



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Malazdrewicz v. Jag's M.J.M. Furniture Showcase Ltd.*, 2022 BCCRT 1370

B E T W E E N :

JENNIFER MALAZDREWICZ and CAMERON MALAZDREWICZ

APPLICANTS

A N D :

JAG'S M.J.M. FURNITURE SHOWCASE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an allegedly defective “Marliss sectional” sofa or couch. In January 2022, the applicants, Jennifer Malazdrewicz and Cameron Malazdrewicz,

bought the couch from the respondent furniture store, Jag's M.J.M. Furniture Showcase Ltd. (Jag). The applicants say the couch was defective on delivery, with a broken arm piece and an ill-fitting tray/lid for a storage insert. The applicants say that shortly after the couch's supports collapsed and its fabric pilled. The applicants claim \$5,000: a \$4,000 refund plus \$1,000 in damages. They also seek an order that Jag remove the couch from their home at Jag's expense.

2. Jag says the couch's only defect is the broken couch arm piece that Jag undisputedly sent a technician to fix. Otherwise, Jag says its sale was final and that the sectional functions as intended, consistent with its floor model.
3. Mrs. Malazdrewicz represents the applicants. Jag 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. Although the parties' submissions each call into question the credibility of the other party, the credibility of interested witnesses cannot be determined solely by whose demeanour appears most truthful in a courtroom or tribunal proceeding. Determining the most likely account includes assessing its harmony with the rest of the evidence. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.

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.
8. As noted above, the applicants claim a total of \$5,000 plus an order that Jag remove the couch from their home at Jag's expense. There is undisputedly some unspecified monetary value to that requested removal order. I find the requested removal order increases the value of the applicants' claim above the CRT's small claims monetary limit of \$5,000. I also have no jurisdiction under section 118 of the CRTA to order Jag to remove the couch, as that would be a form of injunctive relief (an order to do or stop doing something) that is not provided for under section 118. At the same time, Jag does not seek the couch's return and did not file a counterclaim for it. So, for the above reasons, I decline to make any order about the couch's removal. Rather, my decision below is limited to the \$4,000 refund claim and the claim for \$1,000 in damages.

ISSUE

9. The issue in this dispute is whether the couch Jag sold the applicants was defective, and if so, to what extent, if any, the applicants are entitled to a \$4,000 claimed refund and \$1,000 in damages.

EVIDENCE AND ANALYSIS

10. 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.

11. As noted, in January 2022 the applicants bought the sectional couch from Jag. Jag does not deny the applicants' following complaints that presented within 2 to 3 months of the couch's delivery:
 - a. On delivery, one of the couch's mechanical arms was broken.
 - b. The couch's fabric has significant pilling on it.
 - c. The couch's wooden storage tray/lid does not sit flat on top of the insert for it.
 - d. The couch's seating significantly sags along the front edge.
12. I turn first to the applicable law. As cited by the applicants, section 18(c) of the *Sale of Goods Act* (SGA) says there is an implied warranty that goods will be durable for a reasonable period of time considering the use to which the goods would normally be put. This implied warranty applies to all sales of goods, with limited exceptions that do not apply here. Section 18 also sets out implied warranties of merchantable (saleable) quality and fitness for purpose, which apply to commercial sellers like Jag.
13. There is no expert evidence, for example from a furniture manufacturer or repairer, that the couch's quality was below a reasonable standard. Expert evidence is normally required to prove something that is outside an ordinary person's knowledge. However, the exceptions to this rule are when the item is obviously substandard or the allegation is about something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.)

\$4,000 refund claim

14. I turn then to the applicants' specific complaints. First, the broken mechanical arm. In June 2022, Jag's technician undisputedly replaced it and in the applicants' later submissions they do not mention this as an ongoing issue. So, I find this particular issue was resolved.
15. Second, the fabric pilling. In a June 22, 2022 email, the Jag technician noted the broken arm replacement and also expressly noted that the couch's fabric was pilling

badly, which is consistent with couch photos the applicants submitted. Contrary to SGA section 18(c), I find this is obviously not reasonably durable given the couch at that point was only 5 months old. I note there is no suggestion nor any evidence of misuse by the applicants.

