



Civil Resolution Tribunal

Date Issued: April 23, 2019

File: SC-2018-005440

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wei Liu v. TIMBERLAND CEDAR PRODUCTS LTD.*, 2019 BCCRT 493

B E T W E E N :

Wei Liu

APPLICANT

A N D :

TIMBERLAND CEDAR PRODUCTS LTD.

RESPONDENT

A N D :

Wei Liu

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about an order for cedar fencing.
2. The applicant Wei Liu says she paid a \$4,000 cash deposit to the respondent Timberland Cedar Products Ltd. (Timberland) for cedar fencing. Ms. Liu says the products delivered were of poor quality and not as ordered. Ms. Liu returned them. Timberland refused to refund her deposit.
3. Ms. Liu claims the \$4,000 refund, \$200 for “unethical business practices” and \$800 in lost time for one of her workers. Ms. Liu also asks that the tribunal order the Canada Revenue Agency to audit Timberland.
4. Timberland denies any liability. Timberland counterclaims, saying that Ms. Liu owes it \$6,068.56, which it calls the “non-refundable” part of the order. Timberland says the total cost of the order was \$8,236.88, from which it subtracts delivery costs of \$341.25 and the deposit of \$4,000 and adds a claim of \$500 for time spent loading, unloading, storing and handling the order for a total counterclaim of \$2,909.81.
5. Ms. Liu says the order was for only \$7,354.36, not the \$8,326.88 that Timberland uses in its counterclaim.
6. The applicant is self-represented. The respondent is represented by employee or principal Sunny Gujral.

JURISDICTION AND PROCEDURE

7. 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 (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.

8. 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, she 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.
9. On April 5, 2019, the applicant requested an oral hearing. I deny this request. I find there are no extraordinary circumstances that make an oral hearing necessary in the interests of justice, as set out in section 39(3) of the Act. As noted, the tribunal’s mandate includes proportionality, and this roughly \$4,000 dispute does not warrant an oral hearing. The parties each had full opportunity to provide evidence and written submissions. I have drawn my conclusions below based on the harmony of the evidence taken together. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
10. 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.
11. 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.
12. 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

13. In Ms. Liu's claim, the key issue is whether she is entitled to a refund for the \$4,000 cash deposit she paid Timberland on her order for cedar fencing product.
14. In Timberland's counterclaim, the issue is whether Ms. Liu owes it \$2,409.81 Timberland says remains owing on the order, plus its \$500 claim for moving, handling and storing the order

EVIDENCE AND ANALYSIS

15. This is a civil claim in which Ms. Liu bears the burden of proof on a balance of probabilities in her claim. Timberland bears the burden of proof in its counterclaim.
16. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
17. On August 17, 2017, Ms. Liu ordered some cedar fencing products. Timberland says Ms. Liu viewed the fence panels she was set to receive. She then paid a \$4,000 cash deposit to Timberland.
18. Timberland argues that the August 17, 2017 sales contract included conditions that:
 - a. there would be no returns on deposits,
 - b. a 15% restocking charge applied to all returns,
 - c. no refunds or exchanges could be made after 15 days, and
 - d. custom orders would be final sale.
19. Ms. Liu says that when she paid the deposit, Timberland gave her a photocopy of the sales contract on which Ms. Kim Gujral, an employee and family member of Mr. Gujral, had written the words "fully refundable", with "refundable" underlined.

20. Timberland says that the words “fully refundable” referred only to the 4x6 part of the order. However, the notation on the sales contract does not specify only to the 4x6 product.
21. I agree that the document shows that Ms. Liu paid a \$4,000 deposit on an order for a total of \$7,354.36, and that the \$4,000 deposit was noted, in handwriting, to be “fully refundable.” I find that the handwriting matches the other handwriting on the sales contract. It was uncontested, and I find, that this handwriting belongs to Ms. Gujral.
22. I find that this handwritten note modified the conditions that were pre-printed on the order about there being no returns on deposits, a 15% restocking fee, no refunds or exchanges after 15 days and custom orders being final sale.
23. Based on this document, I also find that the order cost \$7,354.36, and not the \$8,236.88 Timberland used to calculate its counterclaim.
24. On August 30, 2017, Timberland attempted to deliver some of the ordered product. Timberland says it delivered the order, but Ms. Liu was not on site. Timberland says Ms. Liu’s landscapers refused to unload the order because it was outside their scope of work, so Timberland’s driver had no choice but to return to the yard. Timberland says it informed Ms. Liu of the storage fees that she would be charged.
25. By contrast, Ms. Liu says her fencing installer looked at the materials and assessed them as poor quality. He asked Timberland to return the delivery. Ms. Liu’s account is consistent with the contemporaneous text messages exchanged between Timberland and Ms. Liu on August 30, 2017. For this reason, I prefer Ms. Liu’s evidence and find that her fencing installer turned the delivery away, without having the product unloaded, because he was not satisfied with the quality of the fencing materials.
26. On August 30, 2017, in the evening, Ms. Liu texted Timberland saying she had heard from her fencing installer and felt sorry about the situation. She then wrote “I

