



Civil Resolution Tribunal

Date Issued: July 15, 2020

File: SC-2019-011047

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Arbour and Bretin v. That Darn Yarn Shop Ltd.*, 2020 BCCRT 793

B E T W E E N :

KAITLYN ARBOUR and PATRICIA BRETIN

APPLICANTS

A N D :

THAT DARN YARN SHOP LTD.

RESPONDENT

A N D :

KAITLYN ARBOUR and PATRICIA BRETIN

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a contract for fiber processing services and a moth infestation.
2. The applicant and respondent by counterclaim, Kaitlyn Arbour, sent raw bison and alpaca fiber to a mill owned by the respondent and applicant by counterclaim, That Darn Yarn Shop Ltd. (TDYS), to be processed into yarn. The applicant and respondent by counterclaim, Patricia Bretin, owns the alpaca fiber.
3. Ms. Bretin and Ms. Arbour say TDYS failed to provide the agreed upon final product, destroyed the alpaca fiber and has refused to return the bison fiber. They claim \$566.16 paid as a deposit to TDYS, \$474 in damages for the destroyed alpaca fiber, \$3,200 in damages for the retained bison fiber, and \$100 in shipping costs.
4. TDYS denies it owes the applicants anything. It says the \$566.16 was for washing services TDYS provided and is non-refundable. TDYS says it was entitled to destroy the alpaca fiber as it was moth infested and says it is entitled to keep the bison fiber as Ms. Arbour refused to pay TDYS' invoice of \$982.80 for processing.
5. TDYS says the applicants' fiber was infested with moths when it arrived at the mill and those moths infested the mill and other customers' orders. TDYS counterclaims for \$982.80 for the unpaid invoice 238, \$2,003.40 for moth damage to other customers' orders, and \$2,013.80 for mill fumigation.
6. Ms. Arbour and Ms. Bretin say they owe TDYS nothing. They deny the moths came from their fiber and say they are not responsible for the mill's fumigation costs, or damage to other orders.
7. Ms. Arbour and Ms. Bretin represent themselves. TDYS is represented by its owner, NL.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.
10. 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.
11. 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 tribunal considers appropriate.

ISSUES

12. The issues in this dispute are:
 - a. Must TDYS pay Ms. Arbour and/or Ms. Bretin for the destroyed alpaca fiber and, if so, in what amount?
 - b. Must TDYS pay Ms. Arbour and/or Ms. Bretin for the bison fiber and, if so, in what amount?
 - c. Must TDYS reimburse \$566.16 and, if so, to whom?

- d. Must TDYS reimburse Ms. Arbour and/or Ms. Bretin \$100 for shipping costs?
- e. Are Ms. Arbour and/or Ms. Bretin responsible for a moth infestation at the mill?
- f. If so, must either Ms. Arbour or Ms. Bretin pay TDYS for damage to other orders and/or fumigation costs and, if so, in what amount?
- g. Must Ms. Bretin and/or Ms. Arbour pay TDYS for invoice 238 and, if so, how much?

EVIDENCE AND ANALYSIS

- 13. In a civil claim, such as this one, Ms. Arbour and Ms. Bretin must prove their claims on a balance of probabilities. Likewise, TDYS must prove its counterclaim on a balance of probabilities. Although I have reviewed all the parties' submissions and evidence, I refer only to that which explains and gives context to my decision.
- 14. On June 25, 2018 Ms. Arbour spoke with NL about processing her gathered bison fiber into yarn. NL recommended blending another fiber with the bison and directed Ms. Ms. Arbour to the TDYS website for instructions on how to prepare animal fiber for processing. In a July 17, 2018 email NL confirmed TDYS could complete Ms. Arbour's order by June 1, 2019.
- 15. Ms. Arbour says she and Ms. Bretin packaged the alpaca fiber and bison fiber into around 8 separate vacuum sealed bags then into two black garbage bags which were taped shut. Ms. Arbour paid a third party, who was not a commercial courier, to deliver the fiber to the mill.
- 16. It is undisputed that the fiber arrived at the mill on August 19, 2018 and that TDYS weighed 47.4 pounds of alpaca and 20 pounds of bison fiber.
- 17. TDYS issued invoice 133 on August 25, 2018 for \$566.16 for scouring and tumbling 67.4 pounds of fiber (\$8 per pound), which I infer means washing the fiber. The

invoice shows it was paid by credit card on September 6, 2018. Ms. Arbour says she paid Invoice 133. Since this is not disputed, I accept it as true.

