



Civil Resolution Tribunal

Date Issued: August 5, 2021

File: SC-2021-000908

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davis (dba Mad About Glass) v. Galleria (Inglewood) Ltd.*,
2021 BCCRT 857

B E T W E E N :

PAIGE DAVIS (Doing Business As MAD ABOUT GLASS)

APPLICANT

A N D :

GALLERIA (INGLEWOOD) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the return of consignment goods.
2. The applicant, Paige Davis (Doing Business As Mad About Glass), says she supplied the respondent, Galleria (Inglewood) Ltd. (Galleria), with fused glass products to sell

on a consignment basis. Ms. Davis says that when Galleria's store closed, it still had \$1,724.57 worth of her glass products, which she says Galleria failed to return to her. While Galleria admittedly sent Ms. Davis' products back by mail, Ms. Davis says she never received the package. Ms. Davis says Galleria paid her \$363.60 for sold products and compensation received from the post office. Ms. Davis says Galleria failed to insure the package for its actual value, so she was undercompensated for its loss. Ms. Davis claims the \$1,360.97 balance for the lost products.

3. Galleria says that it returned all of Ms. Davis' unsold items and the package was delivered to Ms. Davis' place of business. Galleria says that it is not responsible for Ms. Davis failing to pick up the delivered package or for the package becoming lost. Galleria also says that Ms. Davis should have requested extra insurance on the package if that is what she wanted. Galleria denies that it owes Ms. Davis anything.
4. Ms. Davis is self-represented. Galleria is represented by its owner, Susan Copley.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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.
8. 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.

ISSUE

9. The issue in this dispute is to what extent, if any, must Galleria pay Ms. Davis for the lost goods.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant, Ms. Davis must prove her claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to what I find is relevant and necessary to provide context for my decision.
11. Ms. Davis runs a wholesale business selling fused glass products to gift store retailers. Galleria was one of Ms. Davis' retailers with a store located in Alberta. It is undisputed that Ms. Davis provided Galleria with products to be sold on a consignment basis, and that Galleria would pay Ms. Davis once the products sold in the store.
12. Ms. Davis says that the consignment agreement with Galleria was in place with the previous owners of the Mad About Glass business, and the agreement continued when she purchased the business in 2015. Ms. Davis says she never received a copy of any written agreement, if one existed.
13. Galleria provided a copy of an undated consignment agreement, that it says it emailed to Ms. Davis when she took over the business. One of the agreement's terms was

that if Galleria returned any stock, it would be sent with basic insurance unless more was requested. However, Galleria did not provide a copy of the email or any other proof that Ms. Davis received the agreement. Further, the agreement appears to be a standard form agreement, not specific to the Mad About Glass business, and it is unsigned. On balance, I find there is insufficient evidence to prove that Ms. Davis knew about or agreed to the terms of the written consignment agreement that Galleria provided.

14. Rather, I find from the parties' email evidence and submissions that the extent of their agreement was that Ms. Davis would fill Galleria's orders for glass products upon receipt, and Galleria would pay Ms. Davis monthly for the products it sold in its store. I find the parties had no specific agreement about how Galleria would return unsold products to Ms. Davis.
15. Ms. Davis provided a typed June 1, 2020 letter from Galleria, which advised that Galleria's store was permanently closing on October 15, 2020. The letter appears to be a stock letter intended for multiple recipients, with Ms. Davis' name handwritten at the top. In the letter, Galleria asked each recipient to confirm whether they would like to pick up their stock or leave it in the store until a "store closing sale". The letter also stated that for those who would like their stock returned but are "a distance away", Galleria would look after returning their stock, with the shipping costs either collected on delivery (COD) or deducted from any money owed for sold products.
16. Galleria provided a different version of the letter in evidence, which was dated June 7, 2020. Although largely the same, this letter had the recipient's name typed at the top (someone other than Ms. Davis), and it stated the store would be closing as of September 30, 2020. It also included a sentence that when returning unsold stock, insurance would not be included on shipments unless requested. Galleria explained that it sent personalized letters with varied content about the store's closure to its 750 suppliers. Galleria did not dispute that the sentence about insurance was not included in the letter sent to Ms. Davis and did not otherwise explain this omission.

17. The evidence shows that Ms. Davis sent Galleria a June 16, 2020 email confirming that her products could remain in the store for as long as possible, including for the store closing sale. Ms. Davis asked Galleria to confirm how much product was remaining in August 2020, so she could decide whether to pick it up, noting that glass can be heavy to ship and is fragile. Ms. Davis stated that if there was not much left, the unsold product could be shipped back, and the shipping costs could be deducted from any payment owed to her. Ms. Davis also set out an inventory of product Galleria still had, totaling \$1,724.57, including GST.
18. On September 18, 2020, Galleria emailed Ms. Davis that her unsold stock was ready to be returned. Ms. Davis confirmed it would have to be shipped and asked how many items there were and how big and heavy the shipment would be. On September 30, 2020, Galleria provided an updated inventory of unsold products to be returned, which totaled \$1,396, plus GST. On the evidence before me, I find Galleria did not confirm how it would ship the products to Ms. Davis or raise the issue of insuring the package.
19. On October 18, 2020, Ms. Davis emailed Galleria to follow up on when the stock would be sent back. Galleria responded that it had all been shipped the previous week and that it had deducted the shipping costs from the amount Galleria owed Ms. Davis for sold products. Ms. Davis asked Galleria for the tracking number and on October 25, 2020 confirmed she had still not received the package.
20. The evidence shows that Galleria sent Ms. Davis a package on October 5, 2020 and the tracking information shows the package was “delivered to recipient’s front door” on October 9, 2020. It is undisputed that Galleria had requested a signature be required to receive the package but that no signature was obtained. I accept Ms. Davis’ evidence that she never received the package, which is not seriously disputed.
21. It is undisputed that the post office accepted Galleria’s claim that the package was lost and agreed to pay compensation according to its agreement with Galleria. As Galleria insured the package for the \$100 minimum value, the post office provided a cheque for \$125.74, which Galleria passed on to Ms. Davis.

