



Civil Resolution Tribunal

Date Issued: May 13, 2021

File: SC-2020-006042

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Y&ED Jewellery Design Inc. v. Li*, 2021 BCCRT 512

BETWEEN:

Y&ED JEWELLERY DESIGN INC.

APPLICANT

AND:

LUCY DAN LI

RESPONDENT

AND:

Y&ED JEWELLERY DESIGN INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an order for custom earrings. The applicant (and respondent by counterclaim), Y&ED Jewellery Design Inc. (YED), says the respondent (and applicant by counterclaim), Lucy Dan Li, has failed to pay for pearl earrings she asked YED to make. YED claims \$1,500 for its unpaid invoice.
2. It is undisputed Ms. Li brought YED 2 loose black pearls (Original Pearls) from her own collection (Pearl Set) and asked YED to create the custom earrings with the Original Pearls. Ms. Li says when she picked up the earrings, she determined the pearls in them were not the Original Pearls and were of lesser quality and value. YED says it used the Original Pearls in the earrings.
3. Ms. Li says the labour for the pearl earrings was offered at a discounted rate, given other jewellery work she had brought to YED. She says she owes nothing for the earrings, which she has in her possession.
4. YED says it unwillingly agreed Ms. Li could hold 2 loose black pearls (Collateral Pearls) belonging to YED pending the resolution of Ms. Li's concern about the Original Pearls, which concern she raised the day after she picked up the earrings. YED claims for the Collateral Pearls' return or \$3,000 as payment for them. Ms. Li says YED agreed she would retain the Collateral Pearls until YED either returned the Original Pearls to her or provided a pair of pearls of similar size and quality. Ms. Li says YED has not done either and so she should not have to pay for the Collateral Pearls. Ms. Li offers to return the Collateral Pearls when she receives her Original Pearls or compensation for them.
5. Ms. Li counterclaims for \$5,000, the maximum monetary limit in the small claims jurisdiction of the Civil Resolution Tribunal (CRT). Ms. Li says this is half the value of the 2 Original Pearls she gave YED for use in the earrings.
6. Ms. Li is self-represented. YED is represented by one of its owners, Edward Yongzhen Ji.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. 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.
8. 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 find I can fairly hear this dispute through written submissions.
9. Under section 42 of the CRTA, 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.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate. In particular, section 118 gives jurisdiction over recovery of personal property, which I find includes the Collateral Pearls as discussed further below.
11. To some extent the parties have referred to their discussions during the CRT's facilitation process, including settlement offers. Such settlement disclosure is

prohibited by the CRTA section 89, unless all parties consent and I have no evidence of consent. So, I have not considered any of these particular submissions in my decision below.

12. Finally, I note I was initially unable to view 2 photos submitted by Ms. Li, which show the front and back of a receipt YED gave her in December 2019. Through CRT staff, Ms. Li re-submitted them in a different format and CRT staff confirmed with YED it was able to view the versions originally submitted.

ISSUES

13. The issues in this dispute are:
 - a. What was the parties' agreement about payment for the pearl earrings, and is YED entitled to the claimed \$1,500 for creating them?
 - b. Did YED make the pearl earrings with the Original Pearls, and if not, to what extent is Ms. Li entitled to \$5,000 for them?
 - c. Is YED entitled to the Collateral Pearls' return or in the alternative \$3,000?

EVIDENCE AND ANALYSIS

14. In a civil claim like this one, the applicant YED bears the burden of proving its claims, on a balance of probabilities. Ms. Li bears the same burden in her counterclaim. While I have reviewed the parties' submitted evidence and arguments, I have only referenced below what I find is necessary to give context to my decision.
15. As noted above, the central issue in this dispute is whether YED used Ms. Li's Original Pearls when it made her earrings. Ms. Li says it did not, and YED says it did.

