



Civil Resolution Tribunal

Date Issued: July 26, 2021

File: SC-2021-001751 and
SC-2021-001786

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Christensen v. Hutchings*, 2021 BCCRT 812

BETWEEN:

TOM CHRISTENSEN

APPLICANT

AND:

DARREN HUTCHINGS

RESPONDENT

AND:

TOM CHRISTENSEN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for 6 scuba dive bottles. This decision relates to 2 linked disputes that I find are a claim and counterclaim involving the same parties, so I have issued one decision for both disputes.
2. In SC-2021-007151, the applicant (respondent by counterclaim), Tom Christensen, says the respondent (applicant by counterclaim), Darren Hutchings, agreed to purchase 6 used aluminum scuba dive bottles from him for \$600. Mr. Christensen says Mr. Hutchings also agreed to pay the shipping costs, and that Mr. Hutchings sent him prepaid shipping labels for that purpose. Mr. Christensen says Mr. Hutchings has failed to pay him for the bottles and claims their \$600 purchase price.
3. Mr. Hutchings says he agreed to pay \$600 for the bottles, including shipping costs. He says Mr. Christensen was supposed to confirm the shipping costs before sending the bottles, but he failed to do so. Mr. Hutchings says he was charged more than \$600 for shipping the bottles, so he owes Mr. Christensen nothing.
4. Mr. Hutchings also claims that Mr. Christensen used his business shipping account without his authorization to change the shipping labels. He says it should have cost only \$299 to ship the bottles, but Mr. Christensen improperly charged his account \$601.10. In SC-2021-001786, Mr. Hutchings counterclaims for the \$601.10 in shipping charges.
5. Mr. Christensen denies using Mr. Hutchings' business shipping account. He says he simply applied the shipping labels that Mr. Hutchings provided to him. It is undisputed that Mr. Hutchings received the bottles and still has them in his possession.
6. The parties are each self-represented.

JURISDICTION AND PROCEDURE

7. 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.

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. 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.
9. 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.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Who was responsible for the bottles' shipping costs,
 - b. Whether Mr. Hutchings owes Mr. Christensen anything for the bottles, and
 - c. Whether Mr. Christensen owes Mr. Hutchings anything for alleged excess shipping costs.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant, Mr. Christensen must prove his claims on a balance of probabilities. Mr. Hutchings must prove his counterclaim on the same standard. I have read all the parties' evidence and submissions, but I refer only to what I find relevant and necessary to provide context for my decision.
13. It is undisputed that Mr. Christensen advertised 6 used aluminum scuba dive bottles for sale on Facebook Marketplace. The advertisement stated that the bottles were full but "need vis and hydro". It also stated: "The price is firm, if you don't have \$600, please don't low ball me". The ad indicated that Mr. Christensen was on Vancouver Island.
14. Mr. Hutchings responded to Mr. Christensen's ad on February 16, 2021, through what I infer is Facebook Messenger, and the parties' message chain is in evidence. In his first message, Mr. Hutchings asked if Mr. Christensen would consider shipping the bottles to the Okanagan. Mr. Christensen responded that shipping could be arranged at Mr. Hutchings' expense. Mr. Hutchings then asked if Mr. Christensen would accept \$500, considering the hydro costs. Mr. Christensen confirmed his \$600 price and told Mr. Hutchings if he wanted the "hydro and vis" done before shipping, the cost would be \$148.50 per bottle, plus shipping.
15. Mr. Hutchings then asked Mr. Christensen to provide the bottles' weight when empty and asked if Mr. Christensen could take the bottles to Purolator. Mr. Hutchings said he would email shipping labels to Mr. Christensen and then e-transfer him \$600.
16. The evidence shows Mr. Christensen responded with the following text message (reproduced as written):

Yup. Just so we are on the same page. I will empty the bottles and weigh them. I send you the weight and my email address. You send me the labels. I will take them to Purolater. Once I have taken them to Purolater I can call you to confirm drop off. At that point you can etransfer the \$600. Does that sound ok to you.

17. Mr. Hutchings texted his agreement to the above. The evidence shows that Mr. Hutchings emailed the shipping labels to Mr. Christensen on February 18, 2021. His email stated: “here are your labels let me know when your ready? And I will be glad to etransfer you the money” (reproduced as written).
18. The evidence shows Mr. Christensen took the bottles to Purolator on February 19, 2021. Mr. Christensen emailed Mr. Hutchings to confirm he had shipped the bottles and requested Mr. Hutchings send him the e-transfer. Mr. Hutchings responded that he had received only a “scan” email confirmation from Purolator, and he would send payment once he received a “shipped” confirmation email. While Mr. Christensen advised that the shipping labels’ tracking number confirmed the bottles had been shipped, Mr. Hutchings refused to send payment until he received a “shipped” email.
19. It is undisputed that Mr. Hutchings never e-transferred Mr. Christensen \$600. It is also undisputed that Mr. Hutchings received the bottles on February 23, 2021.
20. Based on the parties’ written exchange set out above, I find that Mr. Hutchings agreed to pay Mr. Christensen \$600 for the bottles, plus shipping costs. I find Mr. Christensen expressed more than once that any shipping costs would be at Mr. Hutchings’ expense. Further, I find the only reasonable explanation for Mr. Hutchings providing Mr. Christensen with pre-printed shipping labels and asking him to take the bottles to Purolator is that Mr. Hutchings decided to pay the shipping costs through his own Purolator account.
21. So, given Mr. Hutchings was responsible for the shipping costs, and it is undisputed that Mr. Hutchings failed to pay Mr. Christensen the agreed \$600 for the bottles, I order Mr. Hutchings to pay Mr. Christensen \$600.
22. I turn now to Mr. Hutchings’ counterclaim.
23. Mr. Hutchings says that the original Purolator bill for shipping the bottles was about \$299. However, he alleges that Mr. Christensen used Mr. Hutchings’ Purolator business account to create new shipping labels for \$400 and \$218, without Mr.