22. Ms. Davis says she is not at fault for the shipment going missing, nor for the package being underinsured. She says Galleria did not tell her the package would be sent with only the minimum level of insurance and she was not given an opportunity to request additional insurance. Ms. Davis says she would have paid the extra cost to insure the full value of her products. In contrast, Galleria says Ms. Davis could have confirmed the insurance level and requested additional insurance at any time but chose not to.
23. While Ms. Davis does not use this language, I find that the law of bailment applies to this dispute. The law of bailment is about the obligations on one party to safeguard the possessions of another party. It is where the personal property of one person, the “bailor” (here, Ms. Davis), is held by another person, the “bailee” (here, Galleria). A bailee is required to exercise reasonable care in all of the circumstances in caring for the bailee’s property (see *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273).
24. I find that by accepting Ms. Davis’ glass products on consignment, Galleria was a bailee for Ms. Davis’ property, and it was required to exercise reasonable care for it. So, the question is whether Galleria’s failure to insure the package to the full value of Ms. Davis’ products was a breach of Galleria’s duty to exercise reasonable care. For the following reasons, I find that it was.
25. I find the evidence shows that Galleria was alive to the issue of insurance for shipping products back to its suppliers. As noted, the consignment agreement included a term about returning stock with basic \$100 insurance unless the supplier notified Galleria that they required more insurance. However, I find Galleria did not ensure Ms. Davis was aware of or agreed to this term. Further, Galleria raised the issue of insurance with other suppliers when returning goods upon the store’s closure, as set out in the June 7, 2020 letter and Galleria’s email evidence. But, again, insurance was not raised in the letter Ms. Davis received, or in their email correspondence about returning Ms. Davis’ products.
26. The evidence shows that Ms. Davis confirmed the value of the unsold products to be returned, more than once. So, I find Galleria was aware that \$100 would be insufficient insurance. Yet, Galleria agreed to “look after” returning the products and

at no time raised the issue of insurance with Ms. Davis. I find it is insufficient for Galleria to say that Ms. Davis could have requested additional insurance at any time when Galleria never indicated to Ms. Davis that she should turn her mind to the issue. I find Ms. Davis reasonably assumed that Galleria would adequately insure the package, unless notified otherwise.

27. I note that Galleria submits it has never purchased additional insurance because its shipments have never gone missing. I find just because the post office has not previously lost any of Galleria's shipments does not relieve Galleria of its duty to reasonably care for its suppliers' property, including properly insuring it, subject to any specific agreement it has with the supplier about insurance. As noted, I find the parties had no specific agreement about insurance.
28. I find that Galleria's duty of care included an obligation to insure the package to its full value, or to at least confirm whether Ms. Davis wanted to pay for insurance above the \$100 minimum level. I find Galleria's failure to do so was a breach of its duty to exercise reasonable care of Ms. Davis' property, and I find Galleria must compensate Ms. Davis for her lost products.
29. I turn then to the value of Ms. Davis' lost products. While Ms. Davis says that Galleria had \$1,724.57 worth of product, it is undisputed that some of those products were sold before Galleria's store closed and that Galleria paid Ms. Davis for those items. I find Galleria's September 30, 2020 inventory of unsold products accurately represents the list of Ms. Davis' lost products, which totaled \$1,465.80, including GST. I find the \$27.03 in undisputed shipping costs must be deducted, which Ms. Davis agreed to pay. The \$125.74 in compensation from the post office must also be deducted. So, I find Galleria must pay Ms. Davis \$1,313.03.
30. The *Court Order Interest Act* applies to the CRT. Ms. Davis is entitled to pre-judgement interest on the \$1,313.03 from February 19, 2021, the date of Ms. Davis' invoice for the unsold items, to the date of this decision. This equals \$2.71.

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 see no reason in this case not to follow that general rule. I find Ms. Davis is entitled to reimbursement of \$125 in CRT fees and \$25 in dispute-related expenses for obtaining an Alberta registry search for Galleria, an amount I find reasonable.

ORDERS

32. Within 30 days of the date of this decision, I order the respondent, Galleria (Inglewood) Inc., to pay the applicant, Paige Davis (Doing Business As Mad About Glass), a total of \$1,465.74, broken down as follows:

- a. \$1,313.03 as reimbursement for lost products,
- b. \$2.71 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$150, for \$125 in CRT fees and \$25 for dispute-related expenses.

33. Ms. Davis 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