



# Civil Resolution Tribunal

Date Issued: August 26, 2024

File: SC-2023-007439

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nemec v. National Products, Inc.*, 2024 BCCRT 824

B E T W E E N :

ROBERT NEMEC

**APPLICANT**

A N D :

NATIONAL PRODUCTS, INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This dispute is about an allegedly defective mobile phone mounting device.
2. The applicant, Robert Nemec, bought a RAM mounting device for his Pixel 6 phone. The respondent, National Products, Inc. (National), manufactured the phone mount. Mr. Nemec bought the mount from another company, which is not a party to this dispute.

3. Mr. Nemec says that within days of purchasing the phone mount, the safety strap broke. He says he emailed National, who promised to send replacement straps. Mr. Nemec says the replacement straps had not arrived after a week, so he used the mount and the original strap to attach his phone to his motorcycle. He says that during the ride, the phone came out of the mount, fell to the ground, and broke.
4. Mr. Nemec requests damages of \$540, for the cost of the phone mount and compensation for the damaged phone.
5. National says it sent Mr. Nemec 4 replacement safety straps at no cost, but instead of waiting for them to arrive, Mr. Nemec chose to use the phone mount anyway. National says that because Mr. Nemec chose to use the faulty strap rather than wait for a new one to arrive, National is not responsible for any loss or damage. National also says it offered to send Mr. Nemec a new phone mount, but he declined.
6. Mr. Nemec is self-represented in this dispute. National is represented by a director.
7. For the reasons set out below, I dismiss Mr. Nemec's claims.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.

10. 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.

## **ISSUES**

11. Is Mr. Nemec entitled to \$540 for a product refund and a damaged phone?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, Mr. Nemec, as the applicant, must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions, but refer only to what is necessary to explain my decision.
13. The evidence shows that on June 6, 2023, Mr. Nemec emailed National to report the broken strap. The parties exchanged emails, and on June 8, 2023 National sent a part order number, confirming it had shipped replacement straps.
14. On June 19, 2023, Mr. Nemec emailed National to report that his phone had fallen out of the mount while on a motorcycle ride and was destroyed. Mr. Nemec also said the new straps had not yet arrived. Mr. Nemec requested a refund. National refused a refund, but offered to send a new mount, which Mr. Nemec refused.
15. I find Mr. Nemec is not entitled to any damages. First, Mr. Nemec provided no evidence that his phone was broken, and no evidence that it could not be repaired. So, I find his claimed damages are unproven.
16. Second, National says it offers no warranty for phones broken while using its mounts. Mr. Nemec has not suggested otherwise, so I accept this as accurate. National did not sell the mount to Mr. Nemec, so I also find the implied warranties in the *Sale of Goods Act* do not apply.

17. Third, Mr. Nemec is essentially arguing that National was negligent. For the following reasons, I find National was not negligent.
18. A product manufacturer may be found liable under the tort of negligence. To prove National was negligent, Mr. Nemec must establish National owed him a duty of care, National failed to meet the standard of care, and that the failure caused the claimed damage, which was reasonably foreseeable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
19. I find National owed Mr. Nemec a duty of care, as it manufactured the mount that was offered for sale, and that Mr. Nemec purchased. National admits that the original safety strap that came with the mount broke shortly after Mr. Nemec purchased it. However, I find Mr. Nemec has not proved that the mount was negligently manufactured, or that the mount's failure damaged his phone.
20. Mr. Nemec relies on a statement on National's website, which says the strap (referred to as a tether) is "recommended for applications where excessive wind and G-force could cause movement of the device within the holder." Mr. Nemec says this statement shows that the strap is optional rather than mandatory when using the mount. Mr. Nemec says the mount was positioned behind his motorcycle's windscreen, and he was driving on a paved road, so there was no excessive wind or force. He says the mount should not have failed in these circumstances, and it was negligently manufactured.
21. I find Mr. Nemec has not proved his assertion that there were no significant forces on the mount while he was driving his motorcycle. He has provided no evidence about speed, road conditions, or the configuration of his motorcycle. Also, he knew the strap was broken, and chose to use the mount on the motorcycle anyway. As submitted by National, Mr. Nemec had the option to wait for the replacement straps to arrive, but chose not to. I find that by shipping the replacement straps to Mr. Nemec, National met its duty of care. So, I find National was not negligent.
22. For these reasons, I dismiss Mr. Nemec's claims.

23. 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. As Mr. Nemec was unsuccessful, I dismiss his claim for reimbursement of CRT fees. National is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I order no reimbursement.

## **ORDER**

24. I dismiss Mr. Nemec's claims.

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Kate Campbell, Vice Chair