



Civil Resolution Tribunal

Date Issued: May 30, 2023

File: SC-2022-006143

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pall v. Farnsworth*, 2023 BCCRT 455

BETWEEN:

HARMESH PALL

APPLICANT

AND:

IAN CHRISTOPHER FARNSWORTH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a cell phone purchase.
2. The applicant, Harmesh Pall, bought an iPhone from the respondent, Ian Christopher Farnsworth, for \$900. Mr. Pall says that Mr. Farnsworth advertised the phone as new and in a sealed box. Mr. Pall says that when he got the phone home, he discovered

it was “locked” and that he could not unlock it without the previous owner’s password or the original bill of sale. He claims a \$900 refund.

3. Mr. Farnsworth says they thought the phone was new when they acquired it, and that they did not open the box or inspect the phone before advertising it for sale. Mr. Farnsworth says that Mr. Pall opened the box when they met and saw there was no cord in the box, yet he bought the phone anyway. Mr. Farnsworth argues that Mr. Pall should have known the phone was not new, and that buyer beware applies. Mr. Farnsworth says Mr. Pall is not entitled to a refund.
4. The parties are each self-represented.

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.
9. Mr. Farnsworth did not submit any evidence during the tribunal decision process. In submissions, he states he previously submitted everything, and “if you guys lost it that’s your problem not mine”. I find that Mr. Farnsworth was referring to documents he provided during the facilitation phase of this CRT dispute. However, the case manager advised me that he did not accept any evidence from Mr. Farnsworth, and that he explained to both parties that they must upload all evidence they intend to rely on in the tribunal decision process. Another case manager confirmed that they sent Mr. Farnsworth an email advising them when it was time to provide all their relevant evidence, another email before the deadline reminding them to submit evidence with instructions on how to upload it, and a final email when their evidence was overdue with an extension of time to provide it.
10. Overall, I find Mr. Farnsworth was sufficiently informed about his obligation to upload any evidence they wished to rely on during the tribunal decision process, and they chose not to submit anything. Bearing in mind the CRT’s mandate that includes speed, efficiency, and proportionality, I decided not to ask Mr. Farnsworth again at this late stage whether they wanted to submit any documentary evidence.

ISSUE

11. The issue in this dispute is whether Mr. Farnsworth misrepresented the phone to Mr. Pall, and if so, whether Mr. Pall is entitled to a \$900 refund.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this, the applicant Mr. Pall must prove his claims on a balance of probabilities (meaning “more likely than not”). As noted, Mr. Farnsworth did not submit any evidence. Mr. Pall did not provide any final reply submissions, despite

having the opportunity to do so. I have read all the parties' submitted evidence and arguments but refer only to what I find is necessary to provide context for my decision.

13. Mr. Pall says that on August 24, 2022, he responded to Mr. Farnsworth's ad on Facebook Marketplace for an iPhone 13 Pro Max for \$900. He says the ad stated the phone was brand new, and still sealed in its original box. Mr. Pall did not provide a copy of the ad, but Mr. Farnsworth does not dispute that it contained those statements, and so I accept that it did.
14. The parties arranged to meet at a ferry terminal on August 25, 2022 to complete the sale. During their brief meeting, Mr. Pall opened what appeared to be a sealed box and confirmed the phone was in fact an iPhone 13 Pro Max. However, the phone would not turn on as the battery was not charged. Mr. Pall paid Mr. Farnsworth in cash and got back on the ferry he had just disembarked, to return home. None of this is disputed.
15. Mr. Pall says that he charged the phone when he arrived home and discovered the phone was locked to a previous owner. The evidence shows he texted Mr. Farnsworth immediately, along with a photo showing the phone was locked and required the ID and password used during its original setup to unlock the phone. Mr. Farnsworth denied any knowledge that the phone was locked or previously used. Mr. Farnsworth suggested Mr. Pall try watching YouTube videos about how to unlock a locked phone or take it to an iPhone repair shop. Mr. Farnsworth essentially advised Mr. Pall that while it might cost him an additional few hundred dollars to unlock the phone, he still got a good deal.
16. The parties' text messages show that Mr. Farnsworth then gave Mr. Pall the contact information for a friend, S. Mr. Farnsworth told Mr. Pall that S worked at an Apple Store and that her boyfriend had sold Mr. Farnsworth the phone. Mr. Pall's texts with S show that she was initially cooperative and promised to provide him with the phone's original bill of sale, but she ultimately did not follow through and stopped responding to Mr. Pall.

17. On August 29, 2022, Mr. Pall texted Mr. Farnsworth that he wanted to return the phone for a refund. Mr. Farnsworth declined to take the phone back or provide a refund. Mr. Farnsworth takes the position that buyer beware applies to this sale.
18. Mr. Pall says that Mr. Farnsworth either knew or should have known that the phone was used and locked and that he was misled into believing he was buying a new phone. I find that Mr. Pall is arguing that Mr. Farnsworth misrepresented the phone as being new. Misrepresentation is an exception to the principle of buyer beware.
19. There are 2 types of misrepresentation: fraudulent misrepresentation and negligent misrepresentation. A fraudulent misrepresentation occurs when: 1) a seller makes a false statement of fact to the purchaser, 2) the seller knew the statement was false or was reckless about whether it was true or false, 3) the seller intends for the purchaser to act on the representation, and 4) the misrepresentation induces the purchaser into buying the good: see *Ban v. Keleher*, 2017 BCSC 1132.
20. A negligent misrepresentation occurs when: 1) a seller makes a representation to the purchaser that is untrue, inaccurate, or misleading, 2) the seller fails to take reasonable care in making the misrepresentation, and 3) the purchaser reasonably relies on the misrepresentation to their detriment: see *Queen v. Cognos Inc.*, [1993] S.C.R. 87.
21. Noting that Mr. Farnsworth does not dispute it, I am satisfied that Mr. Farnsworth represented both in the Facebook ad and to Mr. Pall in person that the phone was new when it was, in fact, used.
22. In the parties' text messages after the sale, Mr. Farnsworth consistently stated that they believed the phone was new and in its originally sealed box. I also accept Mr. Farnsworth's submission that the phone was in the same condition when they acquired it as when they sold it to Mr. Pall. Mr. Pall does not say that when he first saw the box, he suspected it had been re-sealed. So, I find the box likely appeared to contain a new phone, and it is possible Mr. Farnsworth was not aware from looking at it that the phone was previously used.

