



Civil Resolution Tribunal

Date Issued: June 18, 2019

File: SC-2018-006405

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dayal v. Timberland Cedar Products Ltd*, 2019 BCCRT 869

B E T W E E N :

suresh dayal

APPLICANT

A N D :

Timberland Cedar Products LTD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the purchase and sale of fence panels.
2. The applicant Suresh Dayal says he ordered and paid for fence panels from the respondent Timberland Cedar Products LTD, but that they arrived damaged.
3. The applicant asks for a refund of the \$2,667.20 he paid.

4. The respondent disagrees about the delivery date, and the type and number of panels the applicant ordered. The respondent says the materials were marked “final sale”. The respondent says the applicant is not entitled to a refund.
5. The applicant is self-represented. The respondent is represented by employee or principal Kim Gujral.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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.
10. Under tribunal rule 9.3(2), 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.

ISSUE

11. The issue in this dispute is whether the applicant is entitled to a refund of the \$2,667.20 he paid the respondent for fence panels and delivery costs.

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities.
13. Although the respondent made submissions, it did not file any evidence.
14. On March 30, 2018, the applicant says he went to the respondent and ordered 31 fence panels. The amount paid was not disputed by the respondent. I find, that the applicant paid \$2,600 in cash.
15. When he arrived home, the applicant realized he needed more panels. He called in a further phone order and paid \$67.20, by Mastercard.
16. The respondent disputes the number of panels ordered by the respondent. It says he ordered only 23 panels total.

17. The handwritten notes filed in evidence by the applicant show that he ordered at least 31 panels, broken down as:
 - a. 17-6x8 panels, 2-5x8 panels and 3-4x8 panels. He paid \$1,550 for these.
 - b. 14-6x8 panels, on sale, for which the handwritten receipt says he paid in full,
 - c. A further order of something from the respondent on April 7, 2018 for which he paid \$67.20. Based on the amount, I find this charge was for some extra panels and delivery.
18. Given that the applicant has these handwritten notes, while the respondent filed no evidence to contest them such as their own business record of the order, I prefer the applicant's account about what happened. I find that the applicant ordered at least 31 panels. I find that he pre-paid for the panels and two delivery charges, for a total of \$2,667.20.
19. The applicant says the delivery happened on April 7, 2018, and the panels arrived in one delivery. The applicant called the respondent and spoke with S, an employee of the respondent. The applicant told S that the panels were damaged and that he did not accept delivery. The respondent did not file any statement from S contesting this account.
20. In contrast, the respondent says the delivery took place April 6, 2018. The respondent says the applicant initially declined the order. After a walk through with the driver, the respondent says the applicant was satisfied with the panels. I find the evidence does not support these contentions.
21. The applicant filed a statement from a neighbor, RP, who attended to help the applicant unload the panels on April 7, 2018 and observed their delivery. RP says that most of the panels were bent and broken. He recalled that the panels remained on the flat bed truck and were not unloaded.

22. Based on the statement of RP, I find that the delivery was attempted on April 7, 2018. I also find that the applicant refused the delivery because the panels were in unacceptable condition.
23. The respondent argues that the panels were non-refundable. The only evidence to support this submission is a handwritten note showing that 14 of the panels were “on sale”. Even if I accepted this as some proof that the panels were non-refundable, it would not apply to all of the panels.
24. The respondent says it gave the applicant a receipt marked “final sale”. However, no one filed such a receipt in evidence. I find that there was no receipt issued. The respondent should have had this business record available. I find that there was no agreement that that the panels were non-refundable.
25. While I am not bound by previous decisions of the tribunal, I have found the analysis of the *Sale of Goods Act* in *Shevchenko v. J.R. Furniture Place Ltd.*, 2018 BCCRT 606 helpful.
26. Sections 16 to 19 of the *Sale of Goods Act* set out certain requirements that may be included as a matter of the law to consumer contracts. Where it is someone's usual business to sell things to the public, section 18 of the *Sale of Goods Act* adds, or implies, certain terms into the sales contract between the seller and purchaser. I find that the respondent is in the business of selling lumber products.
27. One of the implied terms is that an item being sold must be of saleable quality.
28. Here, I find that broken or bent panels are not of saleable quality. To meet *Sale of Goods Act* saleability requirements, I find that a panel should be capable of use in a project, rather than being broken or bent before it is unloaded. This requirement stands whether or not the item was on sale.
29. Based on the evidence and submissions before me, I find the applicant has proven the claim on a balance of probabilities and is entitled to a refund of \$2,667.20.

30. Although it did not file a counterclaim, the respondent says that the applicant should pay it \$657.58, made up of a restocking fee, a second delivery fee and an “inconvenience fee”. I have found that the product was not saleable. Considering this finding, the respondent is not entitled to offset the damages owing to the applicant by \$657.58.
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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$40.96 in dispute-related expenses for delivery of the Dispute Notice, which I find reasonable.
32. I dismiss the applicant’s claim for \$84.00 for legal fees incurred for a demand letter. This is consistent with section 20 of the Act and the tribunal’s rules that legal fees are only ordered in extraordinary cases and that parties represent themselves. This case is not extraordinary.

ORDERS

33. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,891.72, broken down as follows:
 - a. \$2,667.20 as reimbursement for payment for the panels and delivery fees,
 - b. \$58.86 in pre-judgment interest under the *Court Order Interest Act*, calculated from April 7, 2018 to the date of this decision, and
 - c. \$165.96 for \$125 in tribunal fees and \$40.96 for dispute-related expenses.
34. The applicant is entitled to post-judgment interest, as applicable. I dismiss the applicant’s remaining claim.
35. 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.

36. 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