



Civil Resolution Tribunal

Date Issued: July 25, 2018

File: SC-2017-006600

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Powell v. Manito Linens Ltd.*, 2018 BCCRT 373

B E T W E E N :

Mai Powell

APPLICANT

A N D :

Manito Linens Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Mai Powell, says she purchased a set of silk pillowcases from the respondent's website for \$139.79. She says the respondent emailed her later stating there was an error on their website and she needed to pay an additional \$58. She says she declined to pay more, and the respondent refused to ship the

pillowcases and instead refunded the purchase price to her credit card. The applicant seeks an order that the respondent provide the pillowcases for the original price of \$139.79.

2. The respondent, Manito Linens Ltd. (Manito), says the applicant's claim has no merit, and the applicant is attempting to take advantage of an honest mistake on their website. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issue in this dispute is whether the respondent must provide the applicant with the advertised pillowcases for \$139.79.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The documents provided by the applicant show that on October 1, 2017, she purchased a set of “milky white” queen-sized silk pillow shams (pillowcases) from the respondent’s website. She paid \$139.79 including tax, using her credit card. The documents show that she received a discount of \$74.87 off the purchase price by entering a discount code on the website. The applicant obtained the discount code through a promotional email sent by the respondent.
10. After the purchase, the applicant received an automated email message confirming her order. The following day, the respondent sent another email stating that the sale price shown on the website was correct, but the discount code was an error. The respondent said they were surprised to see the extra 35% code was applied to the sale price, so they were looking into whether it was a software issue. They said it was an unfortunate error, as it brought the price below their cost. The respondent asked if the applicant would accept the correct price of \$208.60.
11. In an October 5, 2017 email, the respondent offered to sell the applicant the pillowcases for \$182.26 plus tax. The parties continued to correspond. The applicant refused to pay more and demanded that the respondent ship the pillowcases for the original \$139.79 price. The respondent refused, and said they would ship the pillowcases if the applicant paid an additional \$51.58. In an October 12, 2017 email, the respondent said they had been experiencing software issues with their website, and could not extend the additional 35% off the sale price of the pillowcases.

12. The applicant agrees that the respondent refunded the purchase price of \$139.79 to her credit card, and provided a copy of the refund receipt. The applicant says this refund was performed without authorization, but the respondent says authorization is not necessary for a refund. I agree, as it is not necessary to obtain permission for such a transaction.
13. The applicant asserts that the respondent is contractually obligated to provide the pillowcases for the price she paid on October 1, 2017. The respondent says that price was incorrect due to a technical error, the applicant's money was refunded, and no laws were broken.
14. I agree with the respondent that the price charged to the applicant on October 1, 2017 was an error. Its promotional email, which was provided in evidence, said that the discount code would subtract 5% from the sale prices on the website, rather than the 35.8% discount shown on the October 1, 2017 purchase confirmation.
15. However, when the respondent accepted payment for the pillowcases through its website on October 1, 2017, they entered into a contract with the applicant to provide the pillowcases for the agreed price of \$139.79. The fact that the discount code erroneously subtracted 35.8% from the purchase price, rather than the 5% shown in the promotional email, is not determinative. The applicant offered to pay \$139.79 for the pillowcases, and the respondent (through its website) accepted that offer, took the payment, and confirmed the purchase. The respondent thus breached the contract when it refused to provide the pillowcases.
16. However, in asking that the respondent be ordered to provide the pillowcases for \$139.79, the applicant is asking for specific performance of the contract. Specific performance is generally ordered if monetary compensation will not suffice or is inappropriate, such as where the contracted item is so unique it cannot be purchased elsewhere. For example, specific performance is typically ordered for breach of a land purchase contract, because no two parcels of land are identical.

In this dispute, I find that an order for specific performance is not justified, as silk pillowcases are not particularly unique and can be purchased elsewhere.

17. The *Sale of Goods Act* (SGA), which applies to this dispute, says in section 54(2) that damages for non-delivery of goods is the estimated loss directly resulting from the seller's breach of contract. In this dispute, the applicant's only loss was the \$139.79 purchase price, which was returned to her already.
18. The SGA also says in section 54(3) that if there is an available market for the goods in question, the measure of the damages is the difference between the contract price and the market price of the goods at the time when they ought to have been delivered. The applicant has not provided evidence of higher "market price" for the pillowcases, or an intention to sell the pillowcases, so I find this provision does not entitle her to a remedy.
19. For the reasons set out above, I find that the applicant is not entitled to a remedy for her claim.
20. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss her claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDERS

21. I dismiss the applicant's claim and this dispute.

Kate Campbell, Tribunal Member