16. Third, the storage insert's tray/lid. The applicants' submitted photos show the wooden tray/lid clearly does not fit fully within its storage insert, and instead the tray/lid's length is just a bit too long for the insert and so one of the tray/lid's short edges sits on top of the insert's lip. As a result, the tray/lid does not sit level. Yet, I find it obvious that the tray/lid was designed to sit level within the storage insert, which is also what Jag's website shows in a close-up photo of the tray/lid seated within the storage insert. This is also consistent with Jag's technician's June 22, 2022 email noting the "lid wouldn't fit in storage box and it is not repairable".
17. In its submissions, Jag says the applicants' couch tray/lid is the same as its floor model, and it submitted a video showing this. I find nothing turns on this. Even if the applicants had bought their couch based on the floor model (and there is no evidence before me they did so), for the reasons set out above I find the applicants would reasonably have expected their new couch to have the tray/lid fit the storage insert. I find the applicants' couch tray/lid was obviously defective and a breach of the implied "merchantable quality" warranty in SGA section 18(b).
18. Finally, the couch's sagging, which I find is the most significant issue. The applicants' submitted photos show significant sagging across the couch's front lower section. In a July 13, 2022 email to the couch's manufacturer, Jag described the issue as "drastic sagging of the seat cushions". Jag further wrote in that email that it understood the sectional couch was a "down-blend" and so "some sinking is expected" but that the applicants' sectional "showed substantial damage with use." Jag concluded that email saying its technician determined the cost for "fixing" each seat was \$250 which Jag wrote was "way too high" for the couch's cost.
19. In this CRT dispute, Jag essentially relies on the manufacturer's email response that the couch's seat cushions "are made this way" and so it was not a manufacturing

defect. Jag also says that because the couch is “down-filled”, it naturally sags and cannot be compared to a stiffer foam-filled couch.

20. I do not accept Jag’s position. While Jag initially described the couch as “down-filled”, it later admitted that the couch was filled with a synthetic polyfill as a down substitute. Notably, Jag did not address the applicants’ submitted photos and videos that show the couch has foam below the polyfill, which compress below the couch’s wire supports when pressed on by a hand. I find this is all inconsistent with Jag’s submission that the applicants needed to just fluff the pillows and avoid sitting in the same spot, because it is a down filled couch.
21. Most significantly, based on Jag’s own July 2022 email to the couch’s manufacturer, Jag perceived the sagging as an obvious defect, just one that was too expensive for it to fix. I find the numerous photos and videos in evidence show the sagging is an obvious defect. I find it does not matter what the sagging’s root cause is, and again I note there is no allegation or evidence of misuse by the applicants. Given my conclusion above, I do not need to decide if the couch’s wire supports in the base cushions were installed incorrectly as the applicants further allege.
22. What about the “final sale” condition that was undisputedly on Jag’s invoice for the couch’s sale? Under section 20(2) of the SGA, commercial sellers like Jag cannot contract out of the section 18 implied warranties unless the sale is for used goods. Here, the couch was new when sold. So, I find the SGA section 18 implied warranties apply to the couch, regardless of the “final sale” term on the invoice.
23. In summary, I find Jag breached the SGA for the obvious defects in the couch’s tray/lid for the storage insert and for the couch’s significant sagging, along with the fabric pilling issue.
24. SGA section 56 says a consumer can sue a supplier for damages, even if the supplier was not the manufacturer, for a breach of the SGA implied warranties. So, what are the applicants’ damages? They still have the couch but want Jag to collect it (a request I have addressed above), so I find that the couch has little to no value in its

current condition. As noted, the evidence of Jag's repair attempts also suggests the couch cannot readily be repaired. In the circumstances, I find the applicants are entitled to a full refund of the purchase price. I order Jag to pay the applicants \$4,000. I note the invoice in evidence shows they paid \$4,065.88 for the couch on December 26, 2021. However, since they claim only \$4,000 as a refund, that is all I allow.

\$1,000 damages claim

25. I turn to the applicants' \$1,000 claim for damages. In her final reply submissions, Mrs. Malazdrewicz said that she had to take 2 days off work to meet with the furniture repair technician and had to spend time and deal with the stress of trying to resolve the issue with Jag. However, the applicants did not directly address this claim and submitted no documentary evidence in support of any wage loss.
26. Generally, when a party breaches a contract, the other party is not entitled to compensation for mental stress or inconvenience. However, an exception to this general rule is when part of the contract's purpose was to provide a "psychological benefit". In those cases, the innocent party may receive modest compensation for inconvenience and discomfort that goes beyond mere frustration or disappointment. See *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30. However, I do not find the couch purchase's purpose was to provide a "psychological benefit". There is also no supporting evidence to establish the claimed stress. Finally, under the CRT's rules compensation for "time spent" is generally only granted under extraordinary circumstances, which I find are not present here. Given the above, I dismiss the \$1,000 damages claim.
27. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicants are entitled to pre-judgment interest under the COIA on the \$4,000. Calculated from March 21, 2022 (when the applicants first sought a refund, a date I find reasonable) to the date of this decision, this interest equals \$38.94.
28. 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. The applicants were successful so I allow their claim for reimbursement of \$175 in CRT fees. The applicants did not claim dispute-related expenses.

ORDERS

29. Within 21 days of this decision, I order Jag to pay the applicants a total of \$4,213.94, broken down as follows:

- a. \$4,000 in damages,
- b. \$38.94 in pre-judgment interest under the COIA, and
- c. \$175 in CRT fees.

30. The applicants are entitled to post-judgment interest, as applicable.

31. 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.

Shelley Lopez, Vice Chair