



Civil Resolution Tribunal

Date Issued: March 19, 2021

File: SC-2020-008085

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roots and Wings Distillery Inc. v. Leah Laura Chevallier dba Chuckling Duckling Farm*, 2021 BCCRT 304

B E T W E E N :

ROOTS AND WINGS DISTILLERY INC.

APPLICANT

A N D :

LEAH LAURA CHEVALLIER (Doing Business As CHUCKLING
DUCKLING FARM)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about an unpaid invoice for alcohol used to make hand sanitizer. The applicant, Roots and Wings Distillery Inc. (Roots and Wings), seeks payment of

\$1,375 from the respondent, Leah Laura Chevallier (doing business as Chuckling Duckling Farm).

2. Mrs. Chevallier admits that she has not paid the invoice. Roots and Wings charged \$80 for 4 delivery charges, which Mrs. Chevallier says was not agreed to. She says the invoice should also be reduced because Roots and Wings allegedly stole her hand sanitizer recipe and clients. Mrs. Chevallier also says she marketed Roots and Wings' business when she included Roots and Wings' name on her products and in social media posts. As Mrs. Chevallier did not file a counterclaim, I infer her position is that she is entitled to a set-off for Roots and Wings' use of her hand sanitizer recipe, clientele and advertising services.
3. Roots and Wings is represented by RC, who I infer is a principal or employee. Mrs. Chevallier is self-represented.

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 of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the

CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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.

Late Evidence

8. Mrs. Chevallier provided her evidence late, on the last day for reply submissions from Roots and Wings. The evidence consisted of two witness statements and her invoice for marketing services. Roots and Wings requested that the late evidence not be considered. Given the CRT's mandate that includes flexibility, and since Roots and Wings had an opportunity to respond to the late evidence and specifically addressed the late evidence in its reply submissions, I find there is no breach of procedural fairness in admitting the late evidence. I find the late evidence is admissible and where relevant it is discussed below.

ISSUES

9. The issues in this dispute are:
 - a. Whether Mrs. Chevallier must pay Roots and Wings \$1,375 for the unpaid invoice?
 - b. Whether Mrs. Chevallier is entitled to any set-off against the \$1,375 for the hand sanitizer recipe, clients or marketing services?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Roots and Wings, must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

The Invoice

11. It is undisputed that Roots and Wings issued the \$1,375 invoice to Mrs. Chevallier on March 31, 2020, which included charges for \$1,295 in alcohol and \$80 for deliveries. The invoice indicates that the price per unit of alcohol was reduced from \$25 to \$8.75, and the individual delivery charges was reduced from \$36 to \$20.

12. Mrs. Chevallier does not deny that Roots and Wings provided the invoiced alcohol but disputes the delivery charges. Mrs. Chevallier does not dispute that Roots and Wings completed two roundtrip deliveries. However, she says Roots and Wings offered to pick up buckets and drop off the alcohol for free. Roots and Wings says it did not agree to provide deliveries free of charge.

13. Mrs. Chevallier submitted witness statements from DC and KO. I note that both statements are authored by individuals who are not neutral in this dispute. DC is identified as Mrs. Chevallier's partner and KO is identified as Mrs. Chevallier's friend.

14. KO's statement contains hearsay and double hearsay about the conversation Mrs. Chevallier had with a Roots and Wings employee to arrange the alcohol supply, including drop off and pick up. KO says she "overheard" the Roots and Wings employee indicate that they lived close by and could drop off and pick up the "5 gallon buckets no problem" and KO says that Mrs. Chevallier was "glad as that would save on shipping costs". I place little weight on KO's statement because KO did not directly participate in Mrs. Chevallier's conversations with Roots and Wings and I find it more likely than not that Mrs. Chevallier told KO about them afterwards.

15. DC's witness statement says they were present when Mrs. Chevallier received an alcohol shipment from Roots and Wings. DC says they spoke to a Roots and Wings employee about how grateful Mrs. Chevallier was for the free delivery and discussed where Roots and Wings was located and why it was not out of their way to deliver. DC did not provide details on why the delivery was not out of Roots and Wings' way. I find this statement does not assist me in determining the parties' agreement about delivery charges at the time their agreement was made.
16. Roots and Wings submitted the parties' emails exchanged when Mrs. Chevallier received the invoice on March 31, 2020. In the emails, Mrs. Chevallier confirmed that she would pay the invoice. She also advised that had she known about the delivery charge, she would have completed the deliveries herself. Mrs. Chevallier advised she would pick-up future orders to avoid extra delivery fees. Had Roots and Wings previously offered free delivery, I would have expected Mrs. Chevallier to mention that in these emails, which she did not. Given this, I find it is more likely Roots and Wings did not offer to provide free deliveries. I also find the inconsistencies between Mrs. Chevallier's submissions and the email evidence makes her evidence less credible and reliable.
17. I find there was no agreement between the parties that deliveries would be free of charge. However, given the evidence before me, I find it was an implied term of the parties' agreement that Roots and Wings would deliver the alcohol to Mrs. Chevallier. As Mrs. Chevallier does not dispute that Roots and Wings completed the deliveries, I find the \$80 in delivery charges were reasonably incurred.
18. In summary, I find Roots and Wings has proven its claim for payment of its \$1,375 invoice.

Set-Off

19. I will now consider whether Mrs. Chevallier is entitled to a set-off against the \$1,375 for providing Roots and Wings with the hand sanitizer recipe, clientele and marketing

services. As noted, Mrs. Chevallier did not file a counterclaim. Because she alleges the set-off, the burden to prove it shifts to Mrs. Chevallier.

20. When the desired set off is closely enough connected with the applicant's claimed rights that it would be unjust to proceed without permitting a set off, equitable set off may be applied: see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34.
21. I find Mrs. Chevallier is not entitled to a set-off because she has not proven Roots and Wings owed her any debt, either for Roots and Wings' alleged theft of the hand sanitizer recipe and clientele or for her advertising services. My reasons follow.

Hand Sanitizer Recipe and Clients

22. Mrs. Chevallier says Roots and Wings stole her hand sanitizer recipe and clients, which she says she disclosed to Roots and Wings on the assumption that it was a trusted supplier. Mrs. Chevallier does not further explain why she chose to disclose this information to Roots and Wings.
23. Mrs. Chevallier alleges that after receiving her first order of alcohol, she discovered Roots and Wings had started making its own hand sanitizer with her recipe and had stolen her clients. She says she saw Roots and Wings selling hand sanitizer on social media, and her "sales at the hospitals dropped to zero overnight". However, Mrs. Chevallier did not provide further documentary or other evidence to support these allegations.
24. Roots and Wings says it did not steal Mrs. Chevallier's hand sanitizer recipe or clients. Roots and Wings agrees Mrs. Chevallier shared her hand sanitizer recipe, but denies it used her recipe. Roots and Wings says it followed the World Health Organization (WHO) hand sanitizer formulation.
25. As noted above, Mrs. Chevallier bears the burden of proving that Roots and Wings stole her hand sanitizer recipe and clients. It is undisputed that Mrs. Chevallier shared her hand sanitizer recipe with Roots and Wings. Having done so, it cannot be said that Roots and Wings stole the recipe, and there is no evidence Mrs. Chevallier

provided the recipe to Roots and Wings on the condition it would not be used. In any event, there is insufficient evidence that Roots and Wings did, in fact, use her hand sanitizer recipe or take her clients. I decline to order any set-off for the alleged use of her recipe or clients.

