



# Civil Resolution Tribunal

Date Issued: January 3, 2024

File: SC-2022-007825

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Charles v. Gremmen*, 2024 BCCRT 6

BETWEEN:

GERRY NELSON CHARLES

**APPLICANT**

AND:

BIRGIT GREMMEN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about a custom ankle brace. Gerry Nelson Charles says that he bought an ankle brace from the respondent, Birgit Gremmen. Mr. Charles says that he cannot safely use the brace, and claims a refund of the \$1,200 he paid for it.

2. Ms. Gremmen says that there is no problem with the brace, and that Mr. Charles is not entitled to a refund.
3. Mr. Charles is represented by a family member. Ms. Gremmen represents herself.

## **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). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. 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 decide the dispute based on the documentary evidence and submissions before me.
6. I was initially unable to open 2 pieces of Mr. Charles's evidence. At my request, CRT staff asked Mr. Charles to resubmit the evidence. He did so, and I was able to view it. Normally, I would ask Ms. Gremmen to confirm whether she was able to view Mr. Charles's evidence and if not, give her an opportunity to view and comment on the resubmitted evidence. However, here I find it unnecessary to do so, as my decision does not turn on this evidence in any event.

## **ISSUE**

7. The issue in this dispute is whether Mr. Charles is entitled to a refund for the ankle brace.

## **EVIDENCE AND ANALYSIS**

8. In a civil proceeding like this one, as the applicant Mr. Charles must prove his claims on a balance of probabilities (meaning more likely than not). While I have read all the parties' submitted evidence and arguments, I have only referred to those necessary to explain my decision.
9. As noted, Ms. Gremmen undisputedly fitted Mr. Charles for a custom ankle brace, which he purchased for \$1,200. Mr. Charles says the brace he received is not suitable for his needs, and he claims a refund of the purchase price.
10. Mr. Charles does not specifically articulate the basis of his claim against Ms. Gremmen. I find his claim may be based in breach of contract, breach of the *Sale of Goods Act* (SGA), or negligence.

### ***Breach of contract and SGA***

11. Ms. Gremmen submitted an invoice for the brace in evidence. It shows that Mr. Charles purchased the brace from a company called Ortho Design Inc. (Ortho). I find the inclusion of "Inc." at the end of Ortho's name indicates it is a corporation, based on sections 23 and 24 of the *Business Corporations Act*. A corporation is a distinct legal entity, separate from its shareholders, officers, or employees.
12. While the invoice notes that Ms. Gremmen is the certified orthotist who provided the services to Mr. Charles, I find she did so only as an employee or other representative of Ortho, and not in her personal capacity.
13. So, I find that Mr. Charles did not have a contract with Ms. Gremmen personally, and there is therefore no basis for a claim against her for breach of contract.
14. Similarly, I find that Ortho, and not Ms. Gremmen personally, was the brace's "seller" under the SGA. The SGA contains several implied warranties that may apply to a sale of goods contract. However, as Mr. Charles did not have a contract with Ms. Gremmen personally, I find Ms. Gremmen cannot be personally liable to Mr. Charles for any alleged breach of the SGA.

## ***Negligence***

15. As noted, Mr. Charles's claim may also be based in negligence. Generally, a director, officer or employee of a corporation is not personally liable unless they commit a wrongful act independent from that of the corporation (see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121).
16. Here, it is unclear whether Mr. Charles alleges that Ms. Gremmen committed a wrongful act independent from Ortho. In submissions, Mr. Charles specifically says that he is not questioning Ms. Gremmen's quality of work. However, Mr. Charles says that Ms. Gremmen did not show him a prototype of the brace before ordering it, nor did she explain what the brace would look like or how it would function.
17. I have considered Mr. Charles' arguments to the extent that they can be interpreted as allegations that Ms. Gremmen personally acted negligently. Even if I accepted that Ms. Gremmen was acting outside or independently from Ortho in providing the fitting services, which I find unproven in any event, I would find that Mr. Charles has not established that Ms. Gremmen acted negligently, for the following reasons.
18. To succeed in a negligence claim, Mr. Charles must establish that Ms. Gremmen personally owed him a duty of care, that Ms. Gremmen breached the applicable standard of care, and that he suffered damages caused by Ms. Gremmen's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
19. In claims involving professional negligence, if the conduct in question is of a technical nature or otherwise outside ordinary knowledge, expert evidence is generally required to establish the standard of care and whether it was breached, unless the breach is obvious.
20. I find the standard of care for brace fitting services is outside ordinary knowledge, and it is not obvious on the evidence before me that Ms. Gremmen was negligent. Mr. Charles did not provide any expert evidence about the applicable standard of care or whether Ms. Gremmen's conduct breached it.

21. So, to the extent Mr. Charles alleges that Ms. Gremmen was personally negligent in providing the brace fitting services, I find he has not proven that she was.

### ***Conclusion***

22. For these reasons, I dismiss Mr. Charles's claim against Ms. Gremmen. Nothing in this decision prevents Mr. Charles from filing a claim against Ortho, subject to the applicable limitation period.

### **CRT FEES AND EXPENSES**

23. 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. Mr. Charles was unsuccessful, so I dismiss his claim for CRT fees. Ms. Gremmen did not pay any CRT fees, and neither party claimed dispute-related expenses.

### **ORDER**

24. I dismiss Mr. Charles's claims and this dispute.

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Alison Wake, Tribunal Member