



Civil Resolution Tribunal

Date Issued: July 19, 2023

File: SC-2022-008009

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1077279 BC Ltd. v. McNeil*, 2023 BCCRT 607

BETWEEN:

1077279 BC LTD.

APPLICANT

AND:

BRIAN MCNEIL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the sale of a Kingsong S22 electric unicycle. The respondent, Brian McNeil, bought the unicycle from the applicant, 1077279 BC Ltd. (107), through 107's online store Vancouver Electric Unicycles or vanEUC.com. Mr. McNeil charged

the \$4,514.35 purchase price to his credit card but later said the unicycle was defective after a software update rendered the unicycle inoperable. So, he had his credit card issuer reverse the charge. 107 claims payment of the \$4,514.35.

2. Mr. McNeil says the unicycle was defective on delivery. Contrary to 107's argument about the software update, Mr. McNeil says 107's proposed solution came long after Mr. McNeil's request to return the defective product. Mr. McNeil says he is willing to return the unicycle if 107 provides a pre-paid shipping label.
3. 107 is represented by a director, Thomas Bramble. Mr. McNeil is self-represented.

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. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to 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.

ISSUES

8. The issues in this dispute are a) whether 107 sold Mr. McNeil a defective unicycle, and b) whether 107 is entitled to the claimed \$4,514.35 payment for the unicycle.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, 107 must prove its claim 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. I note 107 did not provide any final reply submissions, despite having the opportunity to do so.
10. On August 25, 2022, 107 sold Mr. McNeil the unicycle for the claimed \$4,514.35. Mr. McNeil undisputedly paid by credit card. The invoice shows 107 delivered it to him by “Canada Post (Expedited)”. However, Mr. McNeil submitted a screenshot of a FedEx tracking document that I find shows the unicycle was delivered to him on September 2, 2022. As discussed further below, Mr. McNeil’s credit card payment was reversed by September 20, 2022.
11. There is nothing on the face of the invoice that addresses any return policy. 107 submitted a copy of its ‘terms and conditions’, but there is no evidence before me that Mr. McNeil ever saw or agreed to those terms before he bought the unicycle. So, I find those terms, which include a term about returning goods, do not bind Mr. McNeil. However, nothing turns on this because this dispute is about whether the unicycle was defective. If it was, then I find 107 breached the parties’ agreement to sell a functioning unicycle and Mr. McNeil was entitled to a refund.
12. In particular, I find the *Sale of Goods Act* (SGA) applies to the parties’ agreement. Section 18 of the SGA sets out several implied warranties that apply to the sale of goods, including that the good was reasonably fit for its purpose, was of saleable quality, and would be reasonably durable considering the use to which it would normally be put and all the sale’s surrounding circumstances.

13. In short, Mr. McNeil says the unicycle was defective on delivery. 107 denies this but acknowledges it became inoperable shortly after, when it says Mr. McNeil tried to install a software update. 107 says that it tried to work remotely with Mr. McNeil on the unicycle's issues but he then reversed the credit card charge.
14. I turn then to the evidence about the unicycle's condition. Mr. McNeil submitted copies of his online support messages with what appears to be the unicycle's manufacturer. It is undisputed these messages were not with 107, and I address his communications with them below. Generally, I find the messages show Mr. McNeil's efforts to get the unicycle operable and powered down.
15. Mr. McNeil also submitted copies of his online customer support exchanges he had with 107. The ticket's title is "New Kingsong S22 will not power down out of the box". This is consistent with Mr. McNeil's submissions, which is that when he unpacked the unicycle, it was already powered on and he was unable to power it down. The first ticket is dated September 3 at 12:32 pm and Mr. McNeil wrote that he had tried 2 apps to try and solve the problem, the unicycle remained powered on. On September 13, 2022, a 107 "support team" employee messaged that Mr. McNeil's unicycle had "issues with the power button right out of the box. I believe an update was stoped or failed and corrupted the software but I won't know for sure until I inspect the device." (quote reproduced as written).
16. The other text messages show 107 was trying to communicate with a third party (perhaps the manufacturer) about the unicycle's issues. On September 20, 2022, 107 asked Mr. McNeil to "reconsider your claim and allow us to fix your wheel." Later that day, Mr. McNeil responded that at that point the riding season was over, and that the unicycle he received was essentially unsafe and unlikely to be repairable.
17. Significantly, 107 messaged Mr. McNeil that the best option was for it to issue a pre-paid shipping label for Mr. McNeil to return the unicycle, and that 107 would not subsequently challenge the credit card payment reversal. Shortly after, 107 advised that it had figured out a way to fix the unicycle but sought payment of the purchase

price first. Mr. McNeil declined, saying he needed to see that the unicycle worked before he would pay for it at that point.

18. First, I find the unicycle was likely defective on delivery. I say this because from the contemporaneous messages I find it was already powered on when Mr. McNeil unpacked it and because Mr. McNeil was unable to get the unicycle to power down. I find it obvious that this is a defect for an electric unicycle. I find 107 breached the parties' agreement and the implied warranties in SGA section 18, by selling Mr. McNeil a defective unicycle.
19. Second, I find Mr. McNeil made reasonable efforts to work with 107, and the manufacturer, to resolve the unicycle's issues. Over 3 weeks had passed since the defective unicycle was delivered before 107 offered a potential solution. In the circumstances, I find Mr. McNeil had no obligation to pay again for the unicycle at that point and was entitled to demand a refund, though I acknowledge he would have paid for the unicycle had 107 implemented the "easy" fix first and that had solved the issue.
20. Third, I find 107 expressly agreed to send Mr. McNeil a pre-paid shipping label for Mr. McNeil to return the unicycle. For reasons 107 does not explain, it reversed its position that it would do that and not pursue payment for the unicycle.
21. In summary, I find 107 sold a defective unicycle. I also find it agreed not to pursue payment for it and would instead send Mr. McNeil a pre-paid shipping label so he could return it, but 107 has not done so. Given all the above, I dismiss 107's claim.
22. Notably, 107 did not seek an order for the unicycle's return, and as noted has not sent Mr. McNeil a prepaid shipping label despite earlier offering to do so. So, I make no order for the unicycle's return, which I note has no value to Mr. McNeil in its defective condition.
23. 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 107 was unsuccessful, I dismiss its claim for reimbursement of CRT

fees. Mr. McNeil did not pay CRT fees and no dispute-related expenses were claimed by any party.

ORDER

24. I dismiss 107's claim and this dispute.

Shelley Lopez, Vice Chair