



Civil Resolution Tribunal

Date Issued: March 31, 2025

File: SC-2024-000260

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garner v. Khangura*, 2025 BCCRT 405

BETWEEN:

DEREK GARNER

APPLICANT

AND:

KULWINDER KHANGURA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the private sale of a used cell phone. The applicant, Derek Garner, purchased the phone from the respondent, Kulwinder Khangura. The applicant says that after the sale, they learned the phone was an inferior counterfeit. The applicant claims a full refund of \$500.

2. The respondent denies liability. They do not dispute that the phone is counterfeit. However, they say the phone was sold on a “no refunds” basis. They also say the applicant tested the phone prior to purchase and found it worked.
3. The parties represent themselves.
4. For the reasons that follow, I find the applicant has proven their claims.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (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. In resolving disputes, the CRT must apply principles of law and fairness. These are the CRT’s formal written reasons.
6. Section 39 of the CRTA 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. 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.
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.

ISSUE

9. The issue in this dispute is whether the respondent must refund the applicant \$500.

BACKGROUND, EVIDENCE, AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove their 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. The respondent did not provide submissions or evidence though they had the opportunity to do so. So, I have relied on their statements from the Dispute Response.
11. The following facts are undisputed, save where noted. Screenshots show that the respondent advertised a "SAMSUNG S23 Ultra" for sale on Facebook. The parties exchanged text messages to arrange a time to meet up.
12. On January 7, 2024, the parties met in person. The applicant tested the phone by taking pictures and inserting a SIM card and calling someone. Pictures show the phone came with a box that labelled it as a "Galaxy S23 Ultra". The box also had a serial number, or IMEI number on it. The applicant purchased the phone for \$500. The respondent advised "no refunds" at the time of the sale.
13. A third party, NLK, witnessed the sales transaction. NLK provided a signed written statement. Both NLK and the applicant say that the respondent advised that the phone was genuine, and the respondent's son had purchased it from Costco. As nothing contradicts this, I find the respondent likely made these statements.
14. The respondent left soon after the sale. About 10 minutes later, the applicant looked closer at the phone and concluded it was counterfeit. They texted the respondent that they wanted a refund because of this. The respondent replied, "Unfortunately there will be no returns accepted. Sorry for the inconvenience." The respondent did not deny the phone was counterfeit or otherwise respond after that.
15. The applicant subsequently visited Westcoast Cellphone. He says a technician there, JR, verified the phone was counterfeit. There is no evidence from JR in this dispute. However, I accept the phone is counterfeit as the respondent does not deny this in any evidence or submissions.

Must the respondent refund the applicant \$500?

16. I find it clear from the text messages and NLK's evidence that the parties contracted for the sale of a Galaxy S23 Ultra phone. I find it was an implied term that the respondent was selling the genuine article and not a counterfeit. I note that the respondent also explicitly represented this to the applicant, but I find it unnecessary to discuss the law of negligent or fraudulent misrepresentation to decide this dispute. My decision would remain the same.
17. I also find that the parties entered into a private sale which was subject to section 18(c) of the *Sale of Goods Act (SGA)*. Section 18(c) requires that the goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale's surrounding circumstances. The other implied warranties in section 18 of the SGA do not apply to private sales.
18. I acknowledge that the respondent verbally advised "no refunds" during the sale. However, I find this language was insufficient to show that the parties agreed the applicant would bear the risk that the phone was counterfeit. For example, the parties did not explicitly agree that the applicant was responsible for verifying the phone was genuine.
19. Similarly, a seller of used goods can exclude the implied warranty of SGA section 18(c), but the seller must do so in clear and unambiguous language. See *Conners v. McMillan*, 2020 BCPC 230 at paragraphs 63 to 65. I find that "no refunds" is insufficient language to show that the parties agreed to exclude the implied warranty of SGA section 18(c).
20. It is undisputed that the phone is counterfeit. So, I find the respondent breached the contract. I also find that the phone was obviously not durable for a reasonable period. The applicant says that the phone had "fake lenses" and "cheap internal [components] causing it to glitch and not work as intended". I accept this was the case, and I take notice of the fact that counterfeits are of less quality in the vast majority of cases. So, I find the respondent breached SGA section 18(c) as well.

21. As I find the breach proven, I turn to damages. I find the counterfeit phone likely has no value, given the applicant's description of it. So, I order the respondent to refund the applicant the full \$500.
22. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$500 refund from January 7, 2024, the date of the sale, to the date of this decision. This equals \$29.27.
23. 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. The applicant did not pay any CRT fees. The parties did not claim any dispute-related expenses. So, I order no reimbursement.

ORDERS

24. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$529.27, broken down as follows:
 - a. \$500 for a refund, and
 - b. \$29.27 in pre-judgment interest under the *Court Order Interest Act*.
25. The applicant is entitled to post-judgment interest, as applicable.
26. This is a validated decision and order. 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.

David Jiang, Tribunal Member