



Civil Resolution Tribunal

Date Issued: April 3, 2019

File: SC-2018-005629

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martinez v. Saatchi & Saatchi Fine Jewellery Ltd.*, 2019 BCCRT 421

B E T W E E N :

Raul Martinez

APPLICANT

A N D :

Saatchi & Saatchi Fine Jewellery Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a custom jewelry purchase.
2. The applicant Raul Martinez ordered a custom-made 14 karat gold necklace and pendant from the respondent Saatchi & Saatchi Fine Jewellery Ltd. The applicant says he paid the agreed \$4,400, but that the quality of the necklace was not

acceptable. The applicant says the pendant was supposed to be made in Italy but was not. He was also dissatisfied with the chain. He says the respondent agreed to fix the chain but then made a shorter chain instead. The applicant claims a refund of the \$4,400 for the necklace and pendant and \$599 for damages to his dignity.

3. The respondent says the necklace and pendant were custom and high quality. The respondent points out that there is 8.5 grams more gold in the jewelry than what was promised to the applicant. It says the applicant is not entitled to a refund. The respondent asks that the dispute be dismissed.
4. The applicant is self-represented. The respondent is represented by principal Julio Saatchi.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is 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 evidence and submissions before me.

7. 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 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. I decided to hear this dispute through written submissions.
8. 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.
9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are whether the applicant is entitled to a refund of \$4,400 for the custom chain and pendant he purchased from the respondent, and, whether the applicant is entitled to damages for injury to his dignity

EVIDENCE AND ANALYSIS

11. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
12. On June 29, 2018 the applicant ordered a custom-made 14 karat gold chain and cross pendant from the respondent.

13. The applicant argues that he was promised that “the cost of the item would be honored by the weight of gold related to the current price of a gram of gold in CAD.” There is no other evidence that the purchase price was tied to the per gram price of gold, and I find that it was not.
14. Based on the evidence, including the purchase order form, I find that parties agreed that the chain was to be 28-32 grams in weight. The cross was to weigh between 12 and 14 grams, for a total range combined between of 40 to 46 grams. The agreed price was \$4,400.
15. The purchase order form specifies that all sales are final and that there are no refunds for custom orders.
16. On July 14, 2018 the applicant picked up the pendant and “paid in full”. Based on the custom order receipt filed in evidence, I find that the pendant weighed 18.7 grams.
17. I find that the respondent agreed to keep the chain to make an alteration to it. Specifically, the applicant had complained that the top of the chain was made with a smaller diameter link than the main part of the chain. The applicant asked for the chain to be altered so that the top part was made with the same size of 14k gold links as the bottom of the chain. The alterations were to be completed within 14 working days from July 16, 2018.
18. On July 29, 2018, the respondent informed the applicant that his chain was ready to be picked up.
19. On August 1, 2018, the applicant came in to pick up his chain. It was uncontested, and I find that, the chain weighed 35.8 grams.
20. The total weight of gold in the custom chain and pendant was 54.5 grams.
21. The applicant filed a photograph, dated August 1, 2018, showing the first chain and the altered chain, side by side. The new chain is made with the larger links throughout. It is, at most, ½ inch shorter than the first chain.

22. The applicant submitted video that he says shows the respondent lying about the gold chain being made in Italy. I have reviewed the video and do not agree. In it, the respondent's principal says that, where chains say they are made in Italy, he relies upon that. The video does not establish the respondent lying about where the jewelry came from.
23. The applicant argues that the chain and pendant were not constructed as agreed. Specifically, he says the chain was not made in Italy, and that the first chain's links were not what he wanted, and that the second chain was too short.
24. Though not argued, I have considered that the contract between the applicant and respondent for the custom-made jewelry is a future performance contract under the *Business Practices and Consumer Protection Act*. On my review of the written contract dated June 29, 2018, I find that it meets all requirements under the BPCPA.
25. Turning to the question of whether the respondent breached the contract to deliver the custom jewelry, I find it did not. The applicant did not prove that the chain or pendant were specified to be made in Italy, nor whether or not they were made in Italy.
26. In terms of the length of the chain, I find it was not agreed upon at the time of the order. The applicant did not prove that the chain was shorter than what was promised to him. He demonstrated only that the second chain was slightly shorter than the first chain constructed.
27. Both parties agree that a minimum weight of gold was discussed. I find that the chain and pendant each exceeded the minimum weight of gold that was agreed upon, to the benefit of the applicant.
28. I find that the respondent fulfilled its obligations under the contract to provide custom jewelry.

29. Aside from the applicant's assertion, there was no evidence to support his claim for damage to his dignity. I find that he has not met the burden of proof upon him in this claim.

30. I dismiss the applicant's claims.

31. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the successful respondent paid no tribunal fees, I make no order in this regard. I dismiss the applicant's claim for reimbursement of tribunal fees.

ORDER

32. I dismiss the applicant's claims and his dispute.

Julie K. Gibson, Tribunal Member