March 4, 2022, and say they were surprised to find it was a white display or floor model sofa, which they would not have chosen given the “impossible to keep clean” colour. I note the applicants’ text messages to MS at the time did not express any concern about the loaner’s colour.

16. In this CRT dispute, the applicants want a full refund from Yaletown for the sofa they bought and which Emmanuel picked up, despite having the loaner sofa. This is because they say they only took the loaner until a full replacement arrived and because MS promised them a full refund. The new replacement sofa MS promised undisputedly never arrived. The applicants still have the loaner. As referenced above, the applicants declined the opportunity to name Palliser as a respondent in this dispute.
17. In contrast, Yaletown says the sofa was not defective and that it is not bound by MS' promises. Yaletown also says it provided the loaner believing it was a final "solution" after the applicants' repeated attendances at Yaletown's showroom. Yaletown further says it did not understand MS had offered it only as a loaner until a replacement arrived, which I accept as there is no evidence before me to the contrary. More on the alleged defects below.
18. I turn then to Yaletown's liability for MS' promises. Yaletown sold the sofa and Palliser was the manufacturer. There is no evidence before me that would support a conclusion Yaletown is bound to refund the applicants simply because Palliser's account manager MS promised a refund or a new replacement sofa at a discounted price. Yaletown and Palliser are separate legal entities and the text messages in evidence show the applicants knew this. So, I find Yaletown is not bound by Palliser's promises.
19. Next, while Yaletown says its sales contract says, "all sales are final", neither party submitted a copy of that contract. However, the applicants do not deny these were the terms. In any event, I find such a term would not relieve Yaletown from liability if the applicants prove the sofa Yaletown sold was defective.
20. So, the next issue is whether the applicants have proven the sofa Yaletown sold them was defective. First, I find MS' promises on their own do not prove this. I acknowledge that MS' promises and stated efforts, including obtaining the loaner sofa, arguably support a conclusion MS assumed that the sofa was defective, as why otherwise would MS take those steps. However, the text messages between the applicants and

MS do not show MS personally ever assessed the sofa or had anyone from Palliser do so and I find they suggest MS generally wanted to keep the applicants happy. More importantly, Yaletown was not a party to those text messages and Yaletown denies the sofa was defective. So, given the applicants' claim here is against Yaletown, I find the applicants cannot rely on MS' promises and efforts as proof the sofa was defective. Again, as the party alleging the defects, the applicants bear the burden of proving it.

21. I turn then to the alleged defects. The applicants say 3 or 4 months after receiving the sofa in April 2021, it was "sagging desperately in the middle". I find the photos in evidence do not show sagging to this extent, if at all.
22. In particular, the applicants say Yaletown's technician took only 2 photos of the sofa and then left. Yaletown submitted those 2 photos but no statement from the technician. In any event, based on these 2 photos, I cannot see any obvious defect in the sofa. I acknowledge the applicants say Yaletown should have done more to investigate their concerns. However, I find Yaletown's decision not to do so does not mean the alleged defects are proven. Again, the applicants bear the burden of proof.
23. Next, the applicants' own photos show Mr. Steele sitting on the sofa's "left" cushion, wearing baggy sweatpants, with a level on his lap. The level indicates Mr. Steele's lap is somewhat un-level and his body is leaning slightly towards the sofa's center cushion. I find these photos unhelpful since Mr. Steele's lap is not a flat surface and his own body's posture could be an explanation for the leaning.
24. Other photos with just the level on the "left" cushion show the level slopes only slightly towards the sofa's center. However, I cannot tell if the cushion is simply lifted a little higher from the sofa's base at the far edge. I find the applicants' submitted photo with a level on the middle cushion does not show significant sloping, if any. In the absence of evidence from a sofa repairperson or a sofa manufacturer saying the sofa is defective or was not reasonably durable, based on the photos in evidence I find nothing obviously wrong with the sofa. I cannot see any significant sagging. So, I cannot conclude the sofa was defective. While the sofa's cushions are not completely

smooth and flat, the style has an indented stitching pattern across the surface. I find its appearance in the photos equally consistent with normal use over 4 months.

25. While the applicants did not argue it, I also find it unproven the sofa was not reasonably durable as a sofa. The applicants have also not proved the sofa they received from Yaletown was not consistent with what they ordered. So, I find no breach of the *Sale of Goods Act* either.
26. Given I have found the applicants have not proven the sofa was defective, it follows that I find the applicants' claim against Yaletown must be dismissed.
27. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Since the applicants were unsuccessful, I dismiss their claim for reimbursement of CRT fees. Yaletown did not pay fees and neither party claims dispute-related expenses.

## **ORDER**

28. I dismiss the applicants' claims and this dispute.

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Shelley Lopez, Vice Chair