



Civil Resolution Tribunal

Date Issued: June 15, 2021

File: SC-2021-001593

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Border Gold Corp. v. Stanley*, 2021 BCCRT 659

B E T W E E N :

BORDER GOLD CORP.

APPLICANT

A N D :

STANLEY STANLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about counterfeit gold coins. The applicant, Border Gold Corp. (BGC), bought what it thought were 4 gold coins from the respondent, Stanley Stanley, for \$2,284. BGC says that after purchasing the coins it determined they were counterfeit. BGC says Mr. Stanley misrepresented the quality of the coins and

breached the parties' contract, and it claims a refund of the \$2,284 purchase price. It says it is willing to return the counterfeit coins to Mr. Stanley.

2. Mr. Stanley says BGC had the opportunity to inspect the coins and make its own assessment of their value before buying them. He says he does not owe BGC anything.
3. BGC is represented by an employee or principal and Mr. Stanley 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. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Did Mr. Stanley negligently misrepresent the quality of the coins?
 - b. Did Mr. Stanley breach the parties' contract?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant BGC must prove its claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss BGC's claims.
10. On February 8, 2021, Mr. Stanley emailed FJ at a different company stating that he wanted to dispose of some personal gold items. On February 9, 2021, FJ forwarded Mr. Stanley's request to BGC and attached a list of items in Mr. Stanley's collection. This list described the 4 coins as "China ¼ OZ 3 x 1989 New York Expo; 1 x 1987 Mazu". It is unclear who drafted this list. On the same date BGC provided Mr. Stanley with a pricing estimate for each of the items in his collection. The 4 coins were estimated at \$578 each. Mr. Stanley told BGC he wished to proceed and provided his phone number.
11. It is undisputed that the parties discussed Mr. Stanley's collection, including the 4 coins, over the phone. However, the dates and details of those discussions are unclear from the parties' submissions.
12. Mr. Stanley says he met with BGC on February 11, 2021 and personally presented the coins, along with the rest of his collection. He says that before completing the purchase 2 different people at BGC inspected the items. BGC does not dispute this.
13. It is undisputed that on February 11, 2021, BGC paid Mr. Stanley \$126,128 by cheque, which included \$2,284 for the 4 coins. A February 11, 2021 purchase invoice shows the details, quantities and price for each item. The 4 coins are described as 1

ounce of “Misc. Gold by the Ounce” for \$2,284. The invoice states that all orders are considered final, and it is the customer’s responsibility to verify the order details.

14. After purchasing the 4 coins, BGC tested them in a precious metals analysis machine. BGC submitted an undated video showing someone testing 1 of the 4 coins in the machine. The reading on the machine shows the coin is 93.41% copper, 4.83% silver, and 1.76% gold. The narrator of the video said the coin is a “gold-plated knock-off.” Mr. Stanley does not dispute these results or that the coins are counterfeit gold. As discussed below, Mr. Stanley says that when he sold the coins to BGC he believed they were gold and represented to BGC that they were gold.

Did Mr. Stanley negligently misrepresent the quality of the coins?

15. BGC says Mr. Stanley negligently misrepresented in emails, on the phone, and in person that the coins were genuine gold. While the principle of “buyer beware” generally applies to the sale of personal property, a seller may not misrepresent the condition or quality of the sale item. To establish negligent misrepresentation, BGC must prove that 1) Mr. Stanley owed BGC a duty of care, 2) Mr. Stanley’s representations were untrue, inaccurate, or misleading, 3) Mr. Stanley acted negligently in making the representations, 4) BGC reasonably relied on the negligent misrepresentations, and 5) BGC’s reliance was detrimental to it (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
16. I accept that Mr. Stanley owed BGC a duty of care by selling it his coins. It is undisputed that the coins are counterfeit, so I find Mr. Stanley’s representations that they are gold were inaccurate. However, on the evidence before me I cannot say BGC has established that Mr. Stanley was negligent in making the representations. I find there is no indication Mr. Stanley knew the coins were counterfeit when he sold them to BGC, or that he was acting in bad faith. BGC did not describe the details of its conversations with Mr. Stanley, so it is unclear if the parties discussed the coins’ origin or how Mr. Stanley acquired them or came to believe they were gold.

17. Even if Mr. Stanley did act negligently in making the representations, in the circumstances I find BGC did not reasonably rely on his representations. The evidence indicates that part of BGC's business is to value and purchase gold items from members of the public. Mr. Stanley says he is not an expert in assessing coins and he was advised to consult BGC for an evaluation of the them. He says BGC physically examined the coins and valued them, and he relied on BGC's valuation as it is a presumed expert in bullion and precious metals. BGC does not dispute this. BGC also does not explain why it would rely on Mr. Stanley's representations that the coins were gold when there is no evidence that he has any expertise in the matter. The evidence also shows BGC has access to a machine that can determine the composition of coins in seconds. BGC does not say why it did not test the coins in this machine before buying them from Mr. Stanley. On the evidence before me I find BGC has not established that Mr. Stanley negligently misrepresented the quality of the coins.

Did Mr. Stanley breach the parties' contract?

18. BGC also says Mr. Stanley breached the parties' contract but does not explain how he allegedly breached it. The purchase invoice states only that it is the customer's responsibility to "verify the order details." On its face, I find this means the customer is responsible to ensure the quantities, amounts, and arithmetic in the purchase order are correct. I find this sentence cannot reasonably be interpreted to obligate the buyer to verify the quality or composition of the items. If BGC intended to place that obligation on Mr. Stanley it could have easily stated so in the purchase invoice but did not. I find BGC has not established that Mr. Stanley breached the contract. I dismiss BGC's claim.

19. 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. Since BGC was unsuccessful, I find it is not entitled to reimbursement of its CRT fees. It does not claim any dispute-related expenses.

ORDER

20. I dismiss BGC's claims and this dispute.

Sarah Orr, Tribunal Member