Civil Resolution Tribunal

Date Issued: March 24, 2021

File: SC-2020-006747

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seaflora Skincare Inc. v. Yu*, 2021 BCCRT 327

B E T W E E N :

SEAFLORA SKINCARE INC.

APPLICANT

A N D :

JESSICA YA-HUI YU and JSPA STUDIO CORP.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This is a dispute about merchandise. The applicant, Seaflora Skincare Inc. (Seaflora), says that it had a consignment agreement in which the respondents, Jessica Ya-Hui Yu and JSpa Studio Corp (JSpa), sold Seaflora products to its clients. Seaflora says

that, after it terminated the agreement, the respondents did not pay for all of the products they sold or kept. Seaflora asks for an order that the respondents pay it $1,145.76 plus contractual interest. The respondents deny that they owe Seaflora any money.

2. Seaflora is represented by its principal. Mx. Yu, who is one of JSpa's founders, represents both respondents.

JURISDICTION AND PROCEDURE

3. 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.

4. 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. Here, I find that I am properly 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.

5. 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.

6. 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

7. The issues in this dispute are:

    a. Whether Seaflora was required to provide the respondents with exchanges or refunds on its products,

    b. Whether the respondents owe Seaflora $1,145.76, and

    c. Whether Mx. Yu has personal responsibility for any amounts owing to Seaflora.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this, an applicant must prove their claims on a balance of probabilities. I have read all the parties' evidence and submissions, but will refer to only what I find relevant and necessary to provide context to my decision.

9. Seaflora produces skincare products. JSpa does business under the name Selfology Spa, and Mx. Yu is one of its principals. The parties had some sort of arrangement starting in 2010 in which JSpa purchased products from Seaflora on a wholesale basis. It is not clear whether there were any formal agreements involved with that arrangement.

10. In July of 2019, Seaflora and JSpa entered into a 1-year agreement for JSpa to sell Seaflora's products to third parties on a consignment basis. The agreement provided that JSpa would pay Seaflora a set price per product, and would retain any difference between the set price and the sale price to third parties. The agreement stated that expired and damaged products would be charged to JSpa as "sold", but did not specifically address returns or exchanges.

11. Several times during 2019, JSpa communicated with Seaflora about possible changes to its products and ingredients. JSpa notified Seaflora of several reports of irritation and tight-feeling skin from its clients and staff. It accepted used product returns from some of its clients. In addition to concerns about the products, there were some production and shipping issues that caused delays in JSpa's orders

arriving from Seaflora. At some point in December of 2019, JSpa stopped using Seaflora products on its clients.

12. Seaflora decided to terminate the consignment agreement with JSpa effective January 3, 2020. The parties' agreement required JSpa to either promptly return Seaflora's goods at JSpa's "sole cost and expense" or pay for the balance of the goods. The agreement stated that any returned goods that were not in "re-saleable condition" would be deemed to have been purchased by JSpa.

13. The parties exchanged email messages about returning Seaflora's property. In these messages, Mx. Yu and another JSpa representative expressed their concerns about "defective" products and a "potential product recall". In a January 30, 2020 message, they asked Seaflora to pick up the products from JSpa's location, apparently due to a lack of trust.

14. On January 31, 2020, 2 Seaflora employees travelled to JSpa's location to retrieve its products. On February 4, 2020, Seaflora issued invoice #10166 for the $1,145.76 difference between its inventory records and the items retrieved from the respondents.

15. The respondents did not pay the invoice because it was for allegedly defective goods that Seaflora would not accept returns of or provide them with exchanges. Mx. Yu says that the respondents considered making a counterclaim for the $1,015.84 that they say is the cost of "recall" products but did not do so. However, I infer that the respondents are asking that the cost of the allegedly defective products be set off against any amounts owing to Seaflora (see *Wilson v. Fotsch*, 2010 BCCA 226 for the applicable criteria for an equitable set off).

