



Civil Resolution Tribunal

Date Issued: January 18, 2023

File: SC-2022-003644

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Xia v. Sandy's Furniture Ltd.*, 2023 BCCRT 50

BETWEEN:

ZONGCHUNZI XIA

APPLICANT

AND:

SANDY'S FURNITURE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an allegedly defective mattress. On April 14, 2022, the applicant, Zongchunzi Xia, bought a mattress from the respondent, Sandy's Furniture Ltd.

(SFL). Ms. Xia says when the mattress was delivered on May 28, 2022, it was damaged and had “use marks”. SFL refused to replace the mattress, saying it was sold as a sample or floor model. Ms. Xia says her spouse was not told that when he ordered the mattress and that they understood they had bought a new mattress. She claims a full refund of \$2,418, although in later submissions seeks a \$2,159 refund and an order that SFL pay the “return shipping fee”. More on this below.

2. SFL says the mattress was sold as a clearance item and was non-returnable and a “final sale”. SFL says it owes nothing.
3. Ms. Xia represents herself, although her spouse assisted with providing her written submissions. SFL is represented by its owner, Dayna Tukutau.

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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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 issue in this dispute is whether the parties agreed that Ms. Xia's purchase of the mattress from SFL was a "final sale" with a "no returns" term, and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Ms. Xia must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. As noted above, it is undisputed Ms. Xia ordered a mattress from SFL in April 2022 and it was delivered to her at the end of May 2022. It is also undisputed the mattress appeared used on receipt, which I find is confirmed in Ms. Xia's submitted photos that show extensive pilling, multiple pulled threads, and a ripped seam.
11. I turn next to SFL's April 14, 2022 "sales invoice", which is the only documentary evidence SFL submitted. It shows its salesperson was JW, which is consistent with Ms. Xia's evidence. It is a 1-page document, with a handwritten list of the items Ms. Xia bought. In the middle of the document there is a typed stamp, in red, that says "FINAL SALE ONLY No Returns/Exchanges" (capitals in original). There is an asterisk beside this, and certain listed items had an asterisk, including the mattress. However, there is nothing on the face of the document that indicates that the mattress was a used item. Further, the bottom of the invoice also says in pre-printed type "ALL

CLEARANCE ITEMS are FINAL SALE; they can not be returned or refunded” (reproduced as written, capitals in original). Yet, there is also nothing on the face of the invoice that indicated the mattress was a “clearance” item. To the extent SFL argues it, I do not agree that “final sale” reasonably indicated the asterisked items (including the mattress) were on clearance. Even if it did, I find that did not reasonably indicate the mattress was not new.

12. In Ms. Xia’s submissions, her spouse says that he was the one who ordered the mattress, and in particular dealt with JW. It is unclear from the evidence why Ms. Xia was listed as the customer, but in the circumstances I find nothing turns on this, given SFL’s invoice listed the applicant Ms. Xia as the customer and SFL does not argue otherwise.
13. Ms. Xia also submitted a copy of SFL’s April 14, 2022 “delivery ticket”, which similarly shows Ms. Xia as the customer. The document is typewritten and shows Ms. Xia’s name beside “customer signature”. It listed the 4 of the items Ms. Xia bought, and for the mattress it said in typed print underneath, “FINAL SALE ONLY / NO RETURN OR EXCHANGE” (capitals in original).
14. SFL argues that it had a “clearance” sign posted in its store when Ms. Xia ordered the mattress but submitted no evidence of this. Ms. Xia and her spouse deny this. Similarly, SFL submitted no evidence showing that Ms. Xia understood she was buying a sample or floor model mattress. In particular, it submitted no evidence from JW about what JW allegedly explained to Ms. Xia (or her spouse) about the mattress’ condition. Notably, Ms. Xia’s spouse says that he spoke with JW in Chinese and JW never said the mattress was used but instead said SFL had a “brand new” king mattress in stock that it could sell them. Ms. Xia’s spouse says he does not speak English and Ms. Xia speaks only a little. SFL does not address the evidence about Ms. Xia’s spouse’s conversation with JW. Instead, in its arguments SFL simply says that it “displayed and represented the item accordingly as per our usual procedures” and that this included “a clear statement” about the sale’s terms. Again, SFL submitted no evidence of this.