just mentioned to them if the landscape tiles that isn't good. We can return. Not everything.” (quote reproduced as written)

27. Timberland argues that this text proves that some of the materials were non-refundable. I disagree. Ms. Liu says she was hoping some of the materials could be used because she felt badly about cancelling the order, but later found out from her installer that all of the product needed to be returned. I accept Ms. Liu's evidence on this point, as it is most consistent with the whole of the evidence before me.
28. Ms. Liu then requested a refund from Ms. Gujral. Timberland refused to refund the \$4,000 deposit.
29. Timberland says the agreement was that the 4x6s were refundable, but the rest of the order was final sale. There is no documentary evidence before me to support this version of events. As noted above, the sales contract documents an agreement that the order was “fully refundable” and I find that it was.
30. Given my finding that the order was fully refundable, I find that Ms. Liu was entitled to have her designate, the fencing installer, examine the materials and decide if they were satisfactory. He rejected the delivery. It does not matter if Ms. Liu reviewed samples of the fencing product at the time of order, because the delivered items could differ from those samples. In any case, I have found that the order was fully refundable, regardless of the reason for rejecting the delivery. I find that Ms. Liu is entitled to a refund of the \$4,000 she paid.
31. I dismiss Timberland's \$500 claim for time spent loading, unloading, handling and storing the products. Timberland did not prove it ever unloaded the products. I have found that, because it was marked “fully refundable”, the sales contract does not entitle Timberland to discount the refund for handling and storage costs.
32. For the reasons above I also dismiss the rest of Timberland's counterclaim. It did not prove that any money remains owing from Ms. Liu, since the order was “fully refundable.”

33. I dismiss Ms. Liu's claim for \$200 for "unethical business practices" because she proved only one claim about a single order, which is appropriately remedied by a refund of her deposit. I have interpreted this claim to be for aggravated damages. There is no evidence to sustain this claim.
34. I dismiss Ms. Liu's \$800 claim for lost time of one of her workers. Although it is not clear, this claim appears to relate to Mr. Liu's evidence that there was an earlier date when Timberland said it would deliver but failed to attend. While it may be that Timberland failed to make an earlier delivery, Ms. Liu has not proven that her fencing contractor and crew were left "waiting for the delivery the whole day". That is, she has not provided statements from these individuals as to what they were doing that day, nor an estimate of their rates.
35. Under section 10 of the *Act*, I refuse to resolve Ms. Liu's claim that the tribunal order the Canada Revenue Agency to audit Timberland. The tribunal does not have jurisdiction to order this remedy. This remedy does not follow from her proven claim, and is a process initiated by the Canada Revenue Agency, not the tribunal.
36. 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. I find Ms. Liu is entitled to reimbursement of \$175 in tribunal fees. I dismiss Timberland's claims for reimbursement of tribunal fees, as it was unsuccessful.

ORDERS

37. Within 30 days of the date of this decision, I order Timberland to pay Ms. Liu a total of \$4,262.19, broken down as follows:
 - a. \$4,000 refund for the deposit,
 - b. \$87.19 in pre-judgment interest calculated from August 17, 2017, when the deposit was paid, to the date of this decision, under the *Court Order Interest Act*, and

c. \$175 for tribunal fees.

38. Ms. Liu is entitled to post-judgment interest, as applicable.

39. Ms. Liu's remaining claims are dismissed. Timberland's counterclaim is dismissed.

40. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

41. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member