



Civil Resolution Tribunal

Date Issued: February 5, 2020

File: SC-2019-006135

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gadus Global Trading Inc v. Portuguese Club of Vancouver*,
2020 BCCRT 141

BETWEEN:

GADUS GLOBAL TRADING INC

APPLICANT

AND:

PORTUGUESE CLUB OF VANCOUVER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about an unpaid fish order.
2. The applicant, Gadus Global Trading Inc, says it placed a large fish order for the respondent, Portuguese Club of Vancouver, and that the respondent now refuses to

either take the fish or pay the invoice. It seeks \$2,800 for the remaining product, plus \$200 for storage costs. The respondent says it did not order the fish and says it does not owe the applicant any money.

3. The applicant is represented by Antonia Corby, its owner and president. The respondent is represented by Victor Mansinho, its Board President.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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. In resolving this dispute, the tribunal may make one or more of the following orders, where permitted by 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.

ISSUE

8. The issue in this dispute is whether the respondent owes the applicant \$3,000 for an unpaid fish order and storage costs.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties had a personal relationship before entering into a business relationship. Ms. Corby is a member of the respondent club. It is undisputed that at some point in 2016, Ms. Corby approached Mr. Mansinho about supplying fish for the respondent club's restaurant.
11. It is also undisputed that, after 2016, when the respondent needed fish, it would contact the applicant and place an order. The respondent says the applicant would supply the fish if it had stock.
12. The applicant says that in July 2018, the parties entered into a verbal agreement that the applicant would source 25 ten-kilogram cases each of cuttlefish, small

mackerel, and large mackerel for the respondent. The applicant further says that after review of the respondent's previous orders, it revised the order to 25 cases of cuttlefish, 20 cases of small mackerel, and 5 cases of large mackerel. The applicant says it agreed to store the fish for a 6-month period and that the respondent would request smaller draws from the larger order as needed, paying for each draw as it was made.

13. The applicant says the 6-month storage period ended in January 2019, but a large quantity of fish remained. As of June 2019, the applicant says it was still storing 11 cases of cuttlefish and 12 cases of small mackerel. The applicant wants the respondent to pay for the remaining fish (\$2,800) plus extra storage costs of \$200 for storing the fish over and above the agreed 6-month storage period.
14. The respondent says it never agreed to such an order, and its normal practice was to contact the applicant for fish only as needed. The respondent denies that it agreed to have the applicant store a large fish order for its exclusive use. The respondent points out it used other importers to supply its fish as well.
15. As noted above, there is no formal contract between the parties. There are no text messages or witness statements indicating the parties agreed to anything other than what had occurred in the past. That is, the respondent would contact the applicant for fish, and if the applicant had any, it would deliver the fish and invoice the respondent. There is no evidence the respondent asked for or agreed that the applicant would hold a large fish inventory for the respondent's exclusive use. The applicant says the agreement was verbal, and the respondent denies any agreement was made. To succeed in its claim, the burden of proof rests with the applicant to show, on a balance of probabilities, that its version of events is more likely than not. In the circumstances, I find each party's version of events is equally likely. Therefore, I find the applicant has not met its burden. I find there is insufficient evidence of any agreement between the parties about the large fish order. As a result, I dismiss the applicant's claims for payment for the fish, and for storage costs.

16. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that it is not entitled to reimbursement of its paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

17. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair