



# Civil Resolution Tribunal

Date Issued: June 21, 2024

File: SC-2023-005534

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *May v. Krespan*, 2024 BCCRT 581

**B E T W E E N :**

OWEN MICHAEL MAY

**APPLICANT**

**A N D :**

KANE KRESPAN and ENTERPRISES LTD. (Doing Business as  
FIELDS DEPARTMENT STORE)

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. This is a dispute about a private used fishing line winder machine sale. The applicant, Owen May, bought the machine from the respondent, Kane Krespan<sup>i</sup>. Mr. May says

the machine is not functional and seeks \$5,000 to cover the cost of a functioning machine.

2. Kane Krespan says that the machine was working when they listed it for sale.
3. Both Mr. May and Kane Krespan are self-represented in this dispute.
4. The other respondent, Enterprises Ltd. (doing business as Fields Department Store), did not provide a response, so is technically in default, which I discuss more below.

## **JURISDICTION AND PROCEDURE**

5. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. 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 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.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
8. 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**

9. The issues in this dispute are:
  - a. Did Kane Krespan misrepresent the machine's condition?
  - b. Was the machine reasonably durable?
  - c. If Kane Krespan misrepresented the machine or the machine was not reasonably durable, what remedy, if any, is Mr. May entitled to?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. May must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. First, I must address Enterprise Ltd.'s liability. Enterprise is Kane Krespan's employer. While it is undisputed that the transaction occurred on its premises, there is no indication in evidence or submissions that Kane Krespan was acting in their capacity as an employee. Kane Krespan placed an advertisement on a webpage used for buying and selling fishing equipment as an individual and Enterprise is not mentioned in the advertisement. I find the sale was a private sale between Mr. May and Kane Krespan. As Mr. May did not have a contract with Enterprise, I dismiss his claim against it. When I use the term "parties" below, I mean the contracting parties, Mr. May and Kane Krespan. Given this, I find nothing turns on the fact Enterprise did not file a Dispute Response so is technically in default.
12. In the online advertisement, Kane Krespan listed an item for sale with the title "HD 140 110 Volt Fishing Line Winder" for \$1,200. The advertisement noted that the unit "can handle all types of reels, braided lines, any size bulk spool, heavy duty service spool holder, high torque output shaft, adjustable disc brake system". The advertisement included a photo of the machine but made no mention of the item's condition.

13. On March 29, 2023, Mr. May bought the machine from Kane Krespan. Mr. May does not specify the amount he paid for the machine, but Kane Krespan implies it was \$750 and I find this to be likely given the parties text messages which reference an amount between \$250 and \$400 United States dollars.
14. In his submissions, Mr. May says that he noticed that pieces were missing from the machine after he returned home. He considers these pieces to be central to the machine's operation. Kane Krespan says they used the machine as it was and that the other pieces identified by Mr. May are accessories that would come with a new machine.

***Did Kane Krespan misrepresent the machine's condition?***

15. In a private sale of a used item, a buyer is expected to reasonably assess the used item's condition before purchase. This is because a seller is not obligated to tell a buyer about obvious defects. The applicable principle is the doctrine of *caveat emptor* or "buyer beware" (*Conners v. McMillan*, 2020 BCPC 230 at paragraphs 70 and 71). However, sellers cannot purposely conceal an otherwise obvious defect, and they cannot misrepresent the item to induce the buyer to purchase it.
16. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement. If a seller misrepresents an item's condition, the buyer may be entitled to damages arising from that misrepresentation. However, the seller must have acted negligently or fraudulently in making the misrepresentation. To succeed in a claim of negligent or fraudulent misrepresentation, the applicant must establish the elements laid out below (see *Ban v. Keleher*, 2017 BCSC 1132 at paragraphs 16 and 31).
17. A fraudulent misrepresentation occurs when:
  - The seller makes a statement of fact to the buyer,
  - The seller knows the statement was false, or is reckless about whether it is true or false, and

- The misrepresentation induces the buyer into purchasing the item.

18. A negligent misrepresentation occurs when:

- The seller makes a representation to the buyer that is untrue, inaccurate, or misleading,
- The seller breaches the standard of care in making the misrepresentation, and
- The buyer reasonably relies on the misrepresentation to their detriment.

19. Here, I find that in the advertisement and in text messages exchanged prior to the transaction, Kane Krespan stated that the machine:

- Can handle all types of reels, braided lines, any size bulk spool,
- Includes heavy duty service spool holder, high torque output shaft, adjustable disc brake system and a variable speed pedal,
- Had not been “abused”, and
- Works fine.

