



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Musto v. Sandy's Furniture Ltd.*, 2025 BCCRT 417

B E T W E E N :

MARIA MUSTO

APPLICANT

A N D :

SANDY'S FURNITURE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Nyhuus

INTRODUCTION

1. The applicant, Maria Musto, bought a sectional sofa from the respondent, Sandy's Furniture Ltd. (SFL). Mrs. Musto says the sofa is defective because it squeaks. She says that SFL breached the implied warranties of the *Sale of Goods Act* (SGA) and claims a full refund of \$3,505.51. Mrs. Musto's friend, who is a former lawyer, represents her.

2. SFL denies owing Mrs. Musto a refund. It says that the sofa is not defective and that Mrs. Musto's floor is causing the squeaking sound. SFL's president represents it.

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)*. 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. 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. In some respects, the parties call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me without an oral hearing. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is at issue. Neither party requested an oral hearing. The claim is also for a relatively small amount. So, bearing in mind the CRT's mandate for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. 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.
6. 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

7. The issues in this dispute are:

- a. Did SFL breach the implied warranty of merchantability under section 18(b) of the SGA?
- b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant, Mrs. Musto, must prove her claims on a balance of probabilities. This means “more likely than not”. I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.

Background

9. I begin with the undisputed facts. SFL is in the business of selling furniture. Mrs. Musto purchased a sectional sofa from SFL on September 6, 2021. SFL’s invoice shows Mrs. Musto paid \$2,996 for the sofa, before taxes and delivery.
10. Along with the sofa, Mrs. Musto bought several other furniture items. While she also reports having issues with some of these other items, she does not claim a refund for them in this dispute. So, I do not discuss those other items further.
11. SFL delivered the sofa on May 26, 2022. On June 12, Mrs. Musto informed SFL that the sofa made a squeaky noise whenever someone sat on it.
12. On July 13, 2022, SFL sent drivers to Mrs. Musto’s home to troubleshoot the problem. They added felt pads to the sofa’s legs. Unfortunately, this did not resolve the issue. The next day, Mrs. Musto reported to SFL that the noise persisted. SFL told Mrs. Musto that her flooring and carpet must be the issue, “as middle support legs are to flex.” Mrs. Musto says this explanation did not make sense to her.
13. On July 26, 2022, SFL took the sofa back to its warehouse to investigate the issue. SFL’s notes say that its technician made repairs to the sofa, including tightening an arm, adding extra hardware throughout, adding fabric at the joints, and adding an

additional leg. SFL says its technician could not hear the noise in its warehouse. SFL returned the sofa to Mrs. Musto on July 30.

14. The next day, Mrs. Musto called SFL to say the sofa was still making noise. In response, SFL hired an independent furniture technician (IFT) who inspected the sofa at Mrs. Musto's home on September 8, 2022.

The noise's cause

15. The parties dispute the IFT's findings about the noise's cause. Since Mrs. Musto's claim turns on whether the noise's cause was a defect in the sofa, and not her floor, I now consider this issue.
16. Mrs. Musto says that while the IFT was at her home, they told her that the noise was caused by the legs which could not support the sofa's size and that the only way to eliminate the noise was to exchange the legs. Mrs. Musto provided photographs, which she says show thin legs supporting a large sofa.
17. SFL, on the other hand, says the IFT determined the sofa was not defective and that Mrs. Musto's "very smooth" floor caused the squeaking. It also says the IFT determined the issue stemmed from Mrs. Musto having a rug or carpeting under the front legs and no carpeting under the middle legs.
18. The parties shared their conflicting interpretations of the IFT's diagnosis on a phone call in late September 2022. I infer the parties did not discuss the sofa again until Mrs. Musto filed this dispute.
19. I find that I do not need to decide between the parties' interpretations of what the IFT said, since SFL provided the IFT's email summarizing their findings. I find this email to be the most reliable source of the IFT's opinion.
20. The IFT wrote:

issue of noise is related to the movement of the legs across the floor when sitting down and getting up. when tech lifted the leg up and had customer sit, no noise is evident.

customer's floors are very smooth and this allows for the legs to move easily during the flexing of the frame when sitting and getting up.

recommend re-selecting her into something else as this cannot be eliminated.

21. For the following reasons, I find the IFT's opinion to be the most reliable assessment of the noise's cause:
 - a. The IFT was a neutral third party, hired by SFL to determine the noise's cause. The IFT did not have a financial incentive to prefer either party's position.
 - b. While the IFT did not state their qualifications in their email opinion to SFL, they held themselves out to be a "furniture medic" who performed these kinds of investigations. Given the context, I find it likely they are a furniture expert.
 - c. Despite having different interpretations of the IFT's findings, both parties place weight on the IFT's opinion.
22. Based on the IFT's assessment, I find that a person sitting on the sofa caused the sofa's frame to flex, which in turn caused the sofa's legs to move along Mrs. Musto's floor, ultimately resulting in a squeaking noise.
23. I note that the IFT recommended to SFL that it select Mrs. Musto a different sofa, since, in their view, the noise could not be eliminated. From this recommendation, I make three inferences. First, I infer that the noise could not be fixed by changing the floor's covering under the sofa. If a rug under the middle leg could have fixed the problem, I find it likely that the IFT would have reported this to SFL.
24. Second, I infer that the IFT found the noise was not a trivial or minor annoyance that Mrs. Musto should be expected to live with. I find that the IFT considered Mrs. Musto's annoyance with the noise to be reasonable and that SFL should address it.

