



Civil Resolution Tribunal

Date Issued: June 12, 2019

File: SC-2018-007476

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ciliberto v. Jaggard*, 2019 BCCRT 718

B E T W E E N :

Giovanni Ciliberto

APPLICANT

A N D :

Maria-Elissa Jaggard

RESPONDENT

A N D :

Giovanni Ciliberto

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The respondent (and applicant by counterclaim), Maria-Elissa Jaggard, runs a hair salon business from her home. The applicant (and respondent by counterclaim), Giovanni Ciliberto, ordered a “hair system” (wig or toupee) from Ms. Jaggard. He paid a deposit of \$949.20 at the time the order was placed, with a remaining balance of \$949.20 to be paid upon delivery.
2. Mr. Ciliberto says the hair system Ms. Jaggard provided was not what he requested, as it was bulky, too short, and too dark. He seeks a refund of the \$949.20 he paid Ms. Jaggard.
3. Ms. Jaggard denies Mr. Ciliberto’s claim for a refund. She says the parties had a valid contract, and the hair system met the specifications Mr. Ciliberto agreed to at the time of the order. She also says a custom-made hair system is intended to be “cut-in” to a final style when the purchaser puts it on, but Mr. Ciliberto refused to let Ms. Jaggard or her son (who works in the salon) finish this. Ms. Jaggard says Mr. Ciliberto also refused her offer to provide a new hair system to replace the first one. In her counterclaim, Ms. Jaggard seeks payment of the remaining balance of \$949.20.
4. Mr. Ciliberto is self-represented. Ms. Jaggard is represented by Brian Jaggard, who I infer is a relative.

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* (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 the circumstances here, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
7. 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.
8. Under tribunal rule 9.3(2), 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

9. The issues in this dispute are:
 - a. Is Mr. Ciliberto entitled to a refund of \$949.20 for the hair system?
 - b. Is Ms. Jaggard entitled to payment of the outstanding balance of \$949.20 for the hair system?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Mr. Ciliberto must provide his claim, and Ms. Jaggard must prove her counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. Based on the evidence before me in this dispute, I find that Mr. Ciliberto is not entitled to any refund. I also find that Mr. Ciliberto must pay Ms. Jaggard the remaining balance of \$949.20 for the hair system.
12. The invoice and receipt provided in evidence shows that on January 4, 2018, Mr. Ciliberto paid \$949.20 by credit card for a “Men’s custom system and/or wig”, with cut-in, care kit, and follow-up. The invoice said the item would be “Custom made to order.” The total price, including taxes, was listed at \$1,898.40, with a 50% deposit due immediately.
13. Both parties provided copies of a January 4, 2018 contract, entitled “Purchase Agreement” (agreement). The agreement sets out the same price and payment terms as the invoice. It also sets out various care requirements for the product, and says the product is custom-made and therefore non-refundable. The agreement contains a term at paragraph 13 stating that if the purchaser does not complete the agreement in a timely manner by paying the purchase price or accepting delivery, he forfeits the deposit and must pay the balance plus interest.
14. Mr. Ciliberto says the written agreement is not valid because he never signed it, because Ms. Jaggard gave it to him as he left the salon after already paying the deposit, and because Ms. Jaggard drew a diagram on her copy of the agreement that was not on the original.
15. I agree that since Mr. Ciliberto never signed the agreement, it is not binding on him. This is because there is no evidence that he knew of and agreed to the specific terms of the written agreement. Rather, I find the contract between the parties is made up of their verbal agreement, plus the written invoice, deposit receipt, and email correspondence. Since Mr. Ciliberto paid the deposit, and emailed Ms. Jaggard several days later with attached examples of what he wanted, he entered into a binding contract to buy the hair system for \$1,898.40. Also, Mr. Ciliberto confirmed his approval of the order in his email correspondence with Ms. Jaggard on January 8 and 9, 2018. Ms. Jaggard said she had told the factory not to start his order until Mr. Ciliberto confirmed whether he wanted the “scallop front edge” or the

“lace front base”. Mr. Ciliberto replied the next day, and told Ms. Jaggard to go “with the one you suggested.” Ms. Jaggard confirmed the order, stating, “I’ve given the factory a go ahead with the original order.” Based on these documents, I find there is a binding contract between the parties.