16. The parties agree that in July 2019 Ms. Li hired YED to make her a set of pearl earrings. They also agree that on August 30, 2019 Ms. Li gave the 2 Original Pearls from her Pearl Set to YED, so YED could use them in the earrings.
17. The parties agree Ms. Li picked up the pearl earrings on February 4, 2020, along with other jewellery. They also agree Ms. Li returned to YED on February 5, 2020 with the earrings, and said the pearls used in the earrings (Earring Pearls) were not the Original Pearls as agreed. YED asked Ms. Li for proof, by way of providing other pearls from the Pearl Set for comparison. The Pearl Set was then located overseas and so Ms. Li was delayed in producing it. So, on February 5, 2020, the parties signed a letter of commitment about how the parties planned to resolve the issue, as discussed further below.
18. On December 21, 2020, Ms. Li brought YED pearls from her Pearl Set for comparison. YED was unable to confirm these Pearl Set pearls were the same as the Original Pearls provided on August 30, 2019.
19. The parties agree Ms. Li retains the pearl earrings with the Earring Pearls plus the 2 Collateral Pearls.

Pearl earring agreement – YED’s \$1,500 claim

20. YED says it never gave Ms. Li a quote for the earrings work and claims \$1,500 for it. Ms. Li says YED agreed to provide free labour to make the earrings because she had brought in various diamond jewellery for YED to modify.
21. YED admits it agreed to “waive off” its materials and labour costs for the earrings because Ms. Li “had bargained”, which based on the parties’ submissions I infer occurred on February 4, 2020 when she picked up the earrings. In this dispute, YED alleges that it does not have to honour that bargain because on February 5, 2020 Ms. Li published on social media that YED failed to use the Original Pearls in the earrings. In particular, YED says that because Ms. Li attempted to ruin its reputation, “it is only fair that she now pays” for the earrings’ construction.

22. I find YED is not entitled to the claimed \$1,500 for the earrings' construction, because YED admits it agreed with Ms. Li that she would not have to pay. The fact that Ms. Li later published critical comments on social media does not alter that agreement. I dismiss YED's claim for \$1,500 for the earrings' construction. I note YED in reply submissions says its reputational loss is more than \$1,500. However, YED did not make a claim for reputational loss, and defamation is outside the CRT's jurisdiction under the CRTA. I make no findings about the alleged defamation.

Ms. Li's \$5,000 claim – did YED use the Original Pearls in the earrings?

23. As noted above, Ms. Li says YED did not use her Original Pearls in the earrings, and YED says it did. Ms. Li describes the Original Pearls as Tahitian black pearls, though elsewhere she says they were peacock green in colour. Based on photos of pearls from her Pearl Set, I find the colour does have a peacock green tone but would be reasonably described as black pearls or black pearls with a gold tone.

24. Ms. Li says the Earring Pearls are inferior to her Original Pearls. In particular, Ms. Li says the Earring Pearls were different colours from each other, whereas the Original Pearls had the same colour. Ms. Li also says the Earring Pearls had many bumps and scratches on their surface, whereas the Original Pearls were completely smooth. Based on Ms. Li's submitted video, the Earring Pearls have some visible blemishes and appear slightly different in colour from the pearl she says is from her Pearl Set.

25. Ms. Li further says, and I find her photo evidence shows, the Earring Pearls are 11.28 and 11.26 mm. Ms. Li says her Original Pearls were both exactly 11.00mm.

26. The parties agree YED did not give Ms. Li a receipt when she provided the Original Pearls, but later did so on December 17, 2019. The receipt in evidence only describes the Original Pearls as "2 black pearl 11mm". YED says that apart from formal appraisals, it rounds down its measurements when describing pearls between 11.0mm and 11.5mm. On balance, I find the receipt's description favours Ms. Li's version of events, in that the Original Pearls were exactly 11.0mm.

27. At the parties' February 5, 2020 meeting, they drafted and signed the commitment letter, which was written in Chinese. I accept the certified English translation provided by Ms. Li, which I note is substantially the same as the uncertified translation YED provided. In the letter, on YED's behalf Mr. Ji undertook to look for a 11.0mm peacock colour Tahitian pearl in YED's inventory, "in order to check if there is a mistake". YED further agreed that if it could not find one:

... we will need Lucy to provide a pearl on her necklace as the sample, and we will find a pair of pearls (perfect circle one) for Lucy to be used on the earrings. ... [Ms. Li certifies that] the parties have agreed to give Lucy temporarily two peacock Tahitian pearls of the sizes 11.2mm and 11.88mm respectively, as the collateral. All of Lucy's properties have been returned.

28. In context, it is clear and undisputed that the last sentence, "All of Lucy's properties have been returned", refers to her other diamond jewellery. I do not accept YED's assertion it "unwillingly" gave Ms. Li the Collateral Pearls or that it only made the agreement to keep her happy. I find the commitment letter supports a conclusion that YED accepted it was possible they had not used the Original Pearls as agreed. I also find Mr. Ji's agreement to look for a 11.0mm peacock pearl supports a conclusion the Original Pearls were 11.0mm each, and not larger.