15. First, as noted there is no statement in evidence from JW. Where a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference. An adverse inference is where the CRT assumes a party failed to provide relevant evidence because the missing evidence would not have supported their case. I draw an adverse inference against SFL and find it likely JW never told Ms. Xia or her spouse that the mattress was used. I prefer Ms. Xia's detailed submission that JW never mentioned the mattress was used or was a floor model. Given the delivery ticket and the sales invoice, I also find there is no other evidence that SFL ever told Ms. Xia that the mattress was used or a floor model.
16. Given the limited evidence before me, I find it reasonable to conclude that Ms. Xia understood the mattress was new, bearing in mind she also bought many other items from SFL at the time that were undisputedly new. I turn next to the applicable law.

Warranties – Sale of Goods Act

17. Section 18 of the *Sale of Goods Act* (SGA) sets out a series of implied warranties that apply to the sale of goods. First, that the item will be reasonably durable, and for commercial sellers like SFL, that the item will also be saleable or of merchantable quality and that it will be reasonably fit for the buyer's required purpose.
18. Here, I find the SFL breached the implied warranty that the mattress would be of saleable or merchantable quality for the description provided. This is because I have found SFL provided a floor model mattress that was damaged and was not new as I have found SFL advised Ms. Xia it would be.
19. What about the "final sale" condition that was undisputedly on SFL's invoice for the couch's sale? Under section 20(2) of the SGA, commercial sellers like SFL cannot contract out of the section 18 implied warranties unless the sale is for used goods. So, if the mattress was not sold as a used item, I find the SGA section 18 implied warranties apply to the mattress, regardless of the "final sale" term on the invoice.
20. As noted above, I find the delivered mattress was not new. However, I find the mattress was also not a "used" item, since it was only a sample or floor model. The

mattress had in fact never been used as a mattress, namely to sleep on. So, I find SFL cannot escape liability by relying on the “final sale” term on the invoice.

21. Further, I find SFL breached the parties’ contract by delivering a damaged mattress when it sold Ms. Xia a new mattress.
22. So, what are Ms. Xia’s damages? They still have the mattress but want SFL to collect it. I do not have jurisdiction to order SFL to accept the mattress’ return. That is an order to do or stop doing something, which in law is known as injunctive relief. I do not have jurisdiction nor authority under the CRTA to grant that form of injunctive relief. In addition, Ms. Xia did not provide any evidence about what return shipping would cost. Further, given it is a used floor model that has been in Ms. Xia’s home, I find it unlikely it has significant resale value. SFL also did not seek its return. For these reasons, I decline to order that remedy.
23. In the circumstances, I find Ms. Xia is entitled to a full refund of the purchase price, which undisputedly was \$2,159 plus taxes, for a total of \$2,190.08. I order SFL to pay Ms. Xia the \$2,190.08.
24. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Xia is entitled to pre-judgment interest on the \$2,190.08. Calculated from April 14, 2022 (the date she paid for the mattress) to the date of this decision, this interest equals \$25.68.
25. 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. As Ms. Xia was successful, I find she is entitled to reimbursement of \$125 in paid CRT fees. Ms. Xia also claims dispute-related expenses. First, \$25 she paid for a lawyer’s retrieval of SFL’s company search. I find this expense reasonable and I allow it. Ms. Xia also claims \$300 for translating the parties’ Chinese submissions into English, which is supported by a receipt in evidence. I also allow this as a reasonable expense. Finally, Ms. Xia claims \$56 for a 30-minute consultation with a lawyer. I do not allow this expense as the CRT’s rules say legal fees are only recoverable in extraordinary cases and this is not an extraordinary case.

ORDERS

26. Within 21 days of this decision, I order SFL to pay Ms. Xia a total of \$2,665.76, broken down as follows:
- a. \$2,159 in damages as a refund for the damaged mattress,
 - b. \$25.68 in pre-judgment interest under the COIA, and
 - c. \$450, as \$125 in CRT fees and \$325 for dispute-related expenses.
27. Ms. Xia is entitled to post-judgment interest, as applicable. I dismiss the remainder of Ms. Xia's claims.
28. 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