



Civil Resolution Tribunal

Date Issued: August 2, 2019

File: SC-2019-001690

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leeward International Trading Ltd. v. Li*, 2019 BCCRT 934

B E T W E E N :

LEEWARD INTERNATIONAL TRADING LTD.

APPLICANT

A N D :

YUE HONG LI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a broken contract for kitchen cabinets. The applicant, Leeward International Trading Ltd., says it contracted to provide the respondent, Yue Hong Li, with kitchen cabinets, but she refused to pay before the cabinets were delivered. The applicant requests a \$1,625.25 cancellation fee, late payment fee, as well as

interest. The applicant is represented by Tony Chen, who I infer is a principal or employee.

2. The respondent says the contract is invalid as it did not state either the applicant's or her legal name. The respondent also takes issue with the terms of the contract. The respondent represents herself.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 "it said, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 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 therefore decided to hear this dispute through written submissions.
5. 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.

6. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the Act: 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:

7. The issues in this dispute are:
 - a. Did the applicant and respondent enter into a valid contract and what were its terms?
 - b. Did the respondent break the contract and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove its claim. It bears the burden of proof on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. The respondent says that the contract is invalid as it did not list the applicant's legal name (Leeward International Trading Ltd.), but rather the name it was doing business as, Super Cabinet World. The applicant has provided its business license indicating that it is entitled to use this name.
11. The respondent has provided an article indicating the pitfalls of signing contracts without using your legal name. I note that this article is about an individual protecting personal assets and the danger of being sued as an individual rather than a business if one signs a contract not using one's proper legal name. This

article does not assist the respondent's position that the contract is invalid because the respondent used its dba name.

12. Although it is likely best practice to use the full legal name when entering a contract, using one's dba name does not make the contract invalid. Aside from the separate provisions that are set out in the *Business Practices and Consumer Protection Act* (BPCPA), which I discuss below, the question in determining the validity of a contract is whether the parties can be properly identified. There is no question based on the applicant's business license that Leeward International Trading Ltd. is Super Cabinet World and legally entitled to use that name.
13. The respondent also says the contract is not valid because she used her nickname Rose Li when she entered the contract and not her legal name Yue Hong Li. The respondent is not denying that she is Rose Li, or that she signed the contract. Therefore, I find that the respondent is the party who signed the contract.
14. The respondent also says that certain of the terms of the contract are in question because there were multiple quotes signed and she disputes that she ever signed the actual order. The applicant agrees there were multiple quotes before the final order because the respondent changed her mind about what she wanted. However, he did submit the final signed order.
15. The respondent suggests that the final signed order is a forgery and that the applicant inserted the word "order" where it did not exist. I do not accept this evidence as the price on the order is \$11,015.00. The respondent in her statement says that she went to the applicant's showroom prepared to pay the \$11,015.00 after the agreement was signed, but the issue for her was that the applicant wanted the payment in cash. I find that this amounts to an admission on the respondent's part that she did enter into the contract to pay the respondent \$11,015.00. Based on this, I find I do not have to decide whether this particular order submitted was the final order because the respondent accepts this was the amount owing.

16. The respondent says that she did not provide the applicant with a \$50.00 deposit. The applicant says she did. The \$50.00 deposit is acknowledged in one of the quotation forms that the respondent provided. I accept that the respondent paid the applicant a \$50.00 deposit. This also supports that there was a contract between the two parties.
17. The applicant has provided the signed agreement which both parties agree was on the back of either the quotation or the order. There is no dispute that both parties signed this agreement. Based on the evidence, I find on a balance of probabilities that the respondent entered into this agreement with the applicant for the cabinets with an outstanding amount of \$11,015.00.
18. The respondent says that she agreed to pay cash because the applicant's quote was lower than one she previously received from another company. However, when it was time to pay she did not have that much cash and she started to get concerned about the applicant's identity and giving it that much money. She was also concerned that it would not deliver the cabinets. She says she asked to see the applicant's business license, but it refused to show it to her. The respondent says she was worried she would not know who to sue if the applicant failed to deliver the cabinets.
19. The applicant says that the respondent knew that the cabinets would not be delivered to her home until she paid for them. The applicant states that they do accept personal cheques but that it would take a few days to clear and the applicant wanted the cabinets the next day. The applicant also says they accept debit and cash but not credit cards on such a large order. The applicant further states that it showed the respondent its business license.
20. Much of the dispute is based on the payment for, and the delivery of, the custom-made cabinets. I find that the BPCPA applies to the contract because Leeward International Trading Ltd. meets the definition of "supplier", as, in the course of business, it participated in a consumer transaction by supplying, or offering to supply, goods or services to a consumer, here, the respondent.

