



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Choys Holdings Incorporated v. 112726 B.C. Ltd.*, 2021 BCCRT 1105

B E T W E E N :

CHOYS HOLDINGS INCORPORATED

APPLICANT

A N D :

1112726 B.C. LTD. and XIANG FANG JIAN

RESPONDENTS

A N D :

CHOYS HOLDINGS INCORPORATED

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payments for commercially sold meat. The applicant (and respondent by counterclaim), Choys Holdings Incorporated (Choys), operates as Fresh Choice. Choys supplied a restaurant Sushi Han with meat but was undisputedly not paid for a number of invoices dated between August 4 and September 5, 2020. Sushi Han is owned by the respondent 1112726 B.C. Ltd. (111). Choys claims \$2,181.67 for those goods delivered but not paid for.
2. The respondent (and applicant by counterclaim) Xiang Fang Jian is 111's president and director. Ms. Jian says in May and June 2020 Choys significantly raised its product prices without advance notice, and that she did not realize the increase until around September 8, 2020. Ms. Jian says she should only have to pay the lower prices for the August 4 to September 5, 2020 invoices, but does not clearly state what those prices should be. Ms. Jian also counterclaims for \$1,114.76, as a refund of the difference between what 111 paid for May to July 2020 orders and what she says 111 should have paid for those orders, at the lower prices. 111 is not a party to the counterclaim.
3. Choys is represented by an officer or employee. Ms. Jian represents the respondents.

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). 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.

5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, 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 CRT considers appropriate.
8. I note 111 did not file a separate Dispute Response from Ms. Jian, despite being served. However, I do not find 111 in default and so I have not assumed liability against it. I say this because Ms. Jian picked up Choys' registered mail service of the Dispute Notice on 111 and because Ms. Jian's submissions show she intended to respond for both herself and 111. I find Choys unprejudiced by this approach.
9. On September 13, 2021, Ms. Jian sent the CRT additional arguments late. This was after the parties had provided their evidence and submitted arguments. So, CRT staff advised Ms. Jian that her later submissions were too late and not accepted. Ms. Jian has already submitted lengthy submissions and the CRT's mandate includes speedy resolution of disputes. I find it would not be proportionate or reasonable to delay resolution of this dispute to obtain Ms. Jian's further late submissions, which would then require my giving Choys an opportunity to comment on them. I decline to allow Ms. Jian's late submissions, which I have not reviewed.

ISSUES

10. The issues are:

- a. Is Ms. Jian entitled to a \$1,114.76 refund, based on alleged overcharges for paid invoices issued in May to July 2020?
- b. Do 111 and Ms. Jian owe Choys \$2,181.67 for unpaid meat invoices from August and September 2020?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, as the applicant Choys has the burden of proving its claim, on a balance of probabilities (meaning “more likely than not”). Ms. Jian bears this same burden for her counterclaim. I have only referenced below what I find is necessary to give context to my decision.
12. Choys is a commercial meat wholesaler and distributor, which also offers butchering services. On a June 25, 2019 credit application to Choy, 111 is the customer with its restaurant Sushi Han as the listed trade name. Choys’ invoices were made out to Sushi Han restaurant, which as noted 111 owned and operated.

Ms. Jian’s \$1,114.76 counterclaim

13. As noted above, 111 did not file a counterclaim against Choys, only Ms. Jian did. Yet, it was 111 that undisputedly contracted with Choys. I find Ms. Jian was undisputedly only a personal guarantor for 111’s debts if 111 did not pay Choys.
14. The evidence is that 111 paid the May to July 2020 invoices at issue in the counterclaim, not Ms. Jian in her personal capacity. As a corporation, 111 is a separate legal entity that is distinct from its directors and officers. Ms. Jian’s being 111’s personal guarantor does not mean she has any personal claim against Choys for invoices 111 paid. It only means she is jointly and severally liable for Choys’ proven debt claims against 111. So, I find Ms. Jian has no standing to make the refund claim against Choys. For this reason, I dismiss Ms. Jian’s counterclaim.

Choy's \$2,181.67 claim for unpaid invoices

15. It is undisputed Choys delivered meat that Ms. Jian ordered for Sushi Han. The respondents' defence is essentially that Choys overcharged 111 because it allegedly failed to give advance notice of price increases, which Choys disputes. There is no evidence that there was an agreement that notice would be in writing. As discussed below, I find the issue is whether Choys gave 111 (or Ms. Jian as its agent) verbal notice of price increases at the time of telephone ordering and even if not, whether the respondents are still responsible to pay Choys' invoices.
16. As noted above, at issue in Choys' claim are its 10 invoices between August 4 and September 5, 2020, which had "net 30 days" terms. The orders were generally 2 or 3 per week, with all but 1 invoice ranging between \$200 and \$356. After applying an October 27, 2020 credit of \$171.66, the outstanding invoices total the claimed \$2,181.67.
17. The evidence indicates meat pricing fluctuated in 2020 although it had been fairly steady before that. 111 had been buying meat from Choys since at least 2019. I find nothing turns on the respondents' evidence about wholesale meat prices during 2020. I accept that Choys reasonably sells products to customers for more than what it pays its suppliers, as it needs to pay overhead and make a profit.
18. Choys says it gave 111 advance notice of fluctuating pricing, meaning each time 111 verbally placed an order over the phone Choys advised the applicable pricing, bearing in mind the volatile nature of the perishable meat market. Choys submitted a statement from YF, its order desk clerk since 1995, supporting its position.
19. I accept that Ms. Jian placed the orders herself for the 10 invoices in question, over the phone. Choys does not dispute this. As noted, Ms. Jian says she did not realize until September 5 or 8, 2020 that the price had significantly increased in May and early June 2020. I find nothing turns on whether it was September 5 or 8.
20. Ms. Jian argues that because Choys had a written alert on 2 prior invoices from August 2019 and March 2020 that the price had increased, that it was trying to

mislead her by simply setting out the price on the invoices in question without an added alert. Yet, there was no agreement that Choys would take particular extra steps to alert 111 of a price increase. I find Choys did not mislead the respondents.

