



Civil Resolution Tribunal

Date Issued: August 30, 2024

File: SC-2023-006602

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grabowski v. Jag's M.J.M. Furniture Showcase Ltd.*, 2024 BCCRT 851

B E T W E E N :

MELISSA GRABOWSKI and SYLVIA GRABOWSKI

APPLICANTS

A N D :

JAG'S M.J.M. FURNITURE SHOWCASE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about a dining room table that the applicant, Sylvia Grabowski, bought from the respondent, Jag's M.J.M. Furniture Showcase Ltd. as a gift for the applicant, Melissa Grabowski.

2. The applicants say the table arrived damaged and seek reimbursement of \$941.85 for the cost of the damaged table.
3. The respondent refused to reimburse the applicant.
4. Melissa Grabowski represents the applicants. The respondent is represented by an employee.

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 *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.
6. 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 and I find that an oral hearing is not necessary.
7. 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.
8. 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

9. The issue in this dispute is whether the table the respondent sold the applicants was defective, and if so, whether the applicants are entitled to a refund for the table.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants 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 any documentary evidence or submissions apart from the Dispute Response filed at the outset of this proceeding, despite the opportunity to do so.
11. Sylvia Grabowski bought a dining room table from the respondent on September 23, 2021. The table arrived at Melissa Grabowski's address in Alberta on October 23, 2021.
12. The applicants say the table arrived with damage to the finish. The applicants sent an email to the respondent on November 4, 2021, and attached pictures of marks on the table. The pictures showed damage to the finish on the table's edge and scratches of different sizes on the tabletop.
13. The applicants also submitted photos of one area where the leg and tabletop appeared to be separated at the joint. The gap appears minimal but there is no ruler displayed for comparison in the photos.
14. The applicants provided a copy of the e-mail confirming the purchase. Neither party provided an invoice showing the terms of any return policy for furniture. The respondent says its website clearly states that any damage or defects should be reported within three days of delivery. The respondent did not provide evidence of this information on the website. Also, the respondent did not say if it informed the applicants of this requirement at the time of purchase. So, I find the respondent cannot rely on this alleged statement on its website.
15. The respondent also said that the table was delivered in the supplier packaging and assembled by the applicants.

16. The applicants do not say if they inspected the table before the purchase or if this was an online purchase. However, the applicants provided an e-mail confirmation dated September 23, 2021. The e-mail confirmation said the respondent was checking to see if the item was in stock at the warehouse. So, I infer that this was an online order and the applicants purchased the table without inspecting it.
17. The applicants also do not say when they assembled the table. Melissa Grabowski says that she was sick and off work for when the table was delivered. Melissa Grabowski said she had to ask someone for assistance to move and unpack the table. It is undisputed that the table was delivered during a time when COVID-19 gathering guidelines were in place. Melissa Grabowski says she had to find someone to assist her with setting up the table who was comfortable visiting her home given her employment and any restrictions in place at that time
18. I accept the applicants' explanation for the delay in unpacking and assembling the table. So, I draw no adverse inference about the delay between delivery on October 23, 2021, and when she notified the respondent on November 4, 2021.
19. Generally, sections 18(a), (b), and (c) of the *Sale of Goods Act* (SGA) apply to commercial sales like this one SGA section 18(b) says there is an implied warranty that goods will be of merchantable (saleable) quality. However, if the buyer has examined the goods there is no implied condition regarding defects that the examination ought to have revealed. SGA section 18 applies to commercial sellers like the respondent. Section 18 also includes warranties that the item will be reasonably durable and reasonably fit for the buyer's purpose.
20. 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).

21. SGA section 17 includes an implied condition that goods sold by description must match the description. Neither party provided a description of the table other than its name. The e-mail receipt for the purchase did show the price of the table. There was no indication that the table was being sold in used condition, on clearance or advertised as a floor model. So, I infer that the table was new.
22. After reviewing the pictures of the scratches on the tabletop and sides, I find that the scratches are cosmetic damage to the finish of the tabletop and sides and do not impact the function of the tabletop. The applicants did not say that the gap at the leg joint affects the table's use. I find the applicants expected that the table would be free of defects or scratches. I also find that this is a reasonable expectation for a new piece of furniture.
23. For this reason, I find that the marks and scratches on the tabletop are a breach of the implied warranty of merchantable quality. The applicants are entitled to rely on this implied warranty as they did not inspect the table before purchase.
24. SGA section 56 says a consumer can sue a supplier for damages, even if the supplier was not the manufacturer, for a breach of the SGA implied warranties. SGA section 56(2) says damages for breach of warranty are based on the estimated loss that directly results from the breach. Here, I find that the applicants have not lost the use of the table, but only the expectation of a better cosmetic finish than the one they received.
25. The applicants asked the respondent about re-staining the table. There was some discussion about sending the table to a furniture repair company. The respondent proposed staining the damaged areas. The applicants wanted the respondent to pay to stain the whole table. The applicants say the respondent told them that the furniture repair company was charging \$1,000 for the repair. However, neither party provided a formal quote for the repair costs. Since it appears that the table can be fixed, I find that a full refund is not appropriate. In the absence of a specific quote for table repairs on a judgment basis I award the applicants \$500 in damages.

26. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the damages award from October 23, 2021, the date of delivery to the date of this decision. This equals \$42.31.
27. 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 find the applicant is entitled to reimbursement of \$125 in CRT fees. The applicants did not claim dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order Jag's M.J.M. Furniture Showcase Ltd. to pay Melissa Grabowski and Sylvia Grabowski a total of \$667.31, broken down as follows:
- a. \$500 in damages,
 - b. \$42.31 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
29. The applicants are entitled to post-judgment interest, as applicable.
30. 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.

Mark Henderson, Tribunal Member