18. I find that, by taking Ms. Arbour's payment for Invoice 133, TDYS entered into a contract with Ms. Arbour to process 67.4 pounds of raw fiber. The terms of the agreement were set out in text messages and emails between the parties, as well as on TDYS' website. I find Ms. Arbour was aware of the website terms as she acknowledges she reviewed the website in detail prior to sending the animal fiber to TDYS.
19. Based on a series of texts between Ms. Arbour and NL between April and October 2019, I find Ms. Arbour checked on the status of the order several times. The texts show TDYS discarded some of the alpaca fiber due to moth infestation in June 2019 and again in October 2019. TDYS started processing the order by October 1, 2019. On October 28, 2019 Ms. Arbour asked TDYS to pay her for the discarded fiber and return what fiber was left. TDYS declined and said it would return the remaining fiber to Ms. Arbour when she paid for the processing provided. TDYS issued invoice 238 on December 14, 2019.
20. I find TDYS entered into an agreement with Ms. Arbour and Ms. Arbour alone as Ms. Bretin did not pay for the services provided or communicate with TDYS. Further, I find Ms. Arbour did not hold herself out to be agent for Ms. Bretin in her agreement with TDYS. I find there is no contractual relationship between Ms. Bretin and TDYS. I will address the claims between Ms. Bretin and TDYS in negligence below.
21. I now turn to what happened to the fiber at the mill.
22. Based on June 20, 2019 text messages between NL and Ms. Arbour, and photos and videos submitted into evidence by TDYS, I find there were moths and larvae throughout the black alpaca fiber still in sealed bags. TDYS acknowledges it destroyed the moth infested alpaca fiber and says it was necessary to prevent a moth infestation in the mill.

23. Based on text messages from NL I find TDYS found more clothing moths in another bag of Ms. Arbour's alpaca fiber around October 1, 2019. Based on October 1, 2019 text messages between Ms. Arbour and NL I find TDYS did not destroy that alpaca fiber but kept it at the request of Ms. Arbour, outside the mill.
24. I accept NL's statement that TDYS weighed the fiber in its original packaging and did not inspect it upon arrival at the mill. I disagree with Ms. Arbour that TDYS was required, under the contract, to inspect the fiber when it arrived. That is not set out on the website, in the text messages, or in the August 25, 2018 invoice.
25. I find it is an implied term of the agreement that TDYS store the alpaca and bison fiber in a safe manner and not allow the fiber to spoil. Ms. Arbour must show that TDYS failed to keep the fiber safe and/or TDYS was negligent in allowing the alpaca fiber to become infested with moths. Ms. Arbour says there were no moths in the alpaca fiber when she sent it to TDYS, so the moths must have come from the mill.
26. In her submissions Ms. Bretin says she and Ms. Arbour inspected the alpaca fiber before sending it to TDYS and found it free of insects. Ms. Bretin believes the order was infested with moths at the mill. Although Ms. Bretin says she has formal training in entomology and pest management, she did not provide her qualifications or the basis for her opinion. On the evidence before me, I do not find Ms. Bretin is an expert in this matter, so I do not accept her opinion on the moth infestation.
27. Ms. Arbour says TDYS had moth infestations in other customers' orders and fleeces during the time the alpaca fiber was at the mill. Based on text messages and photos submitted by TDYS I find there were a series of moth infestations in other customers' orders that were stored in the same location of the mill as Ms. Arbour's order. This does not prove the moths in Ms. Arbour's alpaca fiber came from the mill.
28. It is undisputed that moths were found in the sealed bags of alpaca fiber, as well as in the one bag of alpaca fiber that was not sealed. While I might expect moths

would get into an unsealed bag of fiber, Ms. Arbour and Ms. Bretin have not explained how moths would get into the sealed bags of alpaca fiber while at the mill. Further, I accept NL's statement that there were more moths in Ms. Arbour's fiber than in the other orders stored around Ms. Arbour's, which seems to indicate the moths more likely came from the unsealed bag of alpaca, rather than the mill itself.

29. Ms. Arbour says she sealed all the bags of alpaca before sending them to TDYS and I accept that to be true as there is no reason not to seal the fiber bags. It is unclear how one bag of alpaca fiber became unsealed; whether that happened during transit to the mill or while at the mill. However, even if the bag of alpaca fiber was opened at the mill, I find it unlikely that the moths in that opened bag of fiber came from the mill, given that there were also moths in the sealed bags of fiber.
30. Overall, I find Ms. Arbour has not proven TDYS failed to keep the alpaca fiber safe, or in any way breached its duty to her. On balance, I find Ms. Arbour and Ms. Bretin have failed to prove TDYS is responsible for the moth infestation in the alpaca fiber.
31. I now turn to whether TDYS should compensate Ms. Arbour and/or Ms. Bretin for destroying the alpaca fiber.
32. Ms. Arbour says she spoke with NL on June 20, 2019, who told her that TDYS had discovered the moths a few weeks earlier but had been too busy to contact Ms. Arbour at the time. TDYS acknowledges it did not contact Ms. Arbour immediately about the moths.
33. Ms. Arbour provided in evidence a November 25, 2019 screenshot of TDYS' website which says TDYS will notify the customer before taking any action if it discovers a fleece issue, including moths. As the website forms part of the agreement between Ms. Arbour and TDYS, I find TDYS was required to contact Ms. Arbour prior to discarding the alpaca fiber. I do not find that TDYS was entitled to destroy the alpaca based on its website advice to customers to dispose of any fleece with signs of moths. Even if destruction of the fleece is recommended, TDYS still had an obligation to contact Ms. Arbour first.

34. I disagree with TDYS that Ms. Arbour agreed to the alpaca destruction. Ms. Arbour's October 1, 2019 text message said the bison was the most important, and that the alpaca was disappointing, nothing more.
35. On balance, I find TDYS destroyed the moth infested alpaca fiber it found in June 2019, contrary to the terms of the contract with Ms. Arbour. I find it would be unfair to order TDYS to pay damages based on raw, moth-free alpaca fiber, as I have found Ms. Arbour and Ms. Bretin have failed to show TDYS was responsible for the moth infestation. It is responsible only for destroying the already infested alpaca fiber. Ms. Arbour has not proven any damages arising from the destruction of the moth-infested alpaca and I find the infested fiber likely has no value. I find Ms. Arbour is not entitled to any damages for this breach of contract and dismiss her claim against TDYS for the spoiled alpaca fiber.
36. As Ms. Bretin was not privy to the contract, I dismiss her claim against TDYS for the spoiled alpaca.
37. On October 1, 2019 NL confirmed that TDYS had started processing the remaining alpaca fiber and all the bison fiber. Based on text messages I find the fiber was skirted and washed by October 28, 2018 but still required further processing which TDYS estimated would take at least a few more weeks.
38. I find that Ms. Arbour and TDYS agreed to end their contract on October 28, 2019. Ms. Arbour asked TDYS to return the remaining fiber and pay her for the spoiled alpaca fiber or pay her for the value of the finished fibers. TDYS halted processing the fiber and refused to return the fiber until Ms. Arbour paid for processing up to that point. It is undisputed that TDYS kept the remaining fiber and issued Invoice 238. I find both TDYS and Ms. Arbour bear equal responsibility for the contract ending. I further find Ms. Arbour has received no benefit from the contract, while TDYS received payment on Invoice 133 and kept the fiber.
39. Ms. Arbour says she no longer wants the remaining fiber returned and, instead, wants to be paid for the value of the raw bison and alpaca fibers as she received no

benefit from the contract. TDYS says it is entitled to keep the fiber and sell it to recover its costs, as Ms. Arbour has not paid Invoice 238. TDYS' pricing page on its website says TDYS will sell the product to recover its costs, if no payment is made after 30 days. I find this term does not apply to the December 14, 2019 invoice, as it was issued after Ms. Arbour and TDYS ended their contract and Ms. Arbour was no longer bound by the terms of that agreement.

