Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leeward International Trading Ltd. v. Salehi,* 2022 BCCRT 412

B E T W E E N :

LEEWARD INTERNATIONAL TRADING LTD.

APPLICANT

A N D :

EHSAN SALEHI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is over an alleged underpayment for cabinets and countertops. In May 2021, the respondent, Ehsan Salehi, bought the cabinets and countertops from the

applicant, Leeward International Trading Ltd. (Leeward), which does business as Super Cabinet