



# Civil Resolution Tribunal

Date Issued: January 30, 2024

File: SC-2023-000881

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sadeghvishkai v. Stewart*, 2024 BCCRT 92

BETWEEN:

BABAK SADEGHVISHKAEI

**APPLICANT**

AND:

RICK STEWART (Doing Business As VISIONS ELECTRONICS),  
LUCAS KELLY, and VISIONS ELECTRONICS LIMITED  
PARTNERSHIP

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. Babak Sadeghvishkai, purchased a computer monitor from a Visions Electronics store in June 2022, along with a 3-year extended service plan (ESP). In December 2022, Mr. Sadeghvishkai noticed issues with the monitor and took it back to the

store. The store sent the monitor to the manufacturer's repair shop. Mr. Sadeghvishkaei says the respondents, Rick Stewart (Doing Business As Visions Electronics), Lucas Kelly, and Visions Electronics Limited Partnership, should have provided him with a replacement monitor instead. In the Dispute Notice, Mr. Sadeghvishkaei claims \$5,000 in damages for the respondents' alleged failure to honour what Mr. Sadeghvishkaei says were the ESP's terms, based on what the sales representative told him. In his later written argument, Mr. Sadeghvishkaei appears to limit his claim to a full refund of \$1,784.98. Mr. Sadeghvishkaei is self-represented.

2. The respondents say that the monitor was under the manufacturer's 1-year warranty at the time Mr. Sadeghvishkaei brought it in, and the manufacturer decided to repair it instead of replacing it. The respondents argue they owe Mr. Sadeghvishkaei nothing as his monitor has been repaired. Mr. Stewart and Mr. Kelly are self-represented. Visions Electronics Limited Partnership is represented by a principle or employee.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and an oral hearing is not necessary.
5. 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.

6. Where permitted by CRTA section 118, 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.
7. As noted, Mr. Sadeghvishkaei named 3 respondents in this dispute. However, it is unclear who Mr. Stewart and Mr. Kelly are and how they may be liable for Mr. Sadeghvishkaei's claimed damages. In his written argument, Mr. Sadeghvishkaei says that he purchased the monitor and the ESP from the respondent, Vision Electronics Limited Partnership, which he says does business as Visions Electronics. The evidence before me does not reveal any basis for Mr. Sadeghvishkaei's claims against Mr. Stewart or Mr. Kelly. So, given the lack of any legal basis for the claims against them, I dismiss Mr. Sadeghvishkaei's claims against Mr. Stewart and Mr. Kelly. I consider the merits of Mr. Sadeghvishkaei's claims against Visions Electronics Limited Partnership (Visions) below.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Visions' sales representative misrepresent the ESP to Mr. Sadeghvishkaei?
  - b. If so, what remedies, if any, are appropriate?

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Mr. Sadeghvishkaei must prove his claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. On June 28, 2022, Mr. Sadeghvishkaei purchased a 49-inch LG computer monitor from Visions for \$1,526.99. At the same time, Mr. Sadeghvishkaei purchased Visions' 3-year ESP for \$249.99. Visions also charged Mr. Sadeghvishkaei an \$8 disposal

surcharge. In total, Mr. Sadeghvishkaei paid Visions \$1,784.98. Mr. Sadeghvishkaei says that EN, the sales representative that sold him the ESP, told him that if something happened to the monitor, with the ESP, Visions would replace the monitor in a timely manner and that he would not have to deal with the monitor's manufacturer. Mr. Sadeghvishkaei says that it was important to him that a replacement monitor be provided quickly as he needed the monitor for work.

11. Mr. Sadeghvishkaei says the monitor worked fine for about 6 months. Then, on December 27, 2022, he noticed lines running across the top and bottom of the monitor's display. The same day, Mr. Sadeghvishkaei took the monitor to Visions' store. Visions' service order form from that date notes that the monitor had lines running around across the top and bottom but was otherwise in good condition.
12. Visions undisputedly sent the monitor for repair to LG's service depot. The evidence shows that the repairs were completed by January 26, 2023, but it is unclear exactly when Visions retrieved the monitor back from LG's service depot. A voicemail in evidence, that Mr. Sadeghvishkaei says is from March 7, 2023, shows that a Visions' employee called to tell Mr. Sadeghvishkaei that his monitor was ready for pick-up. Visions says that it contacted Mr. Sadeghvishkaei earlier, around January 31, to tell him the monitor was fixed. Mr. Sadeghvishkaei disputes he was contacted prior to March 7 and alleges unnecessary delays on Visions' part. In any event, it is undisputed that Mr. Sadeghvishkaei has refused to retrieve the monitor, and that he has also refused Visions' offer of a replacement monitor.
13. Mr. Sadeghvishkaei says Visions should not have sent the monitor for repairs by LG but instead, based on what EN told him on June 28, 2022, it should have provided him with an equivalent replacement.
14. Visions says that it was not required to provide a replacement. It says that the monitor was still under LG's 1-year manufacturer's warranty, and it was up to LG whether to repair or replace it. Visions also appears to rely on its ESP terms and conditions which it says are found on its website. These terms say that the ESP offers protection for defects in materials or workmanship. The terms further say that should the product

require multiple “like” repairs during the ESP’s coverage period, or the product is not economical to repair, Visions has the discretion to provide a new similar product at no charge. Neither party provided a copy of LG’s warranty’s terms.

