



Civil Resolution Tribunal

Date Issued: January 15, 2020

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ludbrook Enterprises Inc. v. Century Plaza Ltd.*, 2020 BCCRT 56

B E T W E E N :

LUDBROOK ENTERPRISES INC.

APPLICANT

A N D :

CENTURY PLAZA LTD. and LENA JANG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about who ordered office supplies and who should pay for them. The applicant, Ludbrook Enterprises Inc. (Ludbrook), says the respondent, Century Plaza Ltd. (Century), should pay \$2,885.17 towards an outstanding invoice.

2. Century says it should not pay because it did not order the office supplies. Ludbrook says that, even if this is true, Century should pay because it failed to safeguard its username and password. Ludbrook says the order was made using this information.
3. The respondent Lena Jang works for Century. Ludbrook makes no specific claim against her, and I discuss her liability below.
4. Chad Ludbrook represents Ludbrook. Sergio Cocchia represents Century. I infer the representatives are employees or principals of Ludbrook and Century, respectively. Ms. Jang is self-represented.

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* (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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

9. Did Century authorize purchase of the office supplies?
10. Must Century pay Ludbrook \$2,885.17 for office supplies?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Ludbrook has 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.

Issue #1. Did Century authorize purchase of the office supplies?

12. Ludbrook provides office supplies. It uses several trade names starting with “ASAP”. There are 10 invoices in evidence that show Ludbrook, under its trade name, provided office supplies to Century. The invoices are dated from March 2, 2012 to December 8, 2016. Most orders were for printer ink and totalled less than \$100.00. The largest order was for \$231.43.
13. On July 3, 2019, someone ordered office supplies from Ludbrook totaling \$3,098.65, using Century’s account. The identity of the person is uncertain, and I will discuss it in further detail below.
14. The order was made through Ludbrook’s website and documented in a sales order and an invoice, both dated July 3, 2019. These documents state that BG made the order on behalf of “CPHASG”. In past invoices Century used names that included Century Plaza Hotel or Century Plaza and Absolute Spa Group. I find that CPHASG was likely intended as an acronym for Century Plaza Hotel and Absolute Spa Group. The delivery address of the order was on Smithe Street in Vancouver, BC.
15. Ludbrook says, and I find, that the July 3, 2019 order was made using Century’s unique username and password. I note that Century disputes this. On October 2, 2019, Century demonstrated that it could create a new username and password, place an order for Century, and buy the goods on credit. However, the order lacked

a customer number. In contrast, the July 3, 2019 order documents show Century's customer number.

16. I accept Ludbrook's explanation that new user accounts lack a customer number, and that Ludbrook checks such accounts before filling their orders. The customer number on the July 3, 2019 sales order and invoice matches the number on Century's previous invoices. I conclude from this that the purchases were made from Century's pre-existing account. It follows that the July 3, 2019 order was made using Century's unique username and password.
17. In early July 2019, Ludbrook's courier delivered the office supplies to the Smithe Street address. The courier describes what happened in a July 18, 2019 email.
18. The Smithe Street address had 5 units. The courier delivered most of the supplies to unit 102. Unit 102 is the address for a company named LW. There is no indication that LW and Century are connected in any way.
19. The courier decided to deliver to unit 102 because he made several inquiries and encountered a person named AW. AW accepted and signed for the delivery at unit 102.
20. On July 10, 2019, the courier returned to unit 102 to deliver the remaining back-ordered supplies. However, the person there refused to sign for the goods. The person said it was not their order. It was not AW. The courier returned the supplies to its warehouse and sought further instructions.
21. Ludbrook subsequently asked the courier to retrieve the delivered supplies. The courier met with AW, but AW said he "no longer had the boxes". The courier provided AW's contact information to Ludbrook. AW told Ludbrook he could not locate the supplies.
22. I find that neither Century nor Ms. Jang authorized or placed the order, for the following reasons.
 - a. The order's delivery address was for LW and not Century.

