



# Civil Resolution Tribunal

Date Issued: October 22, 2018

File: SC-2017-004028

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grant v. Hershey Canada Inc*, 2018 BCCRT 640

**B E T W E E N :**

Barry Grant

**APPLICANT**

**A N D :**

Hershey Canada Inc

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Karen Mok

### **INTRODUCTION**

- 1) The applicant, Barry Grant, claims that he ate some improperly wrapped Jolly Rancher candy, manufactured by the respondent, Hershey Canada Inc, which caused him to be sick. He is seeking \$3,000.00 in damages for pain and suffering. The applicant is self-represented. The respondent is represented by a lawyer, Louise Hamill.

## JURISDICTION AND PROCEDURE

- 2) These are the formal written reasons of the Civil Resolution Tribunal (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.
- 3) 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. Some of the evidence in this dispute amounts to a "he said, they said" scenario, as the applicant did not provide any evidence. Credibility of witnesses, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue.
- 4) 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.
- 5) Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - 1) order a party to do or stop doing something;

- 2) order a party to pay money;
- 3) order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

- 6) The issue in this dispute is whether the respondent is responsible for the applicant's alleged illness and if so, what are the appropriate remedies?

## **EVIDENCE AND ANALYSIS**

- 7) I have commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
- 8) The applicant says he ate a package of Jolly Ranchers candy, some of which were not properly wrapped, or wrapped at all, which resulted in him being very sick with vomiting and diarrhea, and in bed for a day and a half.
- 9) The applicant seeks \$3,000.00 for pain and suffering but has not provided any evidence in support of his claim, or at all.
- 10) Between January and August 2017, the applicant and respondent's customer representatives exchanged correspondence on a few occasions, wherein the applicant described his experience to the respondent and sought compensation. The respondent sent him a \$2.00 coupon to reimburse him for his purchase, which the applicant found to be inadequate. The respondent apologized to the applicant for his experience and disappointment with the \$2.00 coupon.
- 11) The respondent denies the applicant's allegations and says that the applicant has not satisfied the burden of proof to substantiate his claim. The respondent is correct in that its earlier apology is not an admission of liability (see the *Apology Act*).

- 12) When a manufacturer delivers a product that is for human consumption, it has a duty to take reasonable care to ensure that the product does not contain a substance that may injure the consumer. The manufacturer is liable even if the product goes through an intermediary, such as a retailer, first before reaching the consumer. When the consumer proves that he has been injured by a substance that one would not expect to be in the product, and that the substance was in the product when it left the manufacturer, there is a presumption of negligence on the part of the manufacturer and the burden then falls on it to disprove negligence (*Donoghue v. Stevenson*, [1932] A.C. 562, *Shandloff v. City Dairy Ltd. and Moscoe*, [1936] O.R. 579 (Ont. C.A.), *Zeppa v. Coca-Cola Ltd.*, [1955] 5 D.L.R. 187 (Ont. C.A.)).
- 13) Here, however, the applicant has not proven that there was a substance that had contaminated the Jolly Rancher candy, let alone that he had been injured by such a substance. I am not prepared to speculate that, simply because the candy may not have been properly wrapped, that it was contaminated. The applicant has not even proved the candy was improperly wrapped, such as with photos of it, nor has he provided any medical evidence to support his assertion that he was sick for a day and a half. The applicant has failed in his burden of proof and accordingly, it is not necessary for me to discuss the second part of the test, whether the substance was in the candy before it left the respondent's manufacturing facility.
- 14) Given my finding above that the applicant has not proved negligence, it is also not necessary for me to address the applicant's claim for damages.
- 15) The applicant's claim is dismissed. As such, under section 49 of the Act, and tribunal rules, I find that the applicant is not entitled to reimbursement of tribunal fees or any dispute-related expenses.

## **ORDERS**

- 16) I dismiss the applicant's claims and therefore, this dispute.

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Karen Mok, Tribunal Member