



# Civil Resolution Tribunal

Date Issued: January 10, 2024

File: SC-2022-009365

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hodgins v. HE Universal Appliance Service Ltd.*, 2024 BCCRT 24

B E T W E E N :

STEVEN HODGINS

**APPLICANT**

A N D :

HE UNIVERSAL APPLIANCE SERVICE LTD., HOME DEPOT OF  
CANADA INC., and SAMSUNG ELECTRONICS CANADA INC.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about a fridge.
2. The applicant, Steven Hodgins, says the fridge he bought from the respondent, Home Depot of Canada Inc. (Home Depot), does not hold its temperature. He says the respondent, HE Universal Appliance Service Ltd. (HE), negligently failed to diagnose

the problem, and the respondent, Samsung Electronics Canada Inc. (Samsung), failed to repair and replace the defective fridge under its warranty. Mr. Hodgins claims \$2,407.08 for the price of the fridge, and \$1,000 for spoiled food.

3. Samsung and Home Depot deny Mr. Hodgins' claims. They say the HE technician who attended Mr. Hodgins' home conducted a thorough inspection of the fridge and determined it was not defective. They say Mr. Hodgins has not proven negligence, breach of warranty, or other breach of contract. In addition, they say Mr. Hodgins has not proven he incurred the claimed costs for spoiled food. Samsung and Home Depot ask that I dismiss this dispute.
4. HE did not file a Dispute Response, so it is technically in default. I address this below.
5. Mr. Hodgins represents himself. Samsung's in-house legal counsel represents both Samsung and Home Depot.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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 I am properly able to assess and weigh the documentary evidence and submissions before me.
8. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate.
9. The CRT may make orders as permitted under section 118 of the CRTA. In addition to a monetary remedy, Mr. Hodgins asks that the respondents remove the fridge from

his house. This is a request for “injunctive relief”, which is an order that a person do or stop doing something. With limited exceptions that do not apply here, injunctive orders are outside the CRT’s small claims jurisdiction. So, I decline to make the requested order.

## **ISSUE**

10. The issue in this dispute is whether any of the respondents are responsible to pay Mr. Hodgins \$2,407.08 for the fridge and \$1,000 for the spoiled food.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mr. Hodgins as the applicant must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties’ submissions and evidence, but refer only to that which I find necessary to explain my decision.

### ***Background***

12. The following background is undisputed. In March 2022, Mr. Hodgins bought a Samsung fridge from Home Depot. Mr. Hodgins contacted Samsung in October 2022 to report the fridge was not holding its temperature. Samsung sent an HE technician to inspect the fridge on October 12, and later emailed Mr. Hodgins to advise the technician had not found any problems with the fridge. Mr. Hodgins emailed back on October 19 to report that the fridge’s fan was intermittently making a loud noise and the temperature was “in the red zone”. He asked Samsung to fix these problems. Samsung responded requesting a recording of the noise. Mr. Hodgins replied to ask again that Samsung fix the fridge. He did not provide the requested recording. There is no evidence of further communication between Mr. Hodgins and Samsung.
13. Mr. Hodgins then attended Home Depot on October 22, and spoke to a supervisor, AC, about his fridge. AC emailed L and M, who I infer are Home Depot customer relations employees, and copied Mr. Hodgins. AC reported Mr. Hodgins’ concerns,

explaining he had already approached Samsung directly. AC said Mr. Hodgins would like a call to discuss the fridge. Mr. Hodgins followed up by email on October 26 asking when he might have a response to his concerns. There is no evidence of further communication between Mr. Hodgins and Home Depot.

### ***HE's liability***

14. I find Mr. Hodgins alleges HE was negligent because its technician found there were no problems with the fridge. The CRT served HE with the Dispute Notice in accordance with the CRT's rules, but as noted above, HE failed to file a Dispute Response as required. So, HE is in default.
15. Liability is generally assumed where a respondent is in default. However, here I find Samsung and HE were in an agency relationship. Under the law of agency, a principal (Samsung) grants authority to an agent (HE) to act on the principal's behalf, and the principal is bound by its agent's actions. I find Samsung's submissions and evidence support the conclusion that HE was acting as its agent when it attended Mr. Hodgins' house to inspect his fridge. In these circumstances, I decline to assume HE's liability despite its technical default status, and I consider whether Mr. Hodgins has proven HE is responsible for his claimed damages.
16. Mr. Hodgins says HE negligently failed to diagnose any problems with the fridge. An agent is liable in tort for its own wrongful acts. To prove HE was negligent, Mr. Hodgins must show HE owed him a duty of care, that it breached the applicable standard of care, and that he suffered damages because of that breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
17. I find HE owed Mr. Hodgins a duty of care to inspect and diagnose his fridge in the manner of a reasonably competent repair technician.
18. In claims of professional negligence, expert evidence is typically required to establish the applicable standard of care, and whether it was breached. This is because the standards of a particular profession are usually outside an ordinary person's knowledge and experience (see *Bergen v. Guliker*, 2015 BCCA 283). The exceptions

to this are when the breach is obvious or when the conduct in question is non-technical in nature (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).

19. Mr. Hodgins says the HE technician did not do tests before diagnosing the fridge as problem-free. He says the technician “merely waved the thermometer about till he found a single reading that was within scope”.
20. Samsung provided a statement from the HE technician who inspected Mr. Hodgins’ fridge. The technician said they first used a “temperature gun” to determine the fridge’s temperature was “good”. Then, they used the Samsung Home Appliance Smart Service app to test the fridge, including to check the fridge’s temperature over the past 5 days. They confirmed the fridge passed all tests. The technician also said they checked the evaporator and condenser fans and found they were working, and the fridge and freezer door were “good”.
21. Somewhat confusingly, both the technician’s statement and their report also indicated the fridge “needs to take time to be looked at”. The report further recorded “if happens again replace the parts” (reproduced as written). Together, I find these statements mean that while the fridge appeared to be working fine at the time the technician inspected it, there could be an underlying issue requiring repair or replacement later on.
22. Though Mr. Hodgins says the HE technician did not conduct any tests, I find this unlikely since they were dispatched in response to Mr. Hodgins’ reported temperature concerns. Mr. Hodgins acknowledges the technician took temperature readings, so I find his position is that the technician did not do tests he considered necessary, not that they failed to do any tests at all. In any event, I find expert evidence is required to prove the applicable standard for fridge inspection and diagnosis, and whether the HE technician breached that standard. As Mr. Hodgins did not provide any expert evidence, I find his negligence claim against HE must fail, and I dismiss it.

### ***Samsung and Home Depot's liability***

23. Mr. Hodgins says Samsung and Home Depot also breached their duty of care to him by failing to repair or replace his fridge. I find Mr. Hodgins' claim is better characterized as breach of contract, so I begin there.
24. It is undisputed that Samsung provided Mr. Hodgins with a limited warranty against "manufacturing defects in material or workmanship", including repairing or replacing the fridge at its option. The warranty formed part of the fridge's purchase contract. Under the warranty, Samsung arranged for HE to attend Mr. Hodgins' home to inspect the fridge, and as noted above, the HE technician reported the fridge was working fine. However, I find Samsung failed to consider the other parts of the technician's report, which indicated 1) the fridge needed more time to be looked at, and 2) if the temperature problem happened again, "replace the parts". After the technician's visit, Mr. Hodgins reported the fridge was making noise and the temperature was "in the red zone", but Samsung did nothing further. It did not send a technician to replace any parts, or even to reassess the fridge. I find that by failing to act on its agent HE's advice, Samsung breached its warranty to Mr. Hodgins.
25. Damages for breach of contract are generally meant to put the innocent party in the same position as if the contract had been performed as agreed (see *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319). There is no evidence of the fridge's repair cost, such as a quote, and no evidence this would have been Samsung's preferred option over replacement had it not breached the warranty. In these circumstances, I find the best measure of damages is the fridge's replacement value. Mr. Hodgins says he paid \$2,407.08 for the fridge. Samsung says it was more, but in any case, argues that \$2,407.08 is excessive. It says any damages should account for the 6 or so months Mr. Hodgins used the fridge before reporting an issue. I disagree. I find it unlikely that had Samsung replaced Mr. Hodgins' fridge, it would have replaced it with anything other than a new fridge. So, I find Samsung is responsible to pay Mr. Hodgins \$2,407.08 for the price he says he paid for the fridge.

26. I turn to Home Depot's liability. None of the parties submitted a copy of the receipt or invoice, or any terms and conditions governing Home Depot's sale of the fridge to Mr. Hodgins. So, I find there is no evidence Home Depot made any express warranties or guarantees to Mr. Hodgins' about the fridge.
27. However, the *Sale of Goods Act* (SGA) section 18 contains several implied warranties that apply to a sale of goods contract, including that the item was reasonably fit for purpose, was of merchantable quality, and would be reasonably durable considering the sale's context and the surrounding circumstances. I find the SGA applies to Home Depot's sale of the fridge to Mr. Hodgins. Since Mr. Hodgins undisputedly used the fridge for at least 6 months before reporting an issue, I find it was reasonably fit for purpose and of merchantable quality. The question is whether it was reasonably durable. For the following reasons, I find it was not.
28. As explained above, Mr. Hodgins first contacted Samsung about the fridge not holding its temperature at the beginning of October 2022. After the HE technician inspected the fridge, Mr. Hodgins contacted Samsung again in mid-October to report the same problem. Given a new fridge's expected lifespan, I find 2 reports of a 6-month-old fridge not holding its temperature within a few weeks of each other strongly suggests a product that was not reasonably durable. I find Samsung's 1-year warranty for labour and parts and 10-year warranty for the inverter compressor supports this conclusion. I find Home Depot breached its implied warranty of durability under the SGA, and is also responsible to pay Mr. Hodgins \$2,407.08 in damages.
29. Since I have found both Samsung and Home Depot liable in contract, I have not considered Mr. Hodgins' allegations of negligence.
30. As for Mr. Hodgins' claim for spoiled food, I find he has provided no evidence of loss, such as receipts showing what he had to replace, so I dismiss this part of his claim.
31. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Hodgins is entitled to pre-judgment interest on the \$2,407.08 from October 22, 2022, the date he attended

Home Depot and a date I find reasonable, to the date of this decision. This equals \$124.57.

32. 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. Hodgins was largely successful, I find he is entitled to reimbursement of \$175 in CRT fees. Mr. Hodgins did not claim dispute-related expenses, so I order none.

## **ORDERS**

33. Within 14 days of the date of this order, I order Samsung and Home Depot, jointly and severally (meaning Mr. Hodgins can collect from either Samsung or Home Depot), to pay Mr. Hodgins a total of \$2,706.65 broken down as follows:
- a. \$2,407.08 in damages, as reimbursement for the fridge's price,
  - b. \$124.57 in pre-judgment interest under the COIA, and
  - c. \$175 in CRT fees.
34. Mr. Hodgins is entitled to post-judgment interest, as applicable.
35. I dismiss Mr. Hodgins' claims against HE, and his remaining claim against Samsung and Home Depot.
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.

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Megan Stewart, Tribunal Member