Civil Resolution Tribunal

Date Issued: July 16, 2021

File: SC-2021-000430

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seaman v. Parent*, 2021 BCCRT 785

B E T W E E N :

ERICA SEAMAN

APPLICANT

A N D :

CHARLES PARENT also known as CHARLIE PARENT

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about a deposit for a custom bed. The applicant, Erica Seaman, says that she paid the respondent, Charles Parent also known as Charlie Parent, an $850

deposit to build her a custom queen size captain's bed. Mr. Parent does business as Charlie the Backyard Builder (Backyard Builder).

2. Ms. Seaman says that Mr. Parent agreed to complete the bed within 3 to 5 weeks of receiving the deposit. Ms. Seaman says that 6 weeks after she paid the deposit, Mr. Parent failed to provide the bed or any evidence that it was being built, so she requested her deposit be refunded. Ms. Seaman claims that Mr. Parent told her the deposit was non-refundable and he stopped communicating with her. Ms. Seaman claims an $850 refund of her paid deposit.

3. Mr. Parent says that Ms. Seaman cancelled her order and his terms of service provide that deposits are non-refundable.

4. During the facilitation stage, Ms. Seaman amended the Dispute Notice to add another respondent, 1281593 B.C. Ltd. (128), as a party. Mr. Parent is a director of 128. 128 failed to file a Dispute Response, as discussed further below.

5. Ms. Seaman and Mr. Parent are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.

8. 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.

9. 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.

10. As a preliminary issue, I address 128's addition as a party and its default status. As noted, Ms. Seaman added 128 as a respondent during the facilitation phase. A February 2, 2021 BC Company Summary for 128 shows Mr. Parent as its sole director. CRT staff confirmed that the CRT emailed the amended Dispute Notice to Mr. Parent. However, CRT staff also advised that Mr. Parent stopped communicating with the CRT during the facilitation phase. There is no evidence before me that Mr. Parent confirmed receipt of the amended Dispute Notice on 128's behalf. So, while 128 did not file a Dispute Response, I decline to find 128 in default because I am not satisfied that it was properly served with the amended Dispute Notice under the CRT rules. Since 128 was not properly served, it is not a party to this dispute. For that reason, I have not included 128 in the style of cause above. In any event, I note that Ms. Seaman did not make any allegations specifically against 128 in the amended Dispute Notice or in her submissions.

ISSUE

11. The issue in this dispute is whether Mr. Parent must refund Ms. Seaman's $850 deposit.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Ms. Seaman must prove her claims on a balance of probabilities. I note that Mr. Parent chose not to provide any evidence or make any submissions, despite having the opportunity to do so. So, only Ms. Seaman provided evidence and submissions, which I have read and considered. However, I have referenced below only what I find is necessary to give context to my decision.

13. Ms. Seaman says she discovered Mr. Parent's business (Backyard Builder) through a sponsored Facebook ad. The ad itself is not before me, but Ms. Seaman provided a series of Facebook Messenger text messages between her and Mr. Parent through Backyard Builder's Facebook page.

14. The evidence shows that Ms. Seaman contacted Mr. Parent about building her a custom bed on November 14, 2020. Ms. Seaman says that all but one of her conversations with Mr. Parent were text messages through Facebook Messenger. There is no formal contract between the parties. I find that Ms. Seaman contracted directly with Mr. Parent and their text messages formed the substance of their agreement.

15. On November 28, 2020, Mr. Parent quoted Ms. Seaman $975 for a double height, queen size captain's bed with 12 drawers, plus an additional $125 for a bookcase style headboard. Mr. Parent said the turnaround time for completion of the bed was 3 to 5 weeks from the time he received an $850 deposit. The evidence shows Ms. Seaman paid the $850 deposit that same day.

16. The evidence also shows that Ms. Seaman asked Mr. Parent for 2 updates on the project in December 2020, and Mr. Parent confirmed the lumber was ordered and he anticipated completion of the bed in the second week of January 2021. On January 8, 2021, Ms. Seaman followed up again asking for photos of the building progress. Mr. Parent did not respond to Ms. Seaman. On January 11, 2021, Ms. Seaman

demanded a full refund of the $850 deposit due to Mr. Parent's lack of response and the passing of the stated delivery date.

