



Civil Resolution Tribunal

Date Issued: June 24, 2020

File: SC-2019-010657

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Purewal v. Farm & Spice Grocers Ltd.*, 2020 BCCRT 696

BETWEEN:

IQBAL PUREWAL

APPLICANT

AND:

FARM & SPICE GROCERS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about money owing for farm produce. The applicant, Iqbal Purewal, sold farm produce to the respondent, Farm & Spice Grocers Ltd. (F&S). Mr. Purewal says that F&S only partially paid his invoices. He seeks an order for payment of \$2,630.20 still owing.

2. F&S acknowledges it only partially paid Mr. Purewal's invoices. However, F&S says this was justified because some of the delivered produce had fungus on it and could not be resold.
3. Mr. Purewal represents himself. An employee or principal represents F&S.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
6. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are as follows:

- a. Did Mr. Purewal breach the parties' contract by delivering low quality produce?
- b. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, as the applicant Mr. Purewal bears the burden of proof, on a balance of probabilities. While I have reviewed all the evidence and submissions, I only refer to them to the extent necessary to explain my decision.
10. The key disagreement is whether Mr. Purewal delivered low quality produce to F&S. I find the delivered produce was of appropriate quality under the parties' agreement. As such, I conclude that F&S must pay Mr. Purewal \$2,630.20. My reasons follow.
11. The background facts are undisputed. Mr. Purewal agreed to supply F&S with farm produce on an ongoing basis. F&S operates a grocery store.
12. The parties did not have a written contract. Mr. Purewal customarily delivered the produce along with an invoice. F&S' representative would sign the invoice to acknowledge delivery. The evidence shows that there are 7 invoices at issue for deliveries in September and October 2018.
13. The invoices in evidence show F&S did not immediately pay the invoices and Mr. Purewal delivered produce on credit. Despite this, I find it likely the parties agreed F&S was obligated to pay the invoices on delivery. Mr. Purewal says the invoices should have been paid on delivery. F&S did not deny this and acknowledged it made payments late in its submissions.
14. F&S began to partially pay the September and October 2018 invoices starting in late December 2018. F&S paid through a series of cheques. It is undisputed that it paid \$2,630.20 less than the amount owing under the invoices.

Issue #1. Did Mr. Purewal breach the parties' contract by delivering low quality produce?

15. I find it was an implied term of the parties' agreement that Mr. Purewal would provide produce to F&S that was suitable for resale to customers. The parties do not dispute this and instead disagree on whether the delivered produce met this standard.
16. F&S says it did not pay the invoices in full because some of the produce had fungus on it. F&S also says Mr. Purewal sold 2 categories of produce based on quality. It says some of the produce came from the lower quality category when it should not have. F&S does not otherwise disagree about the amount owing. I infer from this that F&S' position is that the combined value of the fungus-affected and lower quality produce is equal to the claimed amount of \$2,630.20.
17. Mr. Purewal says all the produce was of adequate quality and says it never sold or categorized any of its produce by quality. Mr. Purewal says F&S only expressed displeasure with the produce when it refused to pay the full invoice amounts about 3 months after it was delivered.
18. I find the evidence supports Mr. Purewal's position. He provided a statement from his produce deliverer, DP. DP confirmed that he delivered produce to F&S. He said that for every delivery, an F&S representative opened each delivery box and checked the produce for defects. DP wrote that the representative confirmed the produce was acceptable each time and signed the invoices. DP added that F&S never advised of any problems.
19. Consistent with this, Mr. Purewal says F&S complained about his eggplants and peppers many months after they were delivered. Mr. Purewal provided 3 invoices for these deliveries. They are signed by a representative from F&S and no issues are noted.

20. Mr. Purewal also provided invoices for his other customers. The invoices to F&S and the other customers show he charged by quantity and weight. He did not categorize or sell his produce by quality.
21. F&S says that its produce manager called Mr. Purewal to advise that the produce had fungus on it and could not be sold. However, F&S did not provide any evidence from the manager. F&S also did not provide any other evidence, such as photos of the unacceptable produce. In these circumstances, I find it appropriate to draw an adverse inference against F&S. I conclude that there was no fungus and that the produce was of acceptable quality under the parties' agreement.

Issue #2. What is the appropriate remedy?

22. Given my findings, I find Mr. Purewal is entitled to \$2,630.20 as payment of his invoices without any reduction.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Purewal is entitled to pre-judgement interest on the debt award.
24. I have found that F&S agreed to pay the invoices on delivery. For a portion of the debt (\$1,395), I award interest on the underlying unpaid amounts from the invoices dated September 14, 18, 24, 2018 to the date of this decision.
25. The remaining debt (\$1,235.20) is linked to 4 invoices dated September 29 and October 12, 18, and 19, 2018. F&S provided 1 cheque to pay the invoices, but it was insufficient to pay them in full. F&S did not clarify which invoices the payment was meant to cover. I have decided to calculate interest owing from the invoice dates of October 18, 2018 (for \$455.20) and October 19, 2018 (for \$780). In this way, the 1 cheque payment is applied to the oldest debts first, which I find fair given the uncertainties. In reaching this decision I have been guided by the CRT's mandate to provide dispute resolution in a speedy, flexible, and fair manner. The total prejudgment interest equals \$85.37.

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Purewal is the successful party and he is entitled to reimbursement of \$125 in CRT fees. Mr. Purewal claimed no dispute-related expenses, so I do not award them to any party.

ORDERS

27. Within 14 days of the date of this order, I order F&S to pay Mr. Purewal a total of \$2,840.57, broken down as follows:

- a. \$2,630.20 in debt,
- b. \$85.37 in pre-judgment interest under the COIA, and
- c. \$125.00 in CRT fees.

28. Mr. Purewal is entitled to post-judgment interest, as applicable.

29. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member