20. As stated, Mr. May bears the burden of establishing his claims. On my review of all submissions and evidence, I find that Mr. May has not established that any of the above statements were false.

21. There is no indication that the machine did not come with the above noted components. Mr. May says that the machine must have “seen some abuse” as Kane Krespan said it came from a high-volume tackle store. However, I find that the fact that the machine was used in a store environment does not prove that it would have been “abused”. In fact, this may indicate that it was used in a professional manner. Mr. May provides no evidence or other explanation to support a finding that the machine had been “abused”.

22. Two of the above representations are that the machine could handle spools and that it worked fine. Mr. May says that a spool cannot be placed on the machine in accordance with the manufacturer's specifications. In their response, Kane Krespan provides technical details on how he used the machine. Mr. May did not provide additional evidence, such as documents or statements, to establish that the use described by Kane Krespan is not possible or that the machine he purchased could not handle spools. He did not provide evidence from an individual familiar with fishing line winder machines or the manufacturer's specifications that he referenced above. In his submission, he refers to emails with the manufacturer, but he did not include these emails in his evidence. In any event, Mr. May mentions that these emails address pieces that come with a new machine, so I find it unlikely these emails would assist in establishing that the machine cannot handle spools or cannot be used in the way described by Kane Krespan. Given the absence of evidence, I am not able to find that the statements by Kane Krespan that the machine worked fine or could handle spools were false.
23. In his evidence, Mr. May provided a photo of a machine that includes pieces which are missing from the machine he purchased. In their response, Kane Krespan identifies these as new features that come with newer machines or accessories that can be purchased to upgrade a machine. There is no evidence provided by either party regarding the pieces that came with the machine when it was originally purchased. However, I note that this would not establish that any of the above noted statements were false. Kane Krespan did not state that the machine included all original pieces or any accessories.
24. I find that Mr. May has not established that any of the statements made by Kane Krespan were false, either negligently or fraudulently. For this reason, I find Mr. May has not proven on a balance of probabilities that Kane Krespan misrepresented the machine's condition.

### ***Was the machine reasonably durable?***

25. The buyer beware principle discussed above is also limited by the warranties set out in section 18 of the *Sale of Goods Act* (SGA). Section 18(c) says that there is an implied condition that the sold goods will be durable for a reasonable period, considering how the goods would normally be used and the sale's surrounding circumstances. As I have found this was a private sale, the other warranties set out in the SGA do not apply. Mr. May explains that the machine was not functional, while Kane Krespan says that it is functional without the additional accessories referred to by Mr. May.
26. The SGA does not define "durable." In *Krotz v. Willis*, 2020 BCCRT 877 at paragraph 25, a tribunal member used the definition of durable from Collinsdictionary.com: "strong and lasts a long time without breaking or becoming weaker". While *Krotz* is not binding on me, I find the reasoning persuasive and adopt it here to find that under section 18(c) of the SGA, goods sold must last without breaking or becoming weaker for a reasonable period with normal use and considering the sale's surrounding circumstances.
27. I find the evidence does not show that Mr. May encountered any issues with the machine's durability following his purchase.
28. Here, Mr. May purchased a used machine but did not examine it for defects until he brought it home. While the parties disagree as to whether it is possible to use the machine without additional pieces, I find there is no evidence that the machine became weaker or broke after it was purchased. Rather, I find the issues he complains about were present at the time of the purchase.
29. I find that Mr. May has not proven on a balance of probabilities that the machine was not reasonably durable in the circumstances. So, I find that Kane Krespan did not breach the implied warranty of durability in SGA section 18(c).
30. As I have found no misrepresentation or breach of an implied warranty under the SGA, I find the buyer beware principle applied to this sale and Mr. May took the risk

by purchasing the machine without inspecting it. As a result, I find that Mr. May is not entitled to the cost of purchasing a functioning machine and I dismiss his claims.

31. 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. I see no reason in this case not to follow that general rule. Mr. May was unsuccessful, so I dismiss his claims for tribunal fees and dispute-related expenses. Kane Krespan did not pay any CRT fees or claim any dispute related expenses.

## **ORDER**

32. I dismiss Mr. May's claim and this dispute.

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Maria Montgomery, Tribunal Member

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<sup>i</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. Kane Krespan did not provide their title or pronouns so I will refer to them by their full name and with gender neutral pronouns throughout this decision, intending no disrespect.