23. However, Mr. Farnsworth did not provide any evidence about what S's boyfriend said about the phone when he sold it to Mr. Farnsworth, or how much Mr. Farnsworth paid for it. I find this is clearly relevant evidence, and Mr. Farnsworth provided no explanation for their failure to provide it. In these circumstances, I find it is appropriate to draw an adverse inference against Mr. Farnsworth. This means that I find Mr. Farnsworth's evidence about what they were told about the phone and what they paid would indicate to a reasonable person that the phone likely was not new or in its originally sealed box.
24. In other words, I find that Mr. Farnsworth should have suspected the phone was used when they acquired it and should have made further inquiries to satisfy themselves that the phone was new and unlocked. In the circumstances, I find Mr. Farnsworth failed to exercise the required reasonable care to ensure their representations about the phone were accurate when reselling it to Mr. Pall.
25. I also find Mr. Pall reasonably relied on Mr. Farnsworth's misrepresentation to his detriment. I acknowledge that the phone's price might have initially raised Mr. Pall's suspicion that the phone might not be as Mr. Farnsworth described it in the ad, as Mr. Farnsworth's undisputed evidence is that stores were selling the same phone new for nearly twice the cost. However, Mr. Pall says the reason he opened the box was to ensure the phone was the correct model before he purchased it. Mr. Pall also undisputedly checked the International Mobile Equipment Identity (IMEI) number on the box during the parties' meeting and confirmed the phone had not been reported lost or stolen. Overall, I find Mr. Pall took reasonable steps to confirm the phone was as Mr. Farnsworth described, despite its low price.
26. Mr. Farnsworth submits that Mr. Pall should have known the phone was used because there was no charging cable or plug in the box. Mr. Pall did not specifically respond to that submission. However, even if I accept that there was no charging cable or plug in the box, there is no suggestion that either party mentioned it to the other at the time. I note that Mr. Farnsworth's own submission is that they understood new phones no longer came with cords. So, I find the alleged missing cord and plug

is insufficient to conclude Mr. Pall should have reasonably doubted Mr. Farnsworth's representations that the phone was new.

27. I accept Mr. Pall's evidence that when the parties discovered the phone would not power on during their meeting, Mr. Farnsworth assured Mr. Pall again that the phone was new. It is also undisputed that Mr. Farnsworth gave Mr. Pall the opportunity to take a photo of their driver's license during the sale, to further assure Mr. Pall that the phone was new and in working order. I find that had Mr. Farnsworth not negligently (and repeatedly) represented the phone as new during their meeting, Mr. Pall likely would not have bought it, or at least would have made efforts to charge the phone and confirm that it worked before paying Mr. Farnsworth.
28. For these reasons, I find that Mr. Farnsworth negligently misrepresented the phone as new. Given this conclusion, I find it unnecessary to consider whether fraudulent misrepresentation applies.
29. The general measure of damages for proven misrepresentations is to put the buyer in the position they would have been in if the misrepresentation had not been made. Here, I find Mr. Pall would not have purchased the phone. So, I find he is entitled to the claimed \$900 for a full refund.
30. I acknowledge that Mr. Pall undisputedly still has the phone. He submits that none of Mr. Farnsworth's YouTube suggestions worked to unlock the phone, and that technicians from 2 phone repair shops and an Apple Store told him the phone could not be unlocked without the original owner's Apple ID. While Mr. Pall did not provide any supporting evidence of his efforts to unlock the phone, I find his submissions are consistent with his text messages to Mr. Farnsworth reporting on his attempts at the time. Further, Mr. Farnsworth does not dispute that the phone is locked and did not pursue in submissions the suggestion that the phone could be unlocked without the original owner's Apple ID.
31. For these reasons, I am satisfied that Mr. Pall cannot unlock the phone, and that it therefore has no residual value. Further, I find Mr. Farnsworth previously expressly

declined the phone's return and did not ask for its return in these proceedings. So, I make no order about the phone's return.

32. The *Court Order Interest Act* applies to the CRT. Mr. Pall is entitled to pre-judgment interest on the \$900 from August 29, 2022, the date he requested a refund, to the date of this decision. This equals \$21.70.
33. 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. As Mr. Pall was successful, I find he is entitled to reimbursement of \$125 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

34. Within 21 days of the date of this order, I order Mr. Farnsworth to pay Mr. Pall a total of \$1,046.70, broken down as follows:
 - a. \$900 in damages for negligent misrepresentation,
 - b. \$21.70 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
35. Mr. Pall is entitled to post-judgment interest, as applicable.
36. 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.

Kristin Gardner, Tribunal Member