



Civil Resolution Tribunal

Date Issued: September 12, 2019

File: SC-2019-001812

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Le Thi Thanh Thao (dba Tian Patio Concepts) v. Rebrovskaya et al*, 2019
BCCRT 1079

B E T W E E N :

LE THI THANH THAO (Doing Business As TIAN PATIO CONCEPTS)

APPLICANT

A N D :

JULIA REBROVSKAYA, JIM ROGERS, and SPARX LOGISTICS
CANADA LIMITED

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a breach of contract for shipping goods from Vietnam. The applicant, Le Thi Thanh Thao (doing business as Tian Patio Concepts) (Tian Patio), says it hired the respondent, Sparx Logistics Canada Limited (Sparx), to deliver a

shipping container filled with furniture. Tian Patio says Sparx breached the parties' agreement by failing to deliver the goods.

2. The other respondents, Julia Rebrovskaya and Jim Rogers, were Sparx employees at the time. Mr. Rogers is the only respondent that filed a Dispute Response and he denies liability. He is no longer working for Sparx.
3. Tian Patio is represented by its owner, Le Thi Thanh Thao. Mr. Rogers is self-represented. Sparx and Ms. Rebrovskaya are not participating and as discussed below are in default. However, Sparx did ask to participate late. I shall discuss this further below.

JURISDICTION AND PROCEDURE

4. 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* (CRTA). 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, 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 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.
6. 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.

7. 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 CRTA:
 - 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.
8. Sparx asked to file a Dispute Response and provided submissions outside the time limits outlined in the tribunal rules. These materials were not accepted or provided to the parties. I have considered whether tribunal staff acted appropriately in refusing to accept the late Dispute Response and submissions.
9. Sparx was served on March 15, 2019, by courier and at its registered office. The delivery was signed for. The applicant provided proof of notice, including a delivery receipt. Sparx did not file a Dispute Response within 30 days. It contacted the tribunal on July 22, 2019, more than four months after being served, to request permission to file a Dispute Response and provide submissions. The tribunal staff refused to accept these materials.
10. I have considered whether refusing the Dispute Response and late submissions would be a breach of the rules of natural justice or procedural fairness. The applicable principles are outlined in many cases. See, for example, *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499 (aff'd 2016 SCC 25) and *Dunsmuir v. New Brunswick*, 2008 SCC 9.
11. I find the tribunal's staff did not act improperly by refusing to accept the late Dispute Response and submissions from Sparx. In reaching this decision, I placed weight upon the following:
 - a. the extent of Sparx' delay was significant, being more than four months;

- b. the applicant did not contribute to the delay;
- c. accepting Sparx' Dispute Response and submissions at this stage would significantly interfere with the tribunal's mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly; and
- d. as I shall outline below, I have dismissed the applicant's claims against the other respondents, Ms. Rebrovskaya and Mr. Rogers. They are therefore unaffected by my decision to refuse Sparx' late materials.

ISSUE

- 12. The issue in this dispute is whether any of the respondents breached the parties' contract, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

- 13. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 14. Tian Patio says it hired Sparx to ship furniture worth approximately \$2,701.35 from Vietnam to Vancouver. The parties' agreement is outlined in a January 4, 2019 email.
- 15. Sparx arranged for pickup of the goods from a Vietnamese factory and on February 19, 2019, the shipping container arrived in Canada. The goods were kept in customs until February 28, 2019. At that time, Ms. Rebrovskaya, a Sparx employee, advised the applicant it had to pay a customs examination/inspection fee of \$2,329.11 CDN and freight charges of \$2,438.00 USD before the goods could be delivered for March 1, 2019. Further, Sparx charged Tian Patio \$200 as a pre-pull fee (for goods storage at a trucker's yard instead of immediate delivery) plus an additional \$50 per day, presumably for storage fees.

