



Civil Resolution Tribunal

Date Issued: June 12, 2023

File: SC-2022-006438

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cereghini v. Amer Sports Canada Inc.*, 2023 BCCRT 491

BETWEEN:

MITCHELL CEREGHINI

APPLICANT

AND:

AMER SPORTS CANADA INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a damaged jacket.
2. The applicant, Mitchell Cereghini, says the pocket of their 2012 Arc'teryx Sabre jacket delaminated, peeling away from the jacket's outer shell. Mr. Cereghini says they tried

to fix the jacket but when that did not work, they contacted the respondent, Amer Sports Canada Inc. (Amer), asking for a replacement under the warranty. Amer declined Mr. Cereghini's replacement request. Mr. Cereghini says the jacket's delamination issue properly falls under the warranty and claims a comparable replacement jacket which they value at \$650.

3. Amer denies Mr. Cereghini's claim. It says the damage to Mr. Cereghini's jacket was caused by a rip, which is not covered by the warranty. Amer also says it appears the rip was previously repaired by a third-party, which voided the warranty in any event. Amer says although the jacket was not covered by its warranty, as a goodwill gesture it offered to a) physically assess the jacket to see if it was repairable, or b) provide Mr. Cereghini with a voucher for 30% of the jacket's original value, upon the jacket's return. Amer says Mr. Cereghini refused both offers. It asks that I dismiss Mr. Cereghini's claim.
4. Mr. Cereghini is self-represented. Amer is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.
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. Cereghini seeks an order that Amer provide them with a replacement jacket. This is a request for injunctive relief, which is an order to do or stop doing something. I do not have jurisdiction or authority under the CRTA to grant that form of injunctive relief. However, as Mr. Cereghini has valued a replacement jacket at \$650, I infer their alternative request is for \$650 in damages, which is an order I could make if I were to find in Mr. Cereghini's favour. Nothing turns on the remedy sought here, since as discussed below I dismiss Mr. Cereghini's claim.

ISSUE

10. The issue in this dispute is whether Mr. Cereghini is entitled to the claimed \$650 for the jacket's replacement value.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Cereghini must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. I note Mr. Cereghini provided no documentary evidence despite being given the opportunity to do so.
12. It is undisputed that in August 2022, Mr. Cereghini contacted Arc'teryx Equipment's (Arc'teryx, a division of Amer) customer service centre to request a replacement for his 2012 Arc'teryx Sabre jacket under a limited product warranty. I find the applicable

warranty was for the jacket's "practical lifetime" meaning "until such time that (Amer has) deemed the product to be worn out beyond reasonable repair" and contained certain exclusions. More on the exclusions below.

13. Email evidence shows Mr. Cereghini initially said the 10-year-old jacket "ripped at the hem due to stitching that fell apart." The customer service representative responded that the warranty did not apply to rips or tears and also did not apply to products that had been repaired by third parties, which, from photos, was what appeared to have happened with the jacket. However, the customer service representative offered to have the jacket physically inspected to see if the rip could be repaired. Mr. Cereghini then wrote back that they were not attempting to claim under the warranty for the rip, which they acknowledged was not covered, but rather for the pocket delamination. Mr. Cereghini reiterated their request for a replacement. Again, Amer declined the request, with the 2 options of a physical assessment and possible repair or a voucher offered instead. Mr. Cereghini did not accept either offer and applied for dispute resolution.
14. The difficulty for Mr. Cereghini is that they have provided no evidence of the delamination for which they claim. As noted above, Mr. Cereghini submitted no documentary evidence in this dispute, and in particular, no photo evidence of the issue they say is covered by Amer's product warranty.
15. For its part, Amer submitted two photos of the jacket. One is a shot of the whole jacket showing what seems to be a repaired front right outer panel. The repair appears to be to a rip or tear in the panel. The second is a close-up of a zipper with multiple layers of stitching sewn onto the adjacent fabric. Critically, neither photo shows a delaminated pocket. Nowhere in Amer's submissions or evidence does it describe the issue with the jacket as one of delamination. Rather, Amer consistently refers to the jacket's rip as seen in the photos it says Mr. Cereghini submitted to it.
16. As noted above, Mr. Cereghini bears the burden of proving their claim. Here, I find there is simply no evidence there was a delamination problem with the jacket at all. Without documentary evidence of this issue, I find Mr. Cereghini has not proven their

claim for damages. Even if Mr. Cereghini had provided documentary evidence of the jacket's delamination, it is unlikely I would have found Amer liable for the claimed damages. This is because the 10-year-old jacket would likely have been beyond its practical lifetime. I dismiss Mr. Cereghini's claim.

17. I note Amer is not bound by its earlier offers of a physical assessment and possible repair or a voucher, since Mr. Cereghini refused those offers.

18. 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. Amer was the successful party but paid no CRT fees, and neither party claimed dispute-related expenses.

ORDER

19. I dismiss Mr. Cereghini's claims and this dispute.

Megan Stewart, Tribunal Member