Hutchings' knowledge or consent. Mr. Hutchings did not explain the difference between the claimed \$601.01 and the \$618 total for the alleged new shipping labels.

24. Mr. Christensen denies using Mr. Hutchings' Purolator account or creating new labels. He says he used the labels Mr. Hutchings emailed him, attached them to the bottles, and gave them to Purolator.
25. Mr. Hutchings provided a printout from his account on the Purolator website of the bottles' shipment details. I infer that these shipment details related to the shipping labels Mr. Hutchings created for Mr. Christensen, as the shipment date is stated as February 18, 2021. The stated shipping cost for the 6 pieces on the printout is \$299.57.
26. Mr. Hutchings also provided copies of 2 Purolator invoices dated February 19 and 26, 2021. The February 19 invoice shows a 6-piece shipment on February 18, 2021 from Vancouver Island to Mr. Hutchings, for \$401.29. The invoice shows the same package identification number for this shipment as shown on the shipment details printout mentioned above.
27. The February 26 invoice shows a 6-piece shipment on February 23, 2021, again referencing the same package identification number, with a notation stating there was an "issue with order". The invoice states the shipment was from the Okanagan to an address other than Mr. Christensen's on Vancouver Island, for a charge of \$218.60.
28. Mr. Christensen provided a printout of the Purolator tracking information for the bottles' shipment. The tracking information shows that the shipping labels were created on February 18, 2021, the bottles were picked up by Purolator on February 19, 2021, and they went through 2 different sorting facilities before going to the Okanagan on February 23, 2021.
29. The tracking information shows the following entries on February 23, 2021:

12:31 p.m.: "unable to deliver – issue with order"

12:33 p.m.: “unable to deliver – returned to sender”

1:05 p.m.: “new tracking number assigned”

2:58 p.m.: “available for pickup for 5 business days from arrival date at the counter” and “shipment delivered to Hutching”

30. I find that the tracking information printout and the Purolator invoices together show that there was some problem with the bottles’ shipping on February 23, 2021, which resulted in increased shipping costs. However, Mr. Hutchings has not provided any evidence that Mr. Christensen is responsible for the shipping problem or the increased costs charged to Mr. Hutchings on February 23, 2021.
31. I also find there is no support in the evidence for Mr. Hutchings’ allegation that Mr. Christensen created new shipping labels with a higher shipping costs to explain the difference between the \$299.57 amount on the Purolator shipment details printout and the \$401.29 charge on the February 19, 2021 invoice. As noted, the package identification numbers are the same on those 2 documents, so I find it unproven they were related to different shipping labels. Further, Mr. Hutchings did not provide any statement from Purolator to explain the cost difference or confirm that any new labels had been created for the shipment.
32. On balance, I find that Mr. Hutchings has failed to meet his burden of proving that Mr. Christensen improperly used his Purolator business account to incur unauthorized shipping costs. I note that Mr. Hutchings says in his submissions that he would never have shipped the bottles knowing the cost. I find that Mr. Hutchings was likely surprised by the total shipping costs when he received the bottles. However, given I have found Mr. Hutchings agreed to be responsible for the bottles’ shipping costs, the fact that the costs were higher than he expected is his responsibility, not Mr. Christensen’s. I dismiss Mr. Hutchings’ counterclaim.

33. The *Court Order Interest Act* applies to the CRT. Mr. Christensen is entitled to pre-judgment interest on the \$600 from February 19, 2021, the date he shipped the bottles, to the date of this decision. This equals \$1.17.
34. 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 Mr. Christensen is entitled to reimbursement of \$125 in CRT fees. Mr. Hutchings did not pay any fees and neither party claimed any dispute-related expenses.

ORDERS

35. Within 14 days of the date of this decision, I order Mr. Hutchings to pay Mr. Christensen a total of \$726.17, broken down as follows:
- a. \$600 in debt for the 6 dive bottles,
 - b. \$1.17 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
36. Mr. Christensen is entitled to post-judgment interest, as applicable.
37. I dismiss Mr. Hutchings' counterclaim.
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 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.

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.

Kristin Gardner, Tribunal Member