



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dietlein v. Montebello Jewellers Inc.*, 2020 BCCRT 457

B E T W E E N :

CHRISTOPHER DIETLEIN

APPLICANT

A N D :

MONTEBELLO JEWELLERS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the purchase and sale of a custom opal and diamond ring.
2. The applicant Christopher Dietlein says he hired the respondent Montebello Jewellers Inc. to make a replica of a family heirloom 18 karat gold engagement ring with 3 opals and 4 diamonds in the setting. The parties agree that the applicant paid

the respondent \$2,800, being \$2,500 plus tax, for the ring. The applicant says the ring the respondent created did not accurately replicate the original and had many defects. The applicant says the ring was made from 14-karat gold, even though the contract was for 18-karat gold.

3. The applicant claims a \$2,800 refund and an order that the applicant repay him \$168.60 for other jeweler appraisals he obtained to examine the ring.
4. The respondent says the applicant examined the ring when it was ready and paid the balance owing without expressing any dissatisfaction. The respondent's jeweler says she was surprised by the applicant's concerns and offered to fix any issues. The respondent says the ring was made from 18-karat gold, as agreed. The respondent says custom items are "final sale" and "no refunds". It asks me to dismiss the dispute. The respondent also claims \$1,400 for time spent on the dispute.
5. The applicant is self-represented. The respondent is represented by business contact and jeweler Annie Vanayan.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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.
10. The applicant mentioned the *Precious Metals Marking Act* in his submissions. I find that the *Precious Metals Marking Act* is a criminal law statute governing precious metal articles, enforced by inspectors designated under it. The tribunal does not have jurisdiction to impose *Precious Metals Marking Act* remedies.

ISSUES

11. The issues in this dispute are:
 - a. whether the custom ring the respondent created for the applicant is defective and/or whether the respondent breached the *Business Practices and Consumer Protection Act* (BCPCA) such that the applicant is entitled to a \$2,800 refund, and,
 - b. if so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

12. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as necessary to explain my decision.
13. On August 28, 2019, the applicant hired the respondent to create a custom 18-karat gold ring with pave set diamonds and opals. A karat is a measure of gold purity. That day, the applicant paid the respondent a \$1,400 deposit.

14. Based on the written notations on the envelope prepared August 28, 2019, I find that the parties agreed that the ring would be mounted with 4 slightly included (SI) clarity grade, GH colour rose cut diamonds, weighing 0.05 carats each, for a total of 0.20 carats. A carat is a measure of diamond weight and is not the same as a karat. The envelope does not record that the ring was final sale or that there were no refunds.
15. I find that the annotated envelope is the contract between the parties.
16. The applicant says the parties did not agree to a no refunds policy for the ring. The respondent disagrees. Because there is no written evidence of a no refunds policy being agreed at the time of the contract, I find that there was no agreement that the ring was a final sale or offered on a no refunds basis.
17. The envelope contract included a sketch of the ring being ordered. It is undisputed, and I find, that the applicant also provided the respondent with multiple photographs of the ring he was asking it to replicate.
18. The applicant says the respondent agreed to show him the ring when it was partly completed. The applicant says the respondent never provided this opportunity. The respondent says it tried to contact the applicant several times to arrange this appointment, but the applicant could not be reached. Given my conclusions below, I find it unnecessary to resolve this discrepancy.
19. The respondent provided the applicant with a September 7, 2019 appraisal of the replica ring at a total replacement value of \$5,320.00, taxes included. In the appraisal, the respondent described an 18-karat yellow gold ring as having 3 opals, and 4 x .05 carat diamonds, for a total carat weight of 0.20. The diamonds were reported as SI and GH colour.
20. On October 19, 2019, the applicant picked up the ring and paid the respondent the \$1,400 balance owing, in cash. The receipt provided to the applicant on October 19, 2019 said "no refunds" on it. However, I find that was not a term of the contract,

which was formed on August 28, 2019. The respondent cannot add a term after the fact by unilaterally including text on a receipt.

