



Civil Resolution Tribunal

Date Issued: November 20, 2020

File: SC-2020-006098

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sze v. Serendipity Consignment Ltd. dba Beccas Bags*, 2020 BCCRT 1310

B E T W E E N :

SYLVIA SZE

APPLICANT

A N D :

SERENDIPITY CONSIGNMENT LTD. doing business as BECCAS
BAGS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about clothing put up for sale on consignment. The applicant, Sylvia Sze, said she listed items with the respondent consignment store, Serendipity Consignment Ltd. dba Beccas Bags (Beccas Bags). Ms. Sze says Beccas Bags sold her pink Gucci sweater for \$650 and so it owes her 75% or \$487.50 from the sale proceeds. Ms. Sze also says her Tom Ford sunglasses, which she values at \$350, were not sold and Beccas Bags has failed to return them to her. I find Ms. Sze claims a total of \$837.50, after deducting \$850 for Versace high-top sneakers that Beccas Bags undisputedly returned to her after this proceeding started.
2. Beccas Bags says Ms. Sze did not respond to its contact attempts, and so after 90 days it was permitted under the contract to sell her items for less than the original list price or donate them to charity. Beccas Bags says it closed its store, which Ms. Sze disputes.
3. Ms. Sze is self-represented. Beccas Bags is represented by an employee or principal.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the

CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

6. Section 42 of the CRTA says 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.

ISSUE

8. The issue in this dispute is whether Beccas Bags owes Ms. Sze anything for consignment items it has not paid her for or returned to her.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Sze must prove her claims on a balance of probabilities. I have read all the parties' submissions, but refer only to the evidence and submissions that I find relevant to provide context for my decision. I note Beccas Bags submitted no evidence, despite having the opportunity to do so.
10. Beccas Bags operated at least in part as an online consignment store, for luxury brand items. Ms. Sze says on November 29, 2017 she contracted with Beccas Bags to consign various items, including the Gucci sweater and the Tom Ford sunglasses. While the contract in evidence shows the date as November 29, the year is cut off. However, given the other evidence before me, I accept that the contract for the sweater and sunglasses was made in November 2017, and not "4 years ago" as alleged by Beccas Bags.
11. Next, I note nothing turns on Beccas Bags' apparent argument that it is not liable because the business was sold after Ms. Sze's contract was made. Her contract was

with the incorporated respondent, and a change in ownership does not change her right to claim a remedy against the corporation under the contract.

12. I will address the sweater first. Ms. Sze says she noticed in July 2020 by “randomly checking out” Beccas Bags’ website that her Gucci sweater had been sold for \$650. I accept this evidence, which is not disputed and is consistent with the screenshots of the sold item in evidence.
13. The 2017 contract sets out the terms under which Beccas Bags can market and sell the consigned items. For the sweater, Ms. Sze set the minimum sale price as \$950, but text messages in evidence show that in late March 2018 she agreed to lower the price to \$650. I cannot tell from the evidence before me when the sweater was sold, other than Beccas Bags sold it for \$650 between late March 2018 and July 2020.
14. Beccas Bags says it contacted Ms. Sze with no response and since she did not pick up the sweater it is not responsible for it. Beccas Bags does not deny it sold the sweater and received the profit from it, and as noted above I accept that it did. I note Beccas Bags originally said it donated all of her items to charity, but I find it sold the sweater and as noted above it later returned the Versace shoes to her. I find these inconsistencies hurt Beccas Bags’ credibility.
15. Beccas Bags relies on the 2017 contractual term that says if the goods have not sold within 90 days, Beccas Bags will contact Ms. Sze to arrange pick-up of the goods or come to an agreement to reduce the minimum price. The contract further says if Beccas Bags has “not reached” Ms. Sze after 2 weeks, Beccas Bags has sole discretion “to reduce the Minimum Price or to donate the Goods to charity”.
16. I find the contract did not permit Beccas Bags to sell the sweater and retain the profit, even though 90 days had passed. It only permitted a price reduction or donation to charity, neither of which happened. Further, I prefer Ms. Sze’s evidence that she was never contacted by Beccas Bags about their right to dispose of the goods, given my conclusion above about Beccas Bags’ credibility.

17. Beccas Bags generally argues that Ms. Sze's claims are too late. I considered whether Ms. Sze's claim for the sweater proceeds may be out of time under the *Limitation Act* (LA). The LA provides for a basic 2-year period for an applicant to start a claim from when they discovered it or reasonably ought to have discovered it. Ms. Sze applied to the CRT on August 20, 2020, which is what stopped the limitation period. This means that if her claim arose before August 20, 2018, she filed it out of time.
18. On balance, I find that given the parties agreed to lower the sweater's price at the end of March 2018, I find Ms. Sze's claim was not discoverable before August 20, 2018. I say this because the parties' text messages suggest that Ms. Sze could reasonably expect the sale to take some time, and I note Beccas Bags told her that the items were not high in demand and so it would not buy them outright from her. The 90-day period set out in the contract had already passed before the text messages that provided for re-listing the sweater at a lower price. I find Ms. Sze's sweater claim in time and so I find Beccas Bags owes her 75% of the \$650 sale price, as provided for under the contract. This equals \$487.50.
19. I turn next to the sunglasses, which the contract states were to be listed for sale for \$350. The text messages in evidence show that in late March 2018 Beccas Bags admitted it had inadvertently failed to list them for sale on its website, but that it would do so the next day. Ms. Sze submits that the sunglasses were never listed for sale, which is not disputed.
20. I find Ms. Sze's claim about the sunglasses is not out of time under the LA, as I find she would reasonably expect them to take some time to sell after Beccas Bags listed them after the late March 2018 discussion. Again, the 90-day period set out in the contract had already passed when Beccas Bags texted that it would fix its error and post the sunglasses on its website. So, I find that Beccas Bags cannot rely on that 90-day clause to support its position that it was entitled to dispose of the sunglasses, though as noted Beccas Bags' evidence is inconsistent with what it did with the various items.

21. Ms. Sze claims \$350 for the sunglasses, based on the price they were to be listed for on Beccas Bags' website. Ms. Sze did not submit any other valuation for them, such as her original purchase price or providing comparable sale prices for used Tom Ford sunglasses. I am not prepared to order payment of \$350 as there is no evidence the sunglasses would have sold for that price. In any event, even if sold for \$350 Ms. Sze would only have been entitled to 75%, or \$262.50, under the parties' contract.
22. On a judgment basis, I find Beccas Bags must pay Ms. Sze \$150 for the sunglasses, bearing in mind the 75% figure in the contract and the fact that the sweater ultimately sold for around 2/3 of its listed price. Together with the \$487.50 for the sweater, this brings the total award to \$637.50.
23. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Sze is entitled to pre-judgment COIA interest on the \$637.50, from July 19, 2020 to the date of this decision. I find July 19, 2020 reasonable as that is the date Ms. Sze discovered the sweater was sold and I have no other evidence about when it was sold. This interest equals \$0.98.
24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. Ms. Sze was substantially successful and so I find Beccas Bags must reimburse her \$125 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

25. Within 30 days of this decision, I order Beccas Bags to pay Ms. Sze a total of \$763.48, broken down as follows:
 - a. \$637.50 in debt,
 - b. \$0.98 in pre-judgment COIA interest, and
 - c. \$125 in CRT fees.
26. Ms. Sze is entitled to post-judgment interest, as applicable.

27. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
28. 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.

Shelley Lopez, Vice Chair