17. In response, Mr. Parent apologized for the delay and said he would provide a progress report the next day. On January 12, 2021, Mr. Parent advised Ms. Seaman that the lumber was in storage, as he had to build the bed outside and he was waiting for 4 clear weather days. He advised that the terms of service on his "page" provided that he had the right to delay building based on weather. Ms. Seaman responded by text that this was the first time she had been made aware of any terms of service, to which Mr. Parent responded that he assumed she had seen them as they are clearly posted on both his page and website.

18. The evidence shows that Ms. Seaman and Mr. Parent then spoke on the phone that same day, during which call I infer Ms. Seaman advised she would like to cancel her order. Ms. Seaman also confirmed her cancelled order by text message on January 12, 2021, and again requested a full refund. The following day, Ms. Seaman confirmed she had not yet received a refund and requested it again.

19. There is no evidence before me that Mr. Parent provided a refund or communicated with Ms. Seaman after January 13, 2021.

20. As noted, Mr. Parent did not provide any evidence or submissions in this dispute. In his Dispute Response, Mr. Parent says only that the deposit was non-refundable under the "posted and accepted terms of service".

21. The general legal principle is that parties will not be bound by contractual terms that they did not explicitly agree to. So, just because a party has terms and conditions on their website does not necessarily mean that they form part of the parties' contract. However, if a website's owner takes reasonable steps to bring the website's terms and conditions to the other party's attention before they enter into the contract, they can become part of the contract: see *Century 21 Canada Limited Partnership v. Rogers Communications Inc.*, 2011 BCSC 1196

22. Here, I find there is insufficient evidence to show that Ms. Seaman was aware of any terms of service on Mr. Parent's website or that Mr. Parent brought the terms of service to Ms. Seaman's attention before they entered into their agreement. There is also no evidence before me that Ms. Seaman explicitly agreed the deposit was non-refundable as a term of their contract. Therefore, I find that any term of service stating that deposits are non-refundable does not apply to Ms. Seaman.

23. Ms. Seaman also argues that because she did not pay the full amount for the bed, her contract with Mr. Parent is a "future performance contract". Under section 17 of the *Business Practices and Consumer Protection Act* (BPCPA), a future performance contract is one where the supply or full payment is not made at the time the contract is made or partly executed.

24. I find that Mr. Parent was a supplier and Ms. Seaman was a consumer under the BPCPA, and that they were involved in a consumer transaction. Given that Mr. Parent was to deliver the custom bed 3 to 5 weeks after the contract was made and Ms. Seaman paid only a deposit, I agree that they had a future performance contract.

25. Section 23(5) of the BPCPA provides that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract, if the contract does not contain the information required under sections 19 and 23(2) of the BPCPA. This information includes the supplier's information, a detailed description of the goods to be supplied, a statement of the terms of payment, and the supply date, among other requirements.

26. As noted, I find the parties' November 28, 2020 text messages comprise their contract. While they contain most of the information required under BPCPA sections 19 and 23(2), I find the requirements under section 19(n) are missing. Section 19(n) requires the contract to include any other restrictions, limitations or other terms or conditions that may apply to the supply of the goods.

27. I find that Mr. Parent's alleged term that the deposit was non-refundable applies to the supply of the custom bed, particularly given he relies on it to refuse Ms. Seaman a refund. As noted, the parties' contract does not refer to the terms of service or confirm that the deposit is non-refundable. Because the contract does not contain all the required information under BPCPA section 19, I am satisfied that Ms. Seaman was entitled to cancel their future performance contract.

28. I find that Ms. Seaman's January 11, 2021 text message amounts to notice of cancellation within one year of receiving a copy of the contract. Section 27 of the BPCPA provides that, if a contract is cancelled under section 23, the supplier must refund the consumer all money received under the contract without deduction, within 15 days after the notice of cancellation has been given. Section 55 says the consumer may recover the refund from the supplier as a debt due.

29. For all the above reasons, I find Mr. Parent must refund Ms. Seaman's $850 deposit.

30. The *Court Order Interest Act* applies to the CRT. Ms. Seaman is entitled to pre-judgement interest on the $850 from January 11, 2021, the date of cancellation, to the date of this decision. This equals $1.95.

31. 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 find Ms. Seaman was the successful party and she is entitled to reimbursement of $125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

32. Within 14 days of the date of this decision, I order Mr. Parent to pay Ms. Seaman a total of $976.95, broken down as follows:

    a. $850 in debt,

    b. $1.95 in pre-judgment interest under the *Court Order Interest Act*, and

c. $125 in CRT fees.

33. Ms. Seaman is entitled to post-judgment interest, as applicable.

34. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

35. 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.

Kristin Gardner, Tribunal Member