Civil Resolution Tribunal

Date Issued: April 21, 2020

File: SC-2019-008669

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Budylin v. Cedar Rim Nursery Ltd.*, 2020 BCCRT 431

B E T W E E N :

VITALIY BUDYLIN

APPLICANT

A N D :

CEDAR RIM NURSERY LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Vitaliy Budylin, says that on March 30, 2019 the respondent nursery, Cedar Rim Nursery Ltd., sold him 16 Pinus Contorta Coast Pine trees. The

applicant says the trees were professionally planted and regularly watered, but that within 3 months 6 trees had dried out and died. The applicant says the respondent refused to honour its warranty. The applicant claims $1,768.45 as a full refund for the 6 dead trees.

2. The respondent says the 16 trees were sold to a business called "Mainland Landscaping – Sandhu" (Mainland), and that Mainland had bought and planted the trees for the applicant. The respondent says its 3-month warranty only applies to goods sold at full retail price to individuals. Here, there was no such warranty for the trees sold to Mainland. The respondent says it is not responsible for the 6 dead trees, given the 3-month passage of time and because it did not plant them.

3. The applicant is self-represented and the respondent is represented by a principal or employee.

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. Bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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. 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.

8. I note the respondent appeared to file a counterclaim. I have not set out a counterclaim in the style of cause above as the respondent did not seek any remedy, nor did either party make any arguments. Instead, in the counterclaim "claim", the respondent simply made its argument that it sold the trees to Mainland, and not to the applicant directly, and so no warranty applies. I have treated these arguments as part of the respondent's defence to the applicant's claim.

9. Next, I note tribunal staff advised the applicant's name should be spelled Budylin not "Budyin" as originally set out in the applicant's tribunal application. I have amended the style of cause above to reflect the correct spelling.

ISSUE

10. Is the applicant entitled to a refund for 6 dead trees under a 3-month warranty?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

12. As noted above, the respondent says it sold the trees to Mainland, which the applicant denies. While the applicant provided brief submissions, he chose not to provide any evidence despite the opportunity to do so. The respondent admits the applicant called it on June 20, 2019, and says at that time it told the applicant the trees were not covered under warranty and that the applicant needed to contact Mainland.

13. The respondent submitted a copy of a March 30, 2019 “invoice” with only Mainland as the “sold to” customer. It shows 16 “Pinus contorta Coast Pine” trees were sold, with a black pen line drawn through a different item. This document is actually titled “gift receipt” and does not show any pricing. The respondent submitted a similar “invoice” copy, with the 2nd item not blacked out. This invoice shows Mainland was charged $260 for each of the 16 trees at issue, plus tax. In this dispute, the parties agree $260 was the cost per tree, plus tax. The respondent says the retail price for the tree was $369.98, and so only the retail sales had a 3-month warranty. The applicant admits he received at least a ‘discount’ though he denies knowing it was wholesale pricing. On balance, I find the trees were sold to Mainland with wholesale pricing.

14. On the face of both the gift receipt and invoice, there are pre-printed terms at the bottom, which include “Nursery & perennial warranty 3 months”. The respondent says that this warranty did not apply to Mainland’s purchase as it received wholesale pricing, and that all wholesale buyers are told the applicable terms. The respondent says all landscapers are given the warranty exceptions when they apply for an account.

15. In his reply submissions, the applicant says on March 30, 2019 he personally selected the trees, negotiated the price and paid for them. He said he “had no idea” who Mainland was, and did not have their phone number and their names. Yet, in an agreed Statement of Facts, the applicant agrees Mainland planted the trees at his residence. I find this discrepancy hurts the applicant’s credibility. I find it more likely than not that the respondent sold the trees to Mainland, the applicant’s chosen landscaper. As noted, the applicant bears the burden of proof and he did not provide any evidence, such as a statement from Mainland. He provided no explanation for the absence of any evidence. I draw an adverse inference against the applicant, and find that it is more likely than not that the respondent told Mainland that there was no warranty on wholesale pricing.

16. In short, I find the applicant has not proved he is entitled to a refund for the 6 dead trees. This is because there was no 3-month warranty applicable and because the applicant has not proved he was a party to the contract for the sale of the trees, even though he paid for them under wholesale pricing made available to Mainland. While the applicant argues he has a "legally binding contract" with the respondent, I have no evidence of such a contract between the parties. As noted, the only evidence is the respondent's invoice and gift receipt, both showing Mainland as its customer.

17. Given my conclusion above, I do not need to address the respondent's argument about the trees having been improperly planted in gravel. I find the applicant's claim must be dismissed.

18. Under section 49 of the CRTA and tribunal rules, as the applicant was unsuccessful I find he is not entitled to be reimbursed for tribunal fees or dispute-related expenses. The successful respondent did not pay any fees or claim expenses.

ORDER

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

Shelley Lopez, Vice Chair