

Numéro de référence : DM-2021-091169-0
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Droits de greffe
Gouvernement du Québec
Palais de justice Montréal

2021023375
106,00\$
2021-02-22

CANADA
PROVINCE OF QUÉBEC
District of MONTRÉAL
Locality: Montréal
File No: 500-32-714380-211

COURT OF QUÉBEC
Civil Division
Small claims Division

Jeremy Cooperstock
Doing business under the name of Jeremy
Cooperstock

vs

eBay Canada Limited
1000-44 CHIPMAN HILL
SAINT JOHN NB E2L 2A9

Plaintiff

Defendant

Claim

Latent defect

The Plaintiff hereby declares that:

1. On or around October 13, 2020, the Plaintiff purchased property from the Defendant, following a written agreement.
2. The agreement was entered into on Westmount (Quebec).
3. The sale was for the following property: Genuine Apple AirPods second generation.
4. The Plaintiff did not have the property inspected before purchasing it.
5. The defects on the property are as follows: Item was identified by Apple Store (Montreal) representative as counterfeit.
6. The Plaintiff first noticed that the property was defective on or around December 6, 2020.
7. The Plaintiff did not notice the defects before that date, for the following reasons: Product had stopped functioning shortly after arrival, but based on the serial number, Apple indicated that they were under warranty for repair. December 6 was the first available appointment slot to bring the items to the Apple Store for repair.
8. The Plaintiff did not carry out any emergency work.
9. The Plaintiff informed in writing the Defendant of the defects on the purchased property.
10. The sale price of the property is \$113.93.
11. The Plaintiff has paid in full for the property.
12. The Plaintiff claims an additionnal amount of ~~\$313.93~~ ^{\$200} for the following reasons: token compensation for lost time of plaintiff, as well as punitive and/or moral damages to serve as an example for other consumers who are repeatedly misled by eBay, and then refused a refund for fraudulent misrepresentation of a counterfeit product.
13. The total amount claimed by the Plaintiff is broken down as follows: \$113.93 (charged to credit card for purchase) \$200.00 (as described above under additional amount claimed).
14. The Plaintiff makes the following clarifications to the facts set out above: Item was subsequently found to be a counterfeit product, not "genuine".
15. Although payment has been duly requested by means of a formal notice, the Defendant has refused or failed to pay.

For these reasons, the Plaintiff asks the court to:

Order the Defendant to pay an amount of \$313.93 to the Plaintiff, with interest at the legal rate, plus the additional indemnity stipulated in section 1619 of the Civil Code of Québec.

Order the Defendant to pay the legal costs associated with this claim to the Plaintiff.

STATEMENT

(deemed to have been made under oath)

I, the undersigned, Jeremy Cooperstock, declare that:

- 1. I am the Plaintiff or the Plaintiff's mandatary.
or
 I represent the Plaintiff in my capacity as:
 officer
 an employee, bound exclusively to the Plaintiff, and I am not an attorney.

At all times during the 12-month period preceding this action, the Plaintiff, i.e. a legal person, partnership, association or group without any juridical personality, had under its direction or control not more than 10 persons bound to it by a contract of employment.

- 2. The sum claimed is due and payable.
- 3. All the facts alleged herein are true.
- 4. This statement is deemed to have been made under oath.

And I have signed

At : Westmount

On : 21/02/2021

Jeremy Cooperstock

Signature of the Plaintiff

Offer of mediation

I wish to submit this dispute to the Small Claims mediation service.

At : Westmount

On : 21/02/2021

Jeremy Cooperstock

Signature of the Plaintiff

Additional information

The information on this page will be used exclusively by the court staff members, who will refer to it when necessary, in order to contact the parties concerned.

Plaintiff

Jeremy Cooperstock doing business under the name of Jeremy Cooperstock

[REDACTED]
[REDACTED]
[REDACTED]

I consent to the use of my Email address by the court office for all forms of communication, to inform me that documents are available in my TPC account or for all forms of notification.

Defendant

eBay Canada Limited
1000-44 CHIPMAN HILL, SAINT JOHN NB E2L 2A9
(506) 632-1970
saint-john@stewartmckelvey.com

Witnesses

[REDACTED] Cooperstock
[REDACTED]
[REDACTED]
[REDACTED]

On February 21, 2021

Jeremy Cooperstock

[REDACTED]
[REDACTED]

Reference number: DM-2021-091169-0

What's next ?

Now that you have completed your statement of claim and have it in hand, this is what you need to do to move forward with your case.

1. Court costs

There are court costs for filing an application. This one will only be legally received at the court office once any court costs have been paid in full.

You can pay the court costs:

1. Online;
2. by mail: certified cheque, postal or bank money order made out to the **ministre des Finances**;
3. in person at the courthouse: cash, debit or credit card, certified cheque or postal or bank money order made out to the **ministre des Finances**.

Note that a person who provides proof of being a recipient under a social assistance or social solidarity program provided for under the Individual and Family Assistance Act is exempted from paying court costs. If that is your case, you must submit your claim booklet for the current month or include a photocopy of it.

2. Eligibility of the claim

When your claim is legally filed at the office of the Court, the clerk will review its eligibility to be heard by the Small Claims Division of the Court of Québec.

If it is ineligible, you will be sent a notice to this effect. You will then have 15 days to dispute the clerk's decision before the Court.

3. Notification of the claim

Once your claim eligible, the clerk will forward a copy of your statement of claim to the Defendant, along with information on the options available to him or her. The Defendant will have 20 days from receipt of your statement of claim to send his or her answer.

If the Defendant does not file an answer with the clerk within the 20-day period, a judgment may be rendered by default against him or her without further notice or delay. For this, your claim must be complete, that is, the supporting documents must be filed to the court.

If the Defendant contests the claim, the clerk will notify you with a copy of the dispute and a list of the exhibits filed at the office of the Court. Both parties will receive a notice indicating the place and date when they must appear in court. The notice will be sent from six (6) weeks to three (3) months before the hearing.

4. Filing exhibits

You must send your exhibits or a copy of them **immediately** to the courthouse where your claim was filed, by mail or in person.

If they are sent by mail, indicate on the envelope “Small claims Division” right underneath the Courthouse name. You must also include the case file number and the full names and contact information of the Plaintiffs. You must indicate the exhibit numbers on the exhibits (e.g., P1, P2) as they are entered on the exhibit list.

If the originals are not filed, you must produce them on the day of the hearing. It is recommended that you keep a copy of your exhibits.

If you are acting on behalf of another person, for example as a guardian or executor of an estate, you must also provide documents to prove that this is your role.

Court files are public. If some of your exhibits contain elements generally considered to be confidential, please file them with the office of the Court in an appropriately identified, sealed envelope. Only the parties in the case and the Court will have access to them, unless the Court authorizes otherwise.

5. Defendant's options

From the receipt of the claim, the Defendant will have 20 days to respond to it with one of the following options:

1. Pay the amount claimed (plus interest and fees) and the court costs directly to you. In such case, the Defendant must send the receipt or proof of payment to the clerk by regular mail, email, or fax. The clerk will then close the case.
2. Pay this amount to the clerk of the Small Claims Division. In such case, the clerk will send you the payment and close the case.
3. Offer to settle the matter out of court. You are free to accept or reject an out-of-court settlement. If you accept, all the parties must sign the settlement and send it to the office of the Court.
4. Dispute your claim. The clerk will then mail you a copy of the dispute and a list of the exhibits filed at the office of the Court. In addition to disputing the claim, the Defendant can also:
 - Request that the dispute be submitted to mediation;
 - Request that the claim be dismissed, mentioning the reasons, or the case be heard in another judicial district, before another court or tribunal, or before the Civil Division of the Court of Québec;
 - Request the involvement of another person, as co-Defendant or third party, to exercise an action in warranty against him/her or to enable the dispute to be fully settled;
 - Make a cross demand against you (if it arises from the same source as the initial claim or a related source and is eligible to be heard by the Small Claims Division) or request the contract to be cancelled or terminated who founded his claim;

- Make a genuine offer and deposit the amount at the office of the Court or with a trust company.

6. Address change

It is very important that you give your and the Defendant's exact address. Please note that a Small Claims application for recovery of a debt expires if it is not notified within three months after it is filed with the office of the Court (C.C.P., art. 107). Failure to inform the clerk of any address change could lead the court to render a judgment by default. During the legal proceedings, if your address changes or if you are informed that the Defendant's address has changed, notify the clerk by regular mail, e-mail or fax. To do so, use the "Notice of Change of Address" form, available on the Website of the Department of Justice, at <https://www.justice.gouv.qc.ca/index.php?id=451&L=2>.

7. Corrections

To notify us of an error after your claim has been sent to the courthouse, please contact the clerk of the Small Claims Division at the courthouse where your claim was filed. The contact information for all courthouses can be found on the Ministère de la Justice website at www.justice.gouv.qc.ca.