- b. Century provided internal emails from July 2019. These emails show Century employees denied making the order.
 - c. The July 2019 order was larger than any of Century's previous orders. This supports the conclusion that someone other than Century made the order.
 - d. On October 2, 2019, BG emailed Century. She wrote that she left Century in February 2016 and never returned. She denied ordering the office supplies. I accept BG's evidence that she did not place the order for Century.
23. Ludbrook reported the matter to police on July 19, 2019. In an email of the same date, Ludbrook wrote Century to say he tried to open a police report. However, the police advised that Century had to open the report. To date, Century has refused to do so.
24. In summary, I find that someone used Century's username and password to buy the office supplies. Century did not authorize the purchase. The parties are essentially innocent in this dispute. The question is, who should pay for the supplies?

Issue #1. Must the Century pay Ludbrook \$2,885.17 for office supplies?

25. Ludbrook says that Century should pay because it is bound by the terms of use on its website. Ludbrook submits Century must safeguard its username and password under the terms of use.
26. In contrast, Century says Ludbrook should have known Century did not place the order. Century notes that the supplies were not sent to its shipping address. It also points out the order was unusually large and was not for the usual printer ink. The order was also made for CPHASG, which is not its legal name.
27. For the reasons that follow, I find that Century must pay Ludbrook \$2,885.17.
28. I have reviewed a copy of the terms of use dated September 26, 2019. They state that the customer is responsible for safeguarding their password to ensure access to the website is properly secured.

29. Century does not dispute that the terms of use are binding or that they were present when it first chose a password. Century did not explain what steps it took, if any, to safeguard its username and password.
30. Ludbrook asked its webhost if any account passwords had been stolen and used to place the July 3, 2019 order. In a September 26, 2019 email, the webhost wrote that there was nothing to suggest their system was as fault.
31. I have found that Century's username and password were used to purchase the office supplies. There is no evidence that Ludbrook or its webhost provided Century's username and password to anyone outside of Century. Century did not provide any evidence or otherwise discuss how it controls access to its username and password. On balance, I conclude that Century breached its obligation to safeguard its password.
32. I acknowledge that the July 3, 2019 order had irregularities. These included the shipping address and size of the order. However, Century did not provide any evidence of commercially reasonable practices in such circumstances. I find these irregularities were not severe enough to make it unreasonable for Ludbrook to fill the order. I also find the use of the name CPHASG in the order was not unusual. As noted above, CPHASG could reasonably be interpreted as an acronym for Century's trade name.
33. I place greater weight on the fact that the purchases were made through Century's unique and passworded account. I find that Ludbrook reasonably thought that the person purchasing the order had apparent authority (also called ostensible authority) to act on Century's behalf. The legal test is that Century must have represented through its words or actions that the person had the authority to place the July 3, 2019 order: *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295. The purchases were made through Century's unique and passworded account. Century participated in the creation of this account and agreed to safeguard its password through the terms of use. I find it was reasonable in the circumstances for Ludbrook to rely on these security features to fill the order.

34. Having found Century breached the terms of use, I must determine damages. Ludbrook claims \$2,885.17, which is less than the July 3, 2019 invoice amount. This is because the back-ordered items were retrieved on July 10, 2019. Within 30 days of the date of this order, I order Century to pay Ludbrook \$2,885.17 in damages for breach of contract.
35. Ludbrook makes no claim against Ms. Jang. I have found no wrongdoing on her part. I dismiss all claims against her.
36. The *Court Order Interest Act* (COIA) applies to the tribunal. Ludbrook is entitled to pre-judgement interest on the sum of \$2,885.17 from August 2, 2019 (the printed due date of the invoice) to the date of this decision. This equals \$25.74.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

37. Under section 49 of the CRTA 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.
38. Ludbrook is the successful party. It seeks \$125.00 in tribunal fees. I order Century to pay this amount. The parties did not claim dispute-related expenses.

ORDERS

39. Within 30 days of the date of this order, I order Century to pay Ludbrook a total of \$3,035.91, broken down as follows:
 - a. \$2,885.17 in damages for breach of contract,
 - b. \$25.74 in pre-judgment interest under the COIA, and
 - c. \$125.00 in tribunal fees.
40. Ludbrook is entitled to post-judgment interest under the COIA, as applicable.

41. Ludbrook's remaining claims, including all claims against Ms. Jang, are dismissed.
42. 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.
43. 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