21. The BPCPA says that a “future performance contract” is a contract for the supply of goods or services between a supplier and a consumer for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. The agreement does state that payment was to be made at the time of signing the contract, but it is undisputed that the respondent was not required to pay (and did not pay) the entire cost of the cabinets at the time she entered into the November 2018 agreement. Because the cabinets were not going to be built and supplied until sometime in the future, I find that the agreement was a future performance contract, as contemplated in the BPCPA.
22. Section 19 of the BCPCA sets out the information which must be contained in a future performance contract. It specifies that the supplier’s name and, if different, the name under which the supplier carries out business, must be contained in the agreement. The agreement signed between the parties only names Super Cabinet World and does not contain the name Leeward International Trading Ltd.
23. Section 23(2) of the BPCPA says that a future performance contract must contain the supply date and the date on which the supply of goods or services will be completed. The 2018 agreement does not contain this information. The agreement provides information about cancelling the order before the delivery date, but the delivery date is not contained in the order, the agreement, on the different quotations, or layouts, including the final January 16, 2019 sketch of the layout.
24. Because neither party specifically addressed the BPCPA, I asked for submissions on this issue.
25. In its submissions, the applicant does not dispute that Leeward International Trading Ltd. was not named in the agreement but provides the business license which shows the relationship between the two. The BCPCA indicates that both names are required in the future performance contract. Therefore, I find that the applicant did not conform with this section of the BCPCA.

26. The applicant also says that the parties discussed the supply date and agreed that it would deliver the goods and start to install the cabinets after the agreement was signed and payment was made “as required in a week per signed date” which I take to mean within one week after the payment was made. The applicant says that the completion date was not applicable but that they discussed that the cabinet installations would be completed in about one week and the countertops fabrications and installation would be completed in about two weeks after the cabinets were installed.
27. The applicant argues that the supply date was going to be the day after the respondent paid in cash because she was the one who wanted the cabinets delivered the next day. I first note that the applicant has not provided evidence that its supply date would be the date after payment, and, in fact, it has submitted that the delivery might be as long as a week after the payment was made. Further, even if the applicant had delivered the cabinets, the question still remains as to when the installation would be completed.
28. The respondent says that there was no firm supply date and that the applicant only told her she would get the product after she paid for it in full. She also says that the completion date was not discussed.
29. I find that the applicant has not proved that the supply and completion date were agreed upon as required by the BPCPA. The formal agreement signed is detailed and includes very specific terms about the obligations of the parties. It does not make sense that in providing a detailed quote and such a comprehensive agreement that these important details would be left to a simple discussion and not put down in writing if they were agreed upon. I accept the respondent’s submission that the supply date and completion date were undetermined, and this is part of what her concern was in handing over a large sum of money with no guarantee as to when or if she would get the product.
30. Therefore, I find that the contract did not contain the information required under sections 19 and 23(2) of the BPCPA. Section 23(5) of the BPCPA says a consumer

may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract if the contract does not contain the names and supply date information required under sections 19 and 23(2).

31. Because of the law set out in the BCPCA, I find the respondent was entitled to cancel the agreement and that she did so when she refused to pay the \$9,000.00. The applicant says that its last attempt to contact the respondent to complete payment was February 8, 2019 and they told her that they were going to take legal action after that date. I find that as of February 8, 2019 the applicant accepted notification that the respondent was not going to pay the \$9,000.00 and that she had cancelled the agreement.
32. Based on all of the evidence, I find that the respondent was entitled to cancel the agreement without penalty under the BCPCA and that she did so. Therefore, she does not have to pay the applicant a cancellation charge, late fee, or interest.
33. 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. As the applicant was unsuccessful in its claim, it is not entitled to have its tribunal fees and expenses reimbursed.

ORDER

34. I dismiss the applicant's claim and this dispute.

Kathleen Mell, Tribunal Member