16. Tian Patio says Sparx breached the parties' agreement in two ways. First, Tian Patio says the parties agreed that Tian Patio had 30 days from delivery to pay for the shipment. However, Sparx insisted on payment in full of all fees before it would release the goods.
17. Second, Tian Patio says that Sparx breached the parties' agreement by charging fees it should not have, and demanding payment of these fees before releasing the goods. In particular, Sparx charged \$2,329.11 for a customs/inspection fee. However, Tian Patio says the Canada Border Services Agency advised that it does not charge a customs examination/inspection fee.
18. Further, Tian Patio says that it spoke to Unique Trucking. The trucking company advised that it delivered Tian Patio's goods to Sparx on March 1, 2019, and no storage fees were owing. Tian Patio therefore disputes being charged a pre-pull fee and additional daily charges when the goods are not being held at a trucker's yard.
19. Tian Patio contacted Sparx on March 20, 2019, to resolve matters. Sparx requested payment for ocean freight (\$2,438 USD, mentioned above), a customs/examination and trucking fee (\$2,979.11 CDN – this amount is not further broken down), and storage, destuffing, and delivery charges (\$1,525 CDN). Tian Patio has not paid these amounts and says it is no longer economical to obtain the goods. The only amount it does not dispute is the ocean freight charge.
20. As noted above, both Sparx and Ms. Rebrovskaya did not provide a Dispute Response or participate in the dispute resolution process despite being properly served with the Dispute Notice. Sparx is therefore in default and their liability is assumed. As this dispute involves non-debt claims, I will assess the value of the applicant's claims below.
21. I find, however, that both Ms. Rebrovskaya and Mr. Rogers are not liable for the applicant's claims. Mr. Rogers provided a Dispute Response. He says he left employment from Sparx on January 28, 2019, and had little to no involvement with this dispute. I find this to be the case. Tian Patio provided submissions generally

disagreeing with what Mr. Rogers knew or did, but I found them to be speculative. Further, Tian Patio did not provide an understandable legal basis for why Mr. Rogers should be personally liable for the breaches of Sparx.

22. Similarly, Tian Patio did not provide a legal basis in its Dispute Notice or arguments for why Ms. Rebrovskaya should be personally liable. Instead, Tian Patio's evidence and submissions are consistent with the conclusion that Ms. Rebrovskaya was carrying out her duties as an employee of Sparx at all times.
23. I dismiss Tian Patio's claims against Ms. Rebrovskaya and Mr. Rogers.
24. I now consider Tian Patio's damages. It claims \$2,701.35 as the value of goods it never received, as well as \$2,000 for lost sales.
25. I find that Tian Patio has proved damages of \$2,025. This is the amount shown as the price of the furniture on a January 14, 2019 invoice, from the furniture manufacturer in Vietnam to Tian Patio. There is no evidence of any other furniture that was included in the shipment and Tian Patio did not explain how it arrived at the claimed figure of \$2,701.35.
26. As to the claim for \$2,000 in lost sales, I find this amount is not supported by the submissions or evidence before me. Tian Patio did not provide any evidence of agreements it had to sell the furniture, or what it could expect to make on such a sale. It also did not explain how it arrived at the figure of \$2,000. Given the lack of evidence and submissions, I find this claimed amount to be speculative and I dismiss it.
27. In summary, I find Tian Patio is entitled to payment of \$2,025 from Sparx. Tian Patio is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from March 1, 2019. I find this date appropriate as it was the expected date of delivery.
28. I dismiss Tian Patio's claims against Mr. Rogers and Ms. Rebrovskaya.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

29. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
30. Tian Patio was the applicant and largely successful in this dispute. I therefore award Tian Patio \$175 for reimbursement of tribunal fees.
31. Tian Patio claimed \$497.18 in dispute-related expenses. I award \$32.86 for reimbursement of such expenses. This amount was supported by an invoice for a corporate search for Sparx (\$32.86). The remaining amounts are for a courier to serve Ms. Rebrovskaya (\$31.20) and an invoice for a skip tracer to locate Mr. Rogers (\$433.12). I do not find it appropriate to award the latter amounts given that I have dismissed the claims against Ms. Rebrovskaya and Mr. Rogers for the reasons set out above.
32. Ms. Rebrovskaya (who did not participate) and Mr. Rogers did not claim for any tribunal fees or dispute-related expenses.

ORDERS

33. I order the respondent Sparx to pay Tian Patio a total of \$2,254.17, broken down as follows:
 - a. \$2,025.00 in damages,
 - b. \$21.31 in pre-judgment interest under the COIA, calculated from March 1, 2019,
 - c. \$175.00 as reimbursement of tribunal fees, and
 - d. \$32.86 in dispute-related expenses.

34. Tian Patio is entitled to post-judgment interest under the COIA. Tian Patio's remaining claims, including all claims against Mr. Rogers and Ms. Rebrovska, are dismissed.
35. Under section 48 of the CRTA, 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 CRTA, 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.

David Jiang, Tribunal Member