Marketing Services

26. Mrs. Chevallier says Roots and Wings verbally agreed to be her “ongoing future alcohol supplier” in exchange for Mrs. Chevallier adding Roots and Wings to her product labels and promoting Roots and Wings as her supplier on social media. Mrs. Chevallier says Roots and Wings stopped supplying her with alcohol but did not pay for the marketing already provided. Roots and Wings admits it stopped supplying Mrs. Chevallier with alcohol but says it did so when Mrs. Chevallier refused to pay the \$1,375 invoice for the alcohol already supplied.
27. Mrs. Chevallier says when she realized Roots and Wings was not going to supply her with more alcohol, and had allegedly stolen her hand sanitizer recipe and clients, she created an \$1,182.30 invoice for the marketing she had provided to Roots and Wings (marketing invoice). Mrs. Chevallier submitted the April 22, 2020 marketing invoice as evidence. The invoice includes a \$575 charge for “branding & market base fee” and a \$550 charge for “social media & marketing fee”, as well as some other small charges. However, apart from the marketing invoice, Mrs. Chevallier did not provide further evidence of the marketing she provided for Roots and Wings.
28. Roots and Wings does not deny that Mrs. Chevallier listed Roots and Wings as a supplier on some of her hand sanitizer labels and in a social media post. Roots and Wings provided photographs of Chuckling Duckling’s hand sanitizer with Roots and Wings listed as a supplier on the label, and one of Chuckling Duckling’s social media posts that lists Roots and Wings as a supplier.
29. However, Roots and Wings says it did not agree to have Mrs. Chevallier advertise on its behalf and the marketing invoice is “bogus”. Roots and Wings says it only asked to be tagged in Chuckling Duckling’s social media posts about hand sanitizer when it

sold Mrs. Chevallier alcohol at a greatly discounted rate. Roots and Wings says small businesses are always willing to tag or mention them in social media posts because it costs nothing and introduces people to great local businesses. Roots and Wings says that any other Roots and Wings' marketing was Mrs. Chevallier's decision. Roots and Wings also says that Mrs. Chevallier only mentioned Roots and Wings on social media for approximately one week.

30. DC's statement, discussed above, also contains hearsay and double hearsay about Roots and Wings' alleged marketing request and Mrs. Chevallier's efforts to contact Roots and Wings to place subsequent alcohol orders, including by text message, phone and email. This information is not helpful in determining whether Mrs. Chevallier and Roots and Wings had an agreement for Roots and Wings to pay for marketing services. In any event, I place little weight on this portion of DC's statement because DC did not directly participate in the conversations and actions they refer to, and I find it more likely than not that Mrs. Chevallier told DC about them afterwards.
31. An after the fact invoice does not establish that there was an agreement between the parties that Roots and Wings would pay for Mrs. Chevallier's marketing services. So, I find Mrs. Chevallier has not proven she had an agreement with Roots and Wings' to pay her for marketing services. While Mrs. Chevallier may have hoped for an ongoing alcohol supply, Roots and Wings' decision not to provide it does not entitle Mrs. Chevallier to charge for marketing services, particularly given she did not pay the \$1,375 invoice, which she admits she owed save for the \$80 in delivery charges. I find Roots and Wings is not indebted to her for marketing services.
32. In any event, even if I had found that there was an agreement between the parties, I find that any alleged agreement between the parties about marketing and ongoing alcohol supply is separate and distinct from the invoice and does not warrant any set off against Mrs. Chevallier's debt for the invoice.
33. Given my conclusions above, I find Roots and Wings is entitled to full payment of \$1,375 in debt.

34. The parties did not have an agreement on interest. The *Court Order Interest Act* applies to the CRT. Roots and Wings is entitled to pre-judgment interest on the debt of \$1,375 from March 31, 2020, the date of the invoice to the date of this decision. This equals \$11.17.
35. 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 Roots and Wings is entitled to reimbursement of \$125 in CRT fees. Roots and Wings did not claim any dispute related expenses, and so I award none.

ORDERS

36. Within 30 days of the date of this order, I order Mrs. Chevallier to pay Roots and Wings a total of \$1,511.17, broken down as follows:
- a. \$1,375 in debt,
 - b. \$11.17 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 CRT fees.
37. Roots and Wings is entitled to post-judgment interest, as applicable.
38. 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.

39. 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.

Leah Volkens, Tribunal Member