16. The respondents suggest that Seaflora inappropriately altered the ingredients of some of its products. The parties' agreement does not restrict Seaflora from making changes to its products. While JSpa may have preferred the previous formulations, any changes to ingredients did not affect the enforceability of the parties' agreement. Further, based on the evidence before me, I find that any change in ingredients would

not, by itself, establish that the products are not reasonably fit for their purpose as contemplated by section 18 of the *Sale of Goods Act*.

17. The parties differ about whether and to what extent exchanges or returns were permitted under their agreement. There is some suggestion that the parties operated on the basis that a separate set of terms and conditions applied to their agreement. These terms say that returns would be accepted only within 30 days of the purchase, and only for products that were "in their original saleable condition: sealed, unused and unmarked". The terms also set out the limited circumstances in which returns would be accepted from retail clients for "sensitivity issues".

18. It appears that these terms and conditions may have applied to the parties' previous wholesale arrangement. However, their consignment agreement says that it represents the "final and entire contract" between the parties and does not mention these or any other terms and conditions. The agreement says that any modifications must be in writing and signed by the parties, but there is no indication that any modifications have occurred.

19. I find that, by signing the 2019 consignment agreement, the parties entered into a new agreement for the consigned products rather than a modification of the previous wholesale arrangement. I am satisfied that whatever terms and conditions applied to the wholesale arrangement do not apply to the parties' consignment agreement. The terms of this agreement do not require Seaflora to accept returns or exchanges for opened product for any reason. Further, the contractual terms provide that products that are damaged, expired, or not in re-saleable condition are deemed to have been purchased by JSpa.

20. After Seaflora terminated the parties' agreement, it was not required to give the respondents credit for products returned by JSpa's customers. The agreement contemplated that all products that were not in "re-saleable condition" were deemed to have been purchased, and that JSpa would be responsible to provide payment for these products. Even if this was not the case, the respondents would bear the burden of proving that the products were defective, and I find that the available evidence

does not meet this burden. I find that the respondents are not entitled to any set off of the value of the returned products against the amount they owe Seaflora.

21. The respondents did not specifically dispute Seaflora's records about how many items had been shipped to them, or the items listed as purchased on invoice #10166. A copy of the invoice with annotations apparently added by JSpa suggest that it believes that it had more of several products than was documented on the invoice. It is not clear whether the different numbers may be attributed to items returned by customers. In any event, I find that, under the terms of the parties' agreement, Seaflora is entitled to payment of its invoice #10166.

22. I have also considered whether both named respondents are responsible for the amounts owing to Seaflora. Although the parties' agreement was between Seaflora as the consignor and JSpa as the consignee, I find that Mx. Yu also bears personal responsibility. The parties' agreement states that the "individual(s) named below hereby agree to indemnify [Seaflora] for any loss, costs, damages, legal fees or expenses arising out of [JSpa's] failure to perform any of the terms, covenants, conditions or provisions contained in this contract".

23. By signing the agreement as JSpa's co-founder, Mx. Yu also agreed to indemnify Seaflora for any losses it may experience. Therefore, under the parties' agreement, both JSpa and Mx. Yu are jointly and severally responsible for Seaflora's claims.

24. Seaflora also claims contractual interest at an annual rate of 2%. The agreement provided that interest would begin to apply on the date the respondents received Seaflora's invoice. Calculated from February 4, 2020, this equals $25.99.

25. 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 Seaflora is entitled to reimbursement of $125 in CRT fees. Seaflora did not make a claim for dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order the respondents to pay Seaflora a total of $1,296.75, broken down as follows:

    a. $1,145.76 for payment of invoice #10166,

    b. $25.99 in contractual interest at a rate of 2% annually, and

    c. $125 in CRT fees.

27. Seaflora is entitled to post-judgment interest, as applicable.

28. 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.

29. 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.

Lynn Scrivener, Tribunal Member