29. YED says after checking its inventory it determined "we didn't make mistake". YED however submitted no documentary evidence of its inventory system. I find the fact that it did not identify a mistake does not mean the Earring Pearls are the Original Pearls.

30. On balance, given my findings above and in particular the different measurements between the Earring Pearls and the Original Pearls, I find the Earring Pearls were not the Original Pearls.

31. I turn then to the appropriate remedy. In February 2021, Ms. Li obtained a \$5,000 appraisal from Unique Jewellery Ltd. (Unique), of one of her other 11.00mm pearls in her Pearl Set.

32. YED says Unique's appraisal report only mentioned 11mm, that the pearl was a South Sea Pearl, colour black with gold overtone, and did not mention the pearl's blemish grade. YED says this description is far different from Ms. Li's claim that the Original Pearls were loose Tahitian pearls with a green peacock colour. I disagree. There is no evidence that Tahitian and South Sea do not mean the same thing. Based on the photos and Ms. Li's video, I find the Pearl Set pearls appear to be black with gold overtone and this is not inconsistent with a "peacock" description of its colour. In the absence of any contrary expert evidence, I find Unique's appraisal is the best evidence of the Original Pearls' value.
33. Given that Ms. Li has reduced her claim to \$5,000 to fall within the CRT's small claims monetary limit, I find \$5,000 is a reasonable amount for the 2 Original Pearls. I address the Collateral Pearls and the Earring Pearls below.

The Collateral Pearls – YED's claim for \$3,000 or their return

34. As described above, the evidence shows YED agreed to give Ms. Li the Collateral Pearls to hold pending YED finding her Original Pearls or giving Ms. Li comparable pearls. I have found above YED did not make the earrings with the Original Pearls and so I find Ms. Li has retained the Collateral Pearls under the agreement. However, having ordered YED to pay Ms. Li \$5,000 for the Original Pearls, I find the most appropriate outcome is for Ms. Li to return the Collateral Pearls to YED, in the same condition as when she received them on February 5, 2020. I find this is most consistent with the commitment letter and the fact that YED did not provide any supporting evidence to prove the Collateral Pearls are worth \$3,000.
35. Finally, I turn to the earrings that contain the Earring Pearls, which as noted above Ms. Li has retained. No evidence was given about their value, other than YED saying they were in fact the Original Pearls (which I have rejected) and Ms. Li saying they were inferior to her Original Pearls. YED did not expressly claim the Earring Pearls' return. I find no basis to order Ms. Li to return the Earring Pearls to YED, and I am mindful of the fact that Unique's \$5,000 appraisal applied to each of the 2 Original Pearls and I only awarded Ms. Li \$5,000 above given the CRT's

monetary limit that applies to each claim. In other words, YED made no claim for the Earring Pearls' return and I find the evidence does not show Ms. Li would be unjustly enriched by keeping them.

36. In summary, I order YED to pay Ms. Li \$5,000 for the Original Pearls and I order Ms. Li to return the Collateral Pearls to YED. I dismiss YED's remaining claims.
37. The *Court Order Interest Act* (COIA) applies to the CRT. I find YED must pay pre-judgment interest on the \$5,000 from February 5, 2020 to the date of this decision. This interest equals \$58.71.
38. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. I find Ms. Li was the more successful party, and so I order YED to reimburse her \$175 in paid CRT fees. I dismiss YED's claim for reimbursement of CRT fees.

ORDERS

39. Within 30 days of this decision, I order YED to pay Ms. Li a total of \$5,233.71, broken down as follows:
 - a. \$5,000 in damages,
 - b. \$58.71 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
40. Within 30 days of this decision, I order Ms. Li to return the Collateral Earrings (as described in the parties' February 5, 2020 commitment letter) to YED at its address listed on the Dispute Response, in the same condition they were in when given to Ms. Li on February 5, 2020. Ms. Li must deliver the Collateral Earrings between 9am and 5pm and give 3 days' written notice of her delivery date, unless the parties agree otherwise in writing. YED's remaining claims are dismissed.

41. Ms. Li is entitled to post-judgment interest, as applicable.
42. 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.
43. 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