



Civil Resolution Tribunal

Date Issued: July 11, 2024

File: SC-2023-007782

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fisher v. Lenning*, 2024 BCCRT 666

BETWEEN:

TERI FISHER

APPLICANT

AND:

DINA LENNING

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers, Vice Chair

INTRODUCTION

1. This dispute is about a used treadmill.
2. The applicant, Teri Fisher, bought a used Peloton treadmill from the respondent, Dina Lenning. Around one month after purchase, when the applicant first attempted to use

the treadmill, he found the digital touchscreen's lower third was non-responsive. Soon after, the applicant was unable to use the treadmill at all, since to run it, he needed to access digital buttons in the touchscreen's non-responsive section. The applicant initially claimed \$2,500, the treadmill's purchase price, but lowered his claim to \$845 plus tax in his submissions.

3. The respondent says the touchscreen worked when she sold it to the applicant. She says she is not responsible for damage that occurred after the applicant took the treadmill home. She asks me to dismiss the applicant's claim.
4. The parties both represent themselves.
5. For the reasons that follow, I allow the applicant's claim in part.

JURISDICTION AND PROCEDURE

6. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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. Each party has clearly explained what they believe happened, and there is nothing to be gained from their oral testimony. Further, 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, whether or not the information would be admissible in court.

9. 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.

ISSUE

10. The issue in this dispute is whether the respondent breached either express or implied warranties about the treadmill, and if so, what damages the respondent owes the applicant.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant 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.
12. The parties agree on the background facts. On June 29, 2023, after seeing an ad on Craigslist, the applicant purchased a used Peloton treadmill from the respondent. The parties agreed on a price of \$2,500 and set up a time for the applicant to pick up the treadmill.
13. In their emails arranging the sale, the applicant asked the respondent to leave the treadmill assembled so he could test it before he took it home. The respondent agreed but said "I would not sell a machine that doesn't work" and "I can promise you it is in great shape."
14. Two days later, the respondent sent the applicant a picture of the treadmill's touchscreen which showed it needed regular maintenance. The respondent then disassembled the treadmill. The respondent told the applicant she had done so. In her submissions, the respondent said she did so for another buyer, though the parties' email exchange makes it seem as though it was for maintenance purposes. By email, the applicant accepted the change in the treadmill's state of assembly.

15. Meaningfully, the respondent then responded by email, saying “I can assure you it works well. My credibility is important to me.”
16. The applicant took the treadmill home on June 29, but was unable to test it due to the state of assembly. He went on vacation from July 4 to July 20. When he returned on July 21, he reassembled the treadmill. I find it was at that time he first discovered that part of the treadmill touchscreen was non-responsive.
17. The applicant sent three videos showing the problem. Digitally displayed buttons in the upper half and along a thin strip along the touchscreen’s bottom worked, but the buttons in the majority of the screen’s lower third did not. Since the respondent’s Peloton account was logged in, the applicant was able to use the treadmill under her account but, due to the location of the digital buttons, could not log out or perform a factory reset.
18. After the applicant contacted the respondent, the respondent logged out of her account. Due to the buttons’ location, the applicant could not log back in to the Peloton. A video also shows he was unable to perform maintenance that would allow the treadmill to function, since it required him to press confirmation buttons on the display. Without doing so, he could not use the treadmill, rendering it useless.
19. Given the circumstances, I find the applicant has proved the touchscreen did not work when he purchased it. I explain below.
20. First, I find the applicant’s explanation for the time it took to contact the respondent is reasonable and supported by evidence of his travel. Next, I note the applicant expressly wanted to inspect the touchscreen before taking it home, but the respondent disassembled the treadmill. While the applicant agreed to continue with the sale, I find the respondent’s disassembly prevented the applicant from performing a reasonable inspection.
21. Further the respondent says the treadmill’s touchscreen was fully functional when she sold it to the applicant. She says she provided him a video of the treadmill

“running.” The applicant says he never received a video, and the respondent did not provide it in evidence, so I find her reference to the video does not assist her.

22. On the other hand, the applicant’s videos taken after he set up the treadmill show the touchscreen is otherwise undamaged. There are no cracks or damaged pixels in his videos suggesting the applicant damaged the treadmill in transportation. The only issue is the non-responsive screen portion.

23. Taken together, I am satisfied the touchscreen did not work at the time of purchase.

Buyer Beware and Exceptions

24. The general rule in the sale of chattel goods, like the treadmill, is *caveat emptor*, which means “buyer beware.” It requires buyers to make reasonable inquiries about, and conduct a reasonable inspection of, the property they wish to purchase. Sellers are not obligated to tell buyers about obvious defects.¹

25. However, there are several exceptions to this rule, including fraud, misrepresentation, contractual warranty, and the implied warranties in *Sale of Goods Act* (SGA). Here, I find the respondent expressly warranted the treadmill worked well and that she would not sell a machine that did not work.

26. As noted above, the respondent specifically addressed the applicant’s response to her having disassembled the treadmill by saying that the treadmill worked well. This was further to her earlier statement that she would not sell a machine that did not work. In this case, the touchscreen is a critical element of the treadmill. Video shows the touchscreen required the applicant to confirm he had complied with certain maintenance steps to activate the treadmill, but the buttons to do so were non-responsive. Without a fully functioning touchscreen, the applicant was unable to use the treadmill.

¹ See, eg: *Connors v. McMillan*, 2020 BCPC 230

27. Since I have already found the applicant proved the touchscreen did work when he bought it, I find the respondent breached her express warranty that the machine worked and worked well.
28. If I am wrong, and the respondent's statements do not amount to express warranties, I would come to the same conclusion using the implied warranties in the SGA.
29. The SGA regulates contracts for the sale of goods in British Columbia. SGA section 18(c), which applies to private sales like this one, says there is an implied condition that sold goods will be durable for a reasonable period, considering how the goods would normally be used and the sale's surrounding circumstances. The other section 18 warranties do not apply to private sales, so I have not considered them.
30. Here, even if the touchscreen was running when the applicant bought it, I find it was not reasonably durable, since it was not working when the applicant set up the treadmill for the first time. There is no evidence the applicant somehow damaged the treadmill when transporting it, and any such argument is speculation.
31. So, I find the respondent breached both express and implied warranties and I find she is liable for damages.

Damages

32. The applicant claims \$845 plus tax for the replacement touchscreen. He provided evidence from Peloton confirming that amount. So, I award \$845, plus \$101.40 tax, for a total of \$946.40.
33. The *Court Order Interest Act* applies to the CRT. However, there is no evidence the applicant has paid to replace the touchscreen, so I order no interest.
34. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, the applicant was successful. So, I order the respondent to pay the applicant \$125 in paid CRT fees. He did not claim any dispute-related expenses.

ORDERS

35. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1071.40 in damages, broken down as follows:
- a. \$946.40 in damages; and
 - b. \$125 in paid CRT fees.
36. The applicant is entitled to post-judgment interest, as applicable.
37. 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 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.

Christopher C. Rivers, Vice Chair