21. Further, on the evidence before me, I find Ms. Jian did not contact Choys about the increase until October 21, 2020. In particular, while Ms. Jian says she phoned YF immediately after she discovered the price increases on September 8, 2020, she submitted no evidence of the call despite submitting cell phone records up to September 4, 2020. This delay does not support the respondents' position.
22. On balance, I find it unlikely Choys failed to advise 111 or Ms. Jian that its prices increased when Ms. Jian placed the orders for every one of the 10 invoices at issue. I find it more likely that Ms. Jian simply failed to pay sufficient attention when placing each order, just as she did not pay close attention to the earlier 2020 invoices that spelled out the pricing increases when she received them.
23. In any event, as noted above Choys undisputedly offered a 3-day post-delivery window to accept disputes, which is part of the terms and conditions (TOC) I find the parties agreed to. Ms. Jian's submissions acknowledge she was aware of this dispute window and had taken advantage of it at least in May 2020. Yet, Ms. Jian never sought to return or make a claim for any of the 10 invoices in question, until after she noticed the price change that was set out on the invoices.
24. Significantly, each of the invoices in question were undisputedly signed by a Sushi Han employee at the time of delivery. The invoices list the type of meat and cut, and in the case of beef, its measured thickness after Choys' butchering. There is no suggestion Sushi Han's employee expressed any concern about the quality or quantity of meat delivered for the invoices at issue.
25. Ms. Jian says she instructed 111's receiving employees to focus on product quality and quantity and not on pricing, since she says she was relying on Choys to give her advance notice of price increases. However, this does not change the fact that

Ms. Jian, as 111's agent and as personal guarantor for the account, agreed to dispute any invoices within 3 days of delivery.

26. I note that Ms. Jian complains that the meat's description changed from invoice to invoice (both the SKU and the measurement thickness), when she says for the relevant period her order was always the same. However, Ms. Jian does not identify any price or quality difference, so I find nothing turns on this.
27. Next, while Ms. Jian says at one point Choys delivered additional meat that she did not order for the restaurant, Ms. Jian admits she agreed to accept that meat and 111 paid for it. So, I find nothing turns on that alleged over-delivery.
28. Choys relies on the *Sale of Goods Act* (SGA). SGA section 32 says that payment and delivery are concurrent conditions. Namely, that unless otherwise agreed, the buyer must be ready and willing to pay the price in exchange for the goods' possession.
29. SGA section 31 says that it is the seller's duty to deliver the goods and the buyer's duty to accept and pay for them, according to the parties' contract. SGA section 34 says that if the buyer accepts the delivered goods, the buyer must pay for them at the contracted rate.
30. SGA section 39 says the buyer is deemed to have accepted goods when a) the buyer intimates to the seller that the buyer has accepted them, b) the goods have been delivered to the buyer and the buyer does anything with them that is inconsistent with the seller's ownership, or c) after a reasonable period of time, the buyer retains the goods without intimating to the seller that the buyer has rejected them.
31. I find under the parties' contract and the SGA terms above that 111 accepted the goods and did not advise Choys as the seller within a reasonable time that there was any dispute. I find 111 owes Choys the claimed \$2,181.67. As personal guarantor, I find Ms. Jian is jointly and severally liable. This means Choys can collect the debt from either 111 or Ms. Jian.

Interest, fees, & expenses

32. Choys claims 2% monthly contractual interest. The June 25, 2019 credit application set out this rate. However, the federal *Interest Act* section 4 says that if an agreement does not set out an equivalent annual rate, the maximum allowable is 5% annually. So, I find Choys is only entitled to 5% annual interest on the \$2,181.67 debt, calculated from the invoice due dates to the date of this decision. This interest equals \$117.75.
33. 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. Ms. Jian was unsuccessful in her counterclaim and so I find she is not entitled to reimbursement of any fees or expenses. Choys was largely successful so I find the respondents must reimburse it the \$125 paid in CRT fees.
34. Choys claims \$184.57 in dispute-related expenses, \$159.44 is for reimbursement to its lawyer for searches they did. I do not allow the law firm's \$45 "agent fee" plus taxes, as I find that amounts to reimbursement of legal fees and the CRT's rules say legal fees are generally not reimbursable except in extraordinary cases. This is not an extraordinary case. So, I allow \$109, plus \$11.60 for a registered mail receipt and a \$13.53 courier receipt for serving the Dispute Notice, for a total of \$134.13, which I find reasonable.

ORDERS

35. Within 21 days of this decision, I order the respondents, jointly and severally, to pay Choys a total of \$2,558.55, broken down as follows:
 - a. \$2,181.67 in debt,
 - b. \$117.75 in pre-judgment interest contractual interest at 5% annually, and
 - c. \$259.13, being \$125 in CRT fees and \$134.13 for dispute-related expenses.

36. Choys is entitled to post-judgment interest, as applicable. I dismiss Ms. Jian's counterclaim.
37. 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.
38. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair