COURT FILE NO.: 19-SC-153524

DATE: 2021/1 1/29

#### **ONTARIO**

### SUPERIOR COURT OF JUSTICE

#### SMALL CLAIMS COURT

BETWEEN:		)	
GERNEIJS ORIGEN	ORICJENE	BELLEIJS, )	A.K.ASelf-represented
		Plaintiff(s) )	
— and_	T. Walker and J. Koenig Counsel for the defendant		
PAYPAL CAN	NADA LTD.	Ś	
		Defendant(s)	
		)	
		)	
		)	HEARD at Ottawa on November 23, 2021

## **REASONS FOR JUDGMENT**

# Deputy Judge K. Nearing

- I . The Plaintiff claims damages of \$1794 Cdn with respect to money he forwarded to the Defendant as a chargeback to his account with the Defendant in connection with the sale of 2 laptops on eBay to an American purchaser. The laptops were sold on April 19, 2019. The laptops were shipped to the purchaser on April 25, 2019 and the purchaser made the payment to the Defendant. The purchaser raised issues with the condition of the laptops and a claim/complaint was opened by the Defendant on April 25, 2019. The Defendant's User Agreement has a process whereby if a purchaser raises an issue that a product is not satisfactory there is a dispute resolution process. When a product is "Significantly Not As Described" also referred to as "SNDA", the process calls for a claim to be opened. The first step of the process calls for the vendor and purchaser to try and resolve the issue through direct communication.
- 2. The purchaser and the Plaintiff tried to resolve the dispute. I accept the Plaintiffs evidence that the purchaser was using the dispute resolution process as a negotiating tactic. On the evidence, the purchaser wanted a \$200 discount to resolve the dispute and the Plaintiff was only prepared to give a \$100 discount.

- 3.0n April 29, 2019, the Defendant notified the Plaintiff, by email to his email address, that a complaint had been made. The Defendant notified the Plaintiff that a response was required by May 8, 2019 and that if no response was received, the complaint would be resolved in the purchaser's favour. The terms of the User Agreement clearly state that the Defendant does not guarantee the return of the items if a complaint is decided in the purchaser's favour. The Defendant sent further reminders to the Plaintiff on May 2 and May 6, 2019. The Plaintiff did not respond to the correspondence from the Defendant. The only possible explanation is the emails from the Defendant went into the spam folder in the plaintiffs computer, so they were not seen and no response was delivered. The result was that the complaint was decided in the purchaser's favour.
- 4.Unfortunately for the Plaintiff, this left him at the mercy of the purchaser. Pursuant to the User Agreement between the Plaintiff and the Defendant, the purchaser was refunded his money and the Plaintiffs account with the Defendant was debited \$1300 USD, the equivalent of the \$1794 Cdn the Plaintiff is claiming. The email communications between the Plaintiff and the purchaser show •that there was still a possibility to complete the transaction for \$1100 USD assuming the purchaser was being truthful in his emails with the Plaintiff.
- 5. While it is regrettable that the Plaintiff is out of pocket \$1794 Cdn, I can find no fault or breach of contract by the Defendant. It acted in accordance with the terms of the User Agreement. During his evidence, the Plaintiff acknowledged the terms of the agreement and that he understood he was bound by the terms. The Plaintiffs real issue is with the purchaser who did not return the laptops and never paid anything for them. For the foregoing reasons, the Plaintiffs claim is dismissed. Given the circumstances, I make no order as to costs.

Deputy Judge K. Nearing

Released: November 29, 2021

SC-19-00153524-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

BETWEEN:

Gerneus Origine Belleus , A.K.A Origen v.Paypal Canada Inc.

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Deputy Judge K. Nearing

Released: November 29, 2021