



Civil Resolution Tribunal

Date Issued: June 18, 2024

File: SC-2023-004277

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Musthafa v. Manulik*, 2024 BCCRT 562

BETWEEN:

MAZAHIR MUSTHAFA

APPLICANT

AND:

TOMASZ MANULIK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about an iPhone purchase.
2. The applicant, Mazahir Musthafa, bought a used iPhone 14 Plus (phone) from the respondent, Tomasz Manulik, for \$1,000. Mr. Manulik advertised the phone for sale on Facebook Marketplace.

3. Mr. Musthafa says the phone was locked, so he could not use it. Mr. Musthafa says he called Fido to set up cell service, and Fido said Mr. Manulik had reported the phone “lost and stolen”, so Fido could not unlock it. Mr. Musthafa says he cannot use the phone in its locked condition. He asks for an order that Mr. Manulik refund the \$1,000 purchase price.
4. Mr. Manulik says Mr. Musthafa did not take steps to register the phone in his name for over 30 days after the sale. Mr. Manulik says when Fido called him, he truthfully told Fido that he no longer possessed the phone. Mr. Manulik says he is not responsible for Fido’s actions, and Mr. Musthafa should have registered the phone in his name sooner.
5. Both parties are self-represented in this dispute.

JURISDICTION AND PROCEDURE

6. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT’s formal written reasons.
7. 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. 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.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUE

9. Is Mr. Musthafa entitled to a refund for the phone?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Musthafa, as the applicant, must prove his claim on a balance of probabilities. I have read the submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision. Mr. Manulik did not provide documentary evidence, but had the opportunity to do so.

11. Mr. Musthafa provided an audio recording of his conversation with a Fido employee, which I have listened to. During the call, the Fido employee said:

- Mr. Manulik had placed a block on the phone, so Mr. Musthafa could not unblock it.
- The phone had been reported “lost and stolen” to the original cell phone service provider, so the only way to unblock it was for Mr. Manulik to call that service provider (not Fido) and have the block removed.
- The block came from Mr. Manulik’s account, so only he could remove it.
- The phone could not be used until Mr. Manulik removed the block.
- The phone sale transaction was possibly a “scam”.

12. Mr. Manulik did not provide evidence, such as a statement from a cell service provider, to contradict these statements from Fido’s employee. Since the Fido employee’s statements are recorded, and uncontradicted, I place significant weight on this evidence. I find the Fido recording confirms that the phone that Mr. Manulik sold Mr. Musthafa is unusable because it is locked.

13. As noted above, Mr. Manulik says the phone would have worked if Mr. Musthafa had “registered” it sooner. However, I find that assertion is not supported by any evidence.

The Fido recording does not suggest that Mr. Musthafa could have removed the block if he had acted sooner. Rather, the recording confirms that only Mr. Manulik could have removed the block, and Mr. Musthafa could never have done so.

14. Also, I find Mr. Manulik's text messages to Mr. Musthafa after the sale do not mention any problem with delayed "registration". The evidence shows that Mr. Musthafa bought the phone on January 19, 2023. On January 23, 2023, Mr. Manulik texted Mr. Musthafa and said someone "went into my account and made whole bunch of changes, ordered whole bunch of stuff on my credit." Mr. Manulik said that because of this, "all of my devices are under investigation." Mr. Manulik said he hoped the phone he sold Mr. Musthafa would not be affected, but if it was, please text him and he would "fix it". Mr. Manulik also said he no longer had the \$1,000 phone sale price.
15. On February 28, Mr. Musthafa texted Mr. Manulik and said the phone was not working, and that it had been reported "lost and stolen". Mr. Musthafa asked Mr. Manulik to call Rogers and remove the "lost and stolen" report. The parties continued to exchange text messages. Mr. Musthafa repeatedly asked Mr. Manulik to fix the problem or refund the \$1,000.
16. In his final text message to Mr. Musthafa, dated March 26, Mr. Manulik said he had spoken to Fido, and that the phone had been "cut off" due to fraudulent activity on his account. Mr. Manulik wrote he would be able to have the phone turned on "after the investigation is over", which could take up to 5 weeks.
17. Mr. Musthafa continued to ask for updates about the phone until April 3, but Mr. Manulik did not reply. Mr. Musthafa filed this CRT dispute on April 18.
18. Section 18(c) of the *Sale of Goods Act* (SGA) applies to private sales of used items, including the phone. Section 18(c) says an item must be durable for a reasonable period of normal use after the sale. Based on Mr. Manulik's text messages stating that the phone had been "cut off" due to a fraud investigation, I find that Mr. Manulik sold a phone that was not usable. There is also no evidence that Mr. Manulik ever remedied this situation to make the phone usable.

19. For these reasons, I find Mr. Musthafa is entitled to refund of the \$1,000 phone purchase price.
20. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Musthafa is entitled to pre-judgment interest from the sale date of January 19, 2023. This equals \$69.05.
21. As Mr. Musthafa was successful in this dispute, under CRTA section 49 and the CRT's rules I find he is entitled to reimbursement of \$125 in CRT fees. Mr. Musthafa also claimed \$12.27 in registered mail expenses, and provided a receipt. I find this was a reasonable dispute-related expense, so I order Mr. Manulik to reimburse it.

ORDERS

22. I order that within 30 days of this decision, Mr. Manulik must pay Mr. Musthafa a total of \$1,206.32, broken down as follows:
 - a. \$1,000 as a refund,
 - b. \$69.05 in pre-judgment interest under the COIA,
 - c. \$12.27 in dispute-related expenses, and
 - d. \$125 in CRT fees.
23. Mr. Musthafa is entitled to post-judgment interest under the COIA, as applicable.
24. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Vice Chair