



Civil Resolution Tribunal

Date Issued: February 2, 2022

File: SC-2020-009991

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ashcroft Window Coverings Ltd. v. Mohammed*, 2022 BCCRT 125

B E T W E E N :

ASHCROFT WINDOW COVERINGS LTD.

APPLICANT

A N D :

SOZAN MOHAMMED AKA MOHAMMED SUZANA SHEREEN NAAZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about custom blinds. The applicant, Ashcroft Window Coverings Ltd. (Ashcroft), says the respondent, Sozan Mohammed aka Mohammed Suzana Shereen Naaz, cancelled her order for the blinds without justification. Ashcroft claims \$1,995 as damages for breach of contract.

2. Miss Mohammed disagrees. She says Ashcroft breached their contract by failing to deliver the blinds within a reasonable time period.
3. An employee or principal represents Ashcroft. Miss Mohammed represents herself.
4. For the reasons that follow, I dismiss Ashcroft's claims.

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 whether Miss Mohammed was entitled to cancel her order, and if not, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ashcroft must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed facts. The parties' contract is largely documented in 2 emails from July 24, 2020. Miss Mohammed offered to purchase 5 custom window blinds for \$1,995 from Ashcroft. This amount included taxes and installation fees. Ashcroft accepted by email later that day. The parties did not otherwise document their contract terms. For example, they did not address refunds or specify a delivery or installation date to complete the work.
12. Miss Mohammed emailed Ashcroft for an update on August 20, 2020. Ashcroft replied that the blinds were "still in production". An email shows that the blinds' manufacturer subsequently began shipping the blinds to Ashcroft on August 25, 2020. There is no indication that any blinds were ever delivered to Miss Mohammed.
13. On August 31, 2020, the parties exchanged several emails. Miss Mohammed advised Ashcroft that she wished to cancel the order. She said the blinds were taking longer than expected. Ashcroft replied that they needed more time as the blinds had not yet arrived. Miss Mohammed insisted on cancelling her order.

Was Miss Mohammed was entitled to cancel her order?

14. I find the facts in this dispute are similar to those in *M.J. Drapery and Blind Ltd. v. Sharma*, 2021 BCCRT 245. In that dispute, the respondent purchased custom blinds and sought to cancel her order about 3 weeks later. The CRT found that the

respondent was entitled to cancel the contract under the provisions of the *Business Practices and Consumer Protection Act* (BPCPA). CRT decisions are not binding, but for the reasons that follow I find the same reasoning applies to this dispute, and I arrive at the same result.

15. Section 17 of the BPCPA says a future performance contract is defined as follows. It is a contract between a supplier and a consumer for the supply of goods or services for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Section 17 lists certain exclusions but these do not apply here.
16. Based on the evidence, I find that Ashcroft is a supplier and Miss Mohammed is a consumer under the BPCPA. I find that they entered into a future performance contract as the supply of the custom blinds would be provided in the future, after the contract was made in late July 2020.
17. I next consider whether Miss Mohammed could cancel the contract under the BPCPA. Section 23(2) requires a future performance contract to contain information that includes the supply date and the date on which the supply of the goods or services will be complete. As noted earlier, I find that the parties' contract, which consists of the emails discussed above, lacks any specific date or range of dates for completion. So, I find the contract does not comply with BPCPA section 23(2).
18. Section 23(5) says that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than 1 year after the date the consumer receives a copy of the contract, if the contract does not contain the information required in sections 19 and 23(2). Section 54 of the BPCPA requires a consumer who wishes to cancel a future performance contract to give notice by any method that creates evidence of their intention to cancel the contract on a specific date.
19. I find that Miss Mohammed was entitled to cancel the contract as it did not comply with BPCPA section 23(2). I find she cancelled the contract in compliance with

BPCPA section 54 because she gave notice to Ashcroft on August 31, 2020 by email. I find it clear that Ashcroft received the notice as it replied to her emails. I also find Miss Mohammed provided notice under BPCPA section 23(5) well before the time limit of 1 year had passed. I further find Miss Mohammed explained why she was cancelling as required by BPCPA section 54(2). In her email she said delivery and installation of the blinds were taking too long. I do not need to consider the validity of this reason, as the BPCPA only requires that a reason is given.

20. Under BPCPA section 27, if a consumer cancels a contract, the supplier must provide the consumer a refund within 15 days after the notice of cancellation has been given without deduction. Under BPCPA section 28, a consumer who cancels a future performance contract must deliver any goods received under the contract to the supplier's business address. There is no indication that Miss Mohammed paid any funds or is holding any of Ashcroft's goods. So, I find it appropriate to dismiss Ashcroft's claims.
21. As was the case in *M.J. Drapery and Blind Ltd.*, the parties did not discuss the BPCPA in their submissions. However, the key facts are undisputed and the BPCPA's relevant sections are mandatory. So, for the same reasons stated in *M.J. Drapery and Blind Ltd.*, I find it is not necessary for the parties to make submissions on the application of the BPCPA here.
22. 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 dismiss Ashcroft's claims for reimbursement. The parties did not claim for any specific dispute-related expenses, so I order none.

ORDER

23. I dismiss Ashcroft's claims and this dispute.

David Jiang, Tribunal Member