25. Third, by recommending that SFL provide “something else” to Mrs. Musto, I infer that the IFT thought that another sofa would work on Mrs. Musto’s floor. If the IFT considered Mrs. Musto’s floor to be the problem, I find it likely the IFT would have told SFL to find a certain type of replacement sofa, to avoid repeating this problem.
26. So, while the interaction between the sofa and Mrs. Musto’s “very smooth” floor ultimately caused the noise, I find that the IFT blamed the sofa, not the floor. On balance, I find that the noise’s cause is primarily the sofa’s moving legs and that this was a defect with the sofa.

Did SFL breach the implied warranty of merchantability under section 18(b) of the SGA?

27. I now turn to the SGA. SGA section 18 says that contracts for the sale of goods have implied warranties that the goods must be reasonably fit for their express or implied purpose, of merchantable quality, and durable for a reasonable period in normal use.
28. Under section 20(2) of the SGA, commercial sellers like SFL cannot contract out of the section 18 implied warranties unless the sale is for used goods. It is undisputed that the sofa was new. So, I find that SFL’s invoice, which says that goods cannot be returned or refunded, does not relieve SFL from the application of the section 18 implied warranties.
29. For the following reasons, I find SFL breached the section 18(b) implied warranty that the sofa would be of a merchantable (saleable) quality. The SGA does not define “merchantable quality”, and courts have held that it is not possible to formulate an all-purpose definition of the term. Rather, the concept of merchantability is flexible, and requires the goods to be of a quality reasonably expected, having regard to all the circumstances of the case (see *Clayton v. North Shore Driving School et al.*, 2017 BCPC 198 at paragraph 100).
30. The implied warranty of merchantability applies if the goods are bought by description, without an opportunity for the buyer to examine the goods. This is the

case here. SFL had to order the sofa Mrs. Musto purchased, so she did not examine it before her purchase.

31. In the circumstances, I find that a reasonable person would not expect a new sofa, worth almost \$3,000, to make a squeaking noise when sat on. As I have found that the squeaking noise was primarily caused by the sofa, I find that the sofa was not of a merchantable quality. So, I find that SFL breached the implied warranty of merchantability.
32. Given this conclusion, I do not address whether SFL breached any other implied warranties under the SGA.

What is the appropriate remedy?

33. Section 56(2) of the SGA states that the measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
34. Mrs. Musto claims a refund of the sofa's purchase price, which I find to be a reasonable measure of damages. Since the IFT found that nothing can be done to fix the sofa's noise issues, I find Mrs. Musto will need to replace the sofa. Awarding Mrs. Musto a refund will allow her to purchase a reasonably similar sofa.
35. I note that, although Mrs. Musto still has the sofa, I find this is not a situation where I should reduce the amount awarded to her. SFL says that if the sofa were returned to it, it would likely have to donate the sofa to charity. Given this, I find it likely that a squeaky sofa will have little or no resale value. So, I find that Mrs. Musto is entitled to a full refund of the sofa's purchase price.
36. Mrs. Musto claims \$3,505.51, broken down as \$2,996 for the sofa's purchase price, \$359.52 for taxes, and \$150 for the delivery fee.
37. I find that it is not appropriate to award reimbursement of the delivery fee. SFL delivered other large items to Mrs. Musto under this order, including a bed, dresser,

and recliner. I find it likely that the \$150 delivery fee would have applied to the purchase, even without the sofa. So, I decline to award a refund of it.

38. In summary, I find that Mrs. Musto is entitled to a refund of the sofa's purchase price, plus taxes, so \$3,355.52.
39. The *Court Order Interest Act* applies to the CRT. Mrs. Musto is entitled to pre-judgment interest on \$3,355.52 from May 26, 2022, the date of the sofa's delivery to the date of this decision. This equals \$388.26.
40. 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. As the successful party, I find Mrs. Musto is entitled to reimbursement of \$175 in CRT fees. Neither party claims dispute-related expenses.

ORDERS

41. Within 21 days of the date of this decision, I order SFL to pay Mrs. Musto a total of \$3,918.78, broken down as follows:
 - a. \$3,355.52 in damages,
 - b. \$388.26 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
42. Mrs. Musto is entitled to post-judgment interest, as applicable.

43. 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.

Peter Nyhuus, Tribunal Member