15. Mr. Sadeghvishkaei says that the ESP’s exclusions and fine print details were “never clearly disclosed during the sale” and he relied on EN’s representation that Visions would replace the monitor if he encountered any issues during the ESP’s coverage period.
16. I find Mr. Sadeghvishkaei essentially argues that EN misrepresented the ESP’s terms on June 28 when he purchased the monitor and the ESP. A misrepresentation is a false statement of fact made either fraudulently or negligently during negotiations or in an advertisement. A “fraudulent misrepresentation” occurs when the seller makes a false statement of fact that the seller knew was false, or was reckless about whether it was true or false, and the misrepresentation induced the purchaser into buying the item. A “negligent misrepresentation” occurs when the seller carelessly or negligently makes a representation that is untrue, inaccurate, or misleading, and the purchaser reasonably relied on the misrepresentation, which reliance resulted in damages. As EN’s employer, Visions may be liable for any negligent or fraudulent representations made by EN in the course and scope of their employment.
17. Here, Visions appears to argue that there was no misrepresentation and that the ESP’s written terms from its website apply. As the party relying on the written terms, I find Visions has the burden of proving that Mr. Sadeghvishkaei agreed to these terms at the time he purchased the ESP. Visions provided no explanation about how these terms would have been brought to Mr. Sadeghvishkaei’s attention on June 28. The invoice for Mr. Sadeghvishkaei’s purchase that is in evidence does not list or refer to any terms or conditions for the ESP. There is also no evidence that EN or anyone else at Visions told Mr. Sadeghvishkaei to refer to Visions’ website where Visions says these terms are located.
18. Notably Visions did not provide any witness statement from EN setting out what EN did or did not tell Mr. Sadeghvishkaei about the ESP on June 28. Vision has offered

no explanation about why it has not provided evidence from EN. I find that had EN referred Mr. Sadeghvishkaei to the ESP's written terms that Visions relies on and not made the alleged misrepresentation, Visions would have provided a witness statement from EN saying so.

19. If a party fails to produce evidence in favour of their position without explanation, an adverse inference may be drawn. This means that the CRT can assume that the evidence does not exist. I find it appropriate to draw an adverse inference against Visions here. Based on this adverse inference, I find it more likely than not that EN represented to Mr. Sadeghvishkaei that if he purchased the ESP, Visions would provide him with a replacement if he had any issues with the monitor. I also find it likely that EN did not bring the written terms that Visions relies on to Mr. Sadeghvishkaei's attention when he purchased the ESP.
20. Under these circumstances, I find Mr. Sadeghvishkaei reasonably relied on EN's representations that Visions would give him a replacement monitor if his monitor encountered any issues. I find that if EN had not made that representation, Mr. Sadeghvishkaei likely would not have purchased the ESP from Visions. So, I find the appropriate remedy under these circumstances is to refund Mr. Sadeghvishkaei the \$249.99 he paid for the ESP. I am not satisfied that Mr. Sadeghvishkaei relied on EN's representation in deciding to purchase the monitor itself, so I find he is not entitled to a refund for the monitor's purchase price.
21. Mr. Sadeghvishkaei provided no evidence or argument about what additional damages he has incurred because of EN's misrepresentations. Similarly, though Mr. Sadeghvishkaei argues that Visions delayed returning the repaired monitor to him, he has provided no evidence of any damage resulting from these delays. So, I find any further damage or loss unproven.
22. Finally, I note Mr. Sadeghvishkaei's computer monitor remains at Visions' store as he has refused to pick it up. Since Mr. Sadeghvishkaei does not seek an order for the monitor's return, I make no further orders about it.

23. In conclusion, I find Visions must pay Mr. Sadeghvishkaei \$249.99 in damages for misrepresentation.
24. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Sadeghvishkaei is entitled to pre-judgment interest on the \$249.99 from June 28, 2022, the date of the misrepresentation, to the date of this decision. This equals \$14.97.
25. 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. Since Mr. Sadeghvishkaei was partially successful, I find he is entitled to \$87.50 for reimbursement of half his paid CRT fees. None of the parties claim any dispute-related expenses, so I award none.

## **ORDERS**

26. Within 14 days of the date of this decision, I order Visions to pay Mr. Sadeghvishkaei a total of \$352.46, broken down as follows:
  - a. \$249.99 in damages for misrepresentation,
  - b. \$14.97 in pre-judgment interest under the COIA, and
  - c. \$87.50 in CRT fees.
27. Mr. Sadeghvishkaei is entitled to post-judgment interest, as applicable.
28. I dismiss Mr. Sadeghvishkaei's claims against Mr. Stewart and Mr. Kelly.
29. 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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Nav Shukla, Tribunal Member