21. On October 22, 2019, the applicant emailed the respondent to say he was dissatisfied with the ring. The applicant asked for a full refund. The respondent refused but offered to fix or consign the ring.
22. On January 2, 2020, the applicant had the ring appraised at \$2,285.00 before tax, by Anello Jewellers in Langley (Anello appraisal).
23. The Anello appraisal describes an acid test that revealed the ring is made of 14-karat, not 18-karat, gold. The appraiser, Breck Alary, comments “it was negative with 18k acid but positive with 14k acid. Stamp was misued and should be re-stamped with 14k.”
24. Mr. Alary reported that the diamonds have a total carat weight of 0.08, colour grade M and clarity I2.
25. On January 9, 2020, the applicant had the ring appraised by Derek Jackson at Jackson Jewellery Appraisal in Vancouver (Jackson appraisal).
26. According to the Jackson appraisal the ring’s retail value is \$2,200 before tax. The Jackson appraisal also lists the following observations:
 - a. the center opal is loose,
 - b. solder lines are visible near the stones,
 - c. the total carat weight of the diamonds is 0.06, colour G/H, clarity grade VS2/SI1, and
 - d. while most of the ring tested as 18-karat gold, but a part tested as 14-karat gold.
27. I accept the Jackson and Anello appraisals as expert opinions on the quality of the ring. I prefer them to the respondent’s appraisal because the respondent has an

interest in the outcome of this dispute. Both the Jackson and Annello appraisals report the total carat weight of the diamonds was significantly less than what was agreed. Although the Jackson and Annello appraisals differ on some details and in the precise total carat weight of the diamonds, I prefer this range of weights over the respondent's significantly different assessment. I find that the respondent breached the contract by making the applicant a ring with diamonds weighing only 0.06-0.08 carats, instead of the agreed 0.20.

28. Section 17 of the *Sale of Goods Act* (SGA) says that, in a contract for the sale of goods by description, there is an implied condition that the goods must correspond with their description.
29. Given the discrepancy in diamond weights between the replica ring and the description in the contract, I find that the respondent failed to sell the applicant what it agreed to sell, contrary to section 17 of the *Sale of Goods Act*.
30. The applicant also submits that the BPCPA applies making him entitled to a refund. I agree. Section 17 of the BPCPA defines a future performance contract an agreement for the supply of goods where the full amount is not paid, or where goods are not supplied in full, at the time of the contract.
31. Because the applicant did not pay the full amount nor receive the ring when the contract was made, I find that the contract for the custom ring is a future performance contract under the BPCPA.
32. Section 19 of the BPCPA lists information that must appear in a future performance contract. Section 19 requires that the contract must include, among other things, the supplier's business name, business address, fax and telephone number and a notice of the consumer's cancellation rights. I find that the contract did not provide any of this information. These details were included on the October 19, 2019 receipt, but I have found the receipt was not part of the contract.
33. Section 23 of the BPCPA says that a consumer may cancel a future performance contact by giving notice of cancellation to the supplier not later than one year after

the date the consumer receives a copy of the contract, if the contract does not contain the information required under section 19, as discussed above.

34. Because the contract did not meet the section 19 BPCPA requirements, I find that the applicant is entitled to cancel the contract, under section 23.
35. I find that the applicant cancelled the contract in writing on October 22, 2019 by email, when he asked for a full refund because he was dissatisfied with the ring.
36. Section 27 of BPCPA says that where a contract is cancelled under section 23, the supplier must refund the consumer all money received under the contract, without deduction, within 15 days after notice of cancellation is given. Section 28 says that the consumer who cancels under section 23 must return the goods to the supplier.
37. Given my findings under the BPCPA, it is not necessary for me provide a detailed analysis of all the alleged breaches of contract. However, I find that the applicant proved that the respondent breached the contract by delivering a ring with diamonds weighing less than the agreed total carat weight, with the center opal loose in the setting, and which contained some 14-karat gold despite agreeing that only 18-karat gold would be used.
38. I find that upon returning the ring, the applicant is entitled to a full refund of the \$2,800 he paid for it. Given the return requirement in BCPCA section 28, I order this relief under section 118 of the CRTA, which gives the tribunal jurisdiction to resolve a claim for recovery of personal property.
39. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$2,800 from October 22, 2019, the date he requested the refund, to the date of this decision. This equals \$28.42.
40. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. I also

allow the applicant's claim for \$173.60 for the two jewelry appraisals, which I find were reasonable dispute-related expenses incurred to obtain necessary expert evidence.

41. I dismiss the respondent's claim for \$1,400 in dispute-related expenses for time spent on the dispute, because she was unsuccessful, and given that the tribunal does not order a party to pay another party compensation for time spent except in extraordinary circumstances: see Rule 9.5(5). This is not an extraordinary case.

ORDERS

42. Within 15 days of this order, I order the applicant to return the ring to the respondent at respondent's address specified on the Dispute Notice, by courier, at the respondent's expense.
43. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,127.02, broken down as follows:
 - a. \$2,800 as a refund for the purchase price of the ring,
 - b. \$28.42 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees and \$173.60 for dispute-related expenses.
44. The applicant is entitled to post-judgment interest, as applicable.
45. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the Emergency Program Act, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal

will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

46. 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.

Julie K. Gibson, Tribunal Member