16. In effect, Mr. Ciliberto says Ms. Jaggard breached the contract by providing a product that did not meet the agreed-upon terms. I find that the evidence provided by Mr. Ciliberto is not sufficient to establish this claim.
17. Mr. Ciliberto provided 2 photos of the hair system on a mannequin head. He says it is too short and bulky, and the hairline was different from what was agreed on. I find the photos do not establish these differences. While I accept that Mr. Ciliberto sent Ms. Jaggard photos and a video showing what he wanted, I find that the limited photos of the actual hair system provided are insufficient to show that the hair could not have been cut and styled into the requested shape. Also, I find Mr. Ciliberto has not established how the hairline was “different” from what he requested in his January 9, 2018 email.
18. Mr. Ciliberto did not dispute Ms. Jaggard’s evidence that he refused to let Ms. Jaggard or her son finish the cut-in. He says they were unprofessional, as he had not agreed to have the cut-in performed by Mr. Jaggard, who washed the hair system in a kitchen sink. I find that these facts, which Ms. Jaggard denies, do not mean the hair system was so substandard that it did not meet the terms of the contract. Mr. Ciliberto was aware when he paid the deposit that Ms. Jaggard’s salon was located in her home. Also, the fact that the hair system was not in a box does not prove it was substandard, or that it was not custom made, as Mr. Ciliberto asserts.
19. Even if I found that the hair system did not meet the contract’s terms, I find that any deficiency could have been cured if Mr. Ciliberto had accepted Ms. Jaggard’s March 21, 2018 emailed offer to reorder a new hair system “with the changes you are looking for” at no extra cost beyond the original contract.

20. Mr. Ciliberto says he received a better product at a lower price from a salon in Toronto. However, he only provided a photo of the shipping box, so I cannot tell how that product was different from the one provided by Ms. Jaggard. I accept that Mr. Ciliberto was able to find a more satisfactory bargain elsewhere, and his submission indicate that he has buyer's remorse. However, this does not mean Ms. Jaggard breached the contract, and does not excuse Mr. Ciliberto from paying the outstanding balance for his order.
21. For all of these reasons, I find that Mr. Ciliberto has not proven that Ms. Jaggard breached the contract between the parties. I therefore find he is not entitled to any refund.

Counterclaim

22. For the same reasons, I allow Ms. Jaggard's counterclaim, and find that Mr. Ciliberto must pay the outstanding balance of \$949.20. Ms. Jaggard is entitled to pre-judgment interest on this sum under the *Court Order Interest Act* (COIA), from March 21, 2018. This equals \$18.27.
23. I have considered whether to order Ms. Jaggard to provide the hair system to Mr. Ciliberto. However, since neither party requested this remedy, and since Mr. Ciliberto made no attempt to pick up the product, I decline to make this order.
24. As Ms. Jaggard was successful in this dispute, in accordance with the Act and the tribunal's rules I find she is entitled to reimbursement of \$150 in tribunal fees. As Mr. Ciliberto was unsuccessful, I find he is not entitled to any reimbursement. Neither party claimed dispute-related expenses.

ORDERS

25. I dismiss Mr. Ciliberto's claims.
26. I order that within 30 days of this decision, Mr. Ciliberto pay Ms. Jaggard a total of \$1,117.47, broken down as follows:

- a. \$949.20 for the outstanding invoice balance,
- b. \$18.27 in pre-judgment interest under the COIA, and
- c. \$150.00 as reimbursement of tribunal fees.

27. Ms. Jaggard is entitled to post-judgment interest under the COIA, as applicable.

28. 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.

29. 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.

Kate Campbell, Tribunal Member