40. I find Ms. Arbour is entitled to be compensated for the loss of the remaining, moth free alpaca fiber and the bison fiber. Ms. Bretin is not entitled to damages as she had no contractual relationship with TDYS. I dismiss Ms. Bretin's claims against TDYS for the remaining alpaca and bison fiber.
41. TDYS estimated that it had less than 10 pounds of moth-free, raw alpaca fiber remaining on October 28, 2019. Ms. Arbour estimates the value of the raw alpaca at \$10 per pound but provides no supporting evidence. I find the evidence about the value of finished bison/alpaca blend yarn does not assist me. As Ms. Arbour has failed to prove her damages for the unspoiled raw alpaca, and as I found she is not entitled to any damages for the moth-infested alpaca, I dismiss Ms. Arbour's \$474 claim for the alpaca fiber.
42. I now turn to the value of the raw bison fiber.
43. Ms. Arbour says she received \$8 per ounce by selling her raw bison fiber through a third party at a fiber festival in June 2018, who then sold the fiber for \$10 per ounce. Ms. Arbour provided a February 2012 invoice showing that she sold 2 pounds of raw, unprocessed, bison fiber to a customer for \$9.14 per ounce.
44. Ms. Arbour provided a statement from AG, owner of a fiber mill in Alberta, with 40 years of experience with hand and machine spinning and working with bison fiber. AG says raw bison fiber sells for \$10.00 to \$17.50 per ounce. I find AG's opinion is consistent with the February 2012 invoice, and Ms. Arbour's statement about the retail value of raw, unprocessed bison fiber.

45. NL says Ms. Arbour overvalues the raw fiber and that, based on the value of retail bison rovings (\$30 to \$35 per ounce), the value of raw bison fiber is closer to \$5 per ounce. I find NL's valuation assumes a retail markup and is therefore not accurate.
46. On balance, I find a fair retail value for raw bison fiber is \$10 per ounce. I find Ms. Arbour is entitled to \$3,200 for her 20 pounds (320 ounces) of raw bison fiber.
47. I now turn to Ms. Arbour's claims for reimbursement of Invoice 133 and her shipping costs.
48. Ms. Arbour says TDYS did not scour and wash the 67.4 pounds of fiber she paid for on Invoice 133. TDYS says it did scour and wash the fiber that was not destroyed, and that Invoice 238 shows that Ms. Arbour was credited for 3 washings on the remaining fiber. Based on my review of Invoice 238 I agree that TDYS did provide the scouring and tumbling services Ms. Arbour paid for on at least part of the fiber.
49. I further find the \$566.16 scouring fee is non-refundable, as set out on TDYS' website, and which I find Ms. Arbour agreed to when she entered into the agreement with TDYS. I dismiss Ms. Arbour's \$566.16 claim for reimbursement of Invoice 133.
50. Ms. Arbour has not provided any evidence that she paid \$100 to ship the fiber to the mill in August 2018, despite being given the opportunity to do so. Further, she has not provided any reason why TDYS would be responsible, under contract or otherwise, for reimbursing her shipping costs. I find Ms. Arbour has failed to prove her claim for shipping costs and I dismiss this claim.
51. In summary, I find Ms. Arbour is entitled to \$3,200 for the loss of her raw bison fiber. I dismiss Ms. Arbour's claims for \$474 for loss of the alpaca fiber, \$566.16 for reimbursement of Invoice 133, and \$100 for shipping costs. As I find Ms. Bretin was not part of the contract with TDYS, and that TDYS was not negligent in allowing the alpaca fiber to be infested with moths, I dismiss all of Ms. Bretin's claims against TDYS.

Counterclaim

52. TDYS says Ms. Arbour and Ms. Bretin are responsible for introducing moths to the mill in their alpaca fiber. I find Ms. Arbour agreed to inspect and discard any fiber with signs of moth infestation before sending it to the mill, as required by TDYS' website.
53. TDYS says the moths must have been visible in the alpaca fleece prior to it coming to the mill, given the extent of the moth infestation when it was discovered in June 2019. NL says moth infestations take time to develop and only occur when fleece sits in storage, as Ms. Bretin's alpaca did. NL relies on her professional expertise but provides no evidence of her qualifications, so I do not accept she is an expert in this area.
54. TDYS submitted into evidence photos of another customer's order of moth infested sheep fleece. NL says the fleece was shorn just prior to being sent to the mill and so the moth infestation was less than one year old. NL says the photos show a typical moth infestation at less than one year old, which is what Ms. Arbour's alpaca should look like if the moth infestation was only one year old. As noted above, I find NL is not an expert in moth infestation. The photos do not explain the life cycle of the moth, the timing of reproduction and infestation, or provide any explanation as to how old the alpaca moth infestation is. I find the timing of a moth infestation is a matter beyond common expertise which requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Without such an expert opinion I find the photos do not help me in determining when the moths infested the alpaca fleece and whether Ms. Arbour and/or Ms. Bretin should have seen any signs of moths in the fleece in July 2018.
55. Ms. Arbour says that she and Ms. Bretin removed the alpaca fiber from its storage bags, laid it out, skirted it as described on TDYS' website (picked out vegetable matter and spoiled fibers) then repackaged the alpaca fiber before to sending it to TDYS in 2018. Ms. Arbour says there were no moths, larvae, eggs, or other signs of moth infestation in the fleece. I would expect that, if there were signs of moths in the

alpaca fleece, Ms. Bretin and/or Ms. Arbour would have seen it while picking bits out of the alpaca and repackaging it. On balance, I find there were no visible signs of moths in the alpaca fiber when Ms. Bretin and Ms. Arbour repackaged it. I find Ms. Arbour did not breach this term of the agreement.

56. On balance, I find TDYS has failed to prove it was more likely than not that Ms. Arbour and/or Ms. Bretin knew, or should have known, there were moths in the alpaca fiber.

57. TDYS says that, if Ms. Arbour had vacuum sealed the bags of alpaca fiber properly and used a commercial courier as instructed, the moths would not have left the alpaca fleece and infested the mill. TDYS did not provide any evidence that these shipping instructions were on its website or were otherwise conveyed to Ms. Arbour. I find vacuum sealed bags and a commercial courier were not terms agreed to by Ms. Arbour.

58. Further, Ms. Arbour says she sealed the bags before sending them to TDYS and NL admits the bags appeared to be sealed when they arrived at the mill. It was only when TDYS went to process the fiber in June 2019, that one of the bags was found to be open. There is no evidence what happened to the bags of fiber in those 9 months or why one of the bags was unsealed in June 2019. I find TDYS has failed to prove Ms. Arbour and/or Ms. Bretin was negligent in packaging or sealing the bags of alpaca fleece.

59. As TDYS has failed to prove Ms. Arbour and/or Ms. Bretin were responsible for the moth infestation at the mill, I also find TDYS is not entitled to recover its costs resulting from the moth damage. I dismiss TDYS' claim for \$3,600 for fumigating the mill. I also dismiss TDYS' claim for \$2,003.40 for moth damage to its other customers' orders.

60. I turn now to TDYS' claim for its unpaid Invoice 238.

61. In its December 14, 2019 invoice (Invoice 238), TDYS charged Ms. Arbour a total of \$982.80 for extra scouring, tumbling, and skirting 16 pounds of fiber. I accept NL's

argument that Ms. Arbour agreed to pay for extra processing services, as set out on TDYS' website pricing page, when she entered into the contract with TDYS. However, as noted above, TDYS did not provide the agreed upon yarn or rovings, or even return Ms. Arbour's fiber.

62. I find Ms. Arbour is not required to pay Invoice 238 as she did not receive the benefit of those processing services. I dismiss TDYS' claim for \$982.80 for Invoice 238.
63. In summary, I dismiss all of TDYS' claims against both Ms. Arbour and Ms. Bretin. I also dismiss Ms. Bretin's claims against TDYS. I find TDYS must pay Ms. Arbour \$3,200 for the raw bison fiber. I dismiss the remainder of Ms. Arbour's claims.
64. The *Court Order Interest Act* applies to the CRT. Ms. Arbour is entitled to pre-judgment interest on the \$3,200 from October 28, 2019, the date the contract was terminated, to the date of this decision. This equals \$42.82.
65. 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 Ms. Arbour is entitled to reimbursement of \$175 in CRT fees. As TDYS was unsuccessful in its counterclaim, I find it is not entitled to reimbursement of any CRT fees.

ORDERS

66. Within 30 days of the date of this order, I order TDYS to pay Ms. Arbour a total of \$3,417.82, broken down as follows:
 - a. \$3,200 in damages for her raw bison fiber,
 - b. \$42.82 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.

67. Ms. Arbour is entitled to post-judgment interest, as applicable.
68. 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.
69. 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.

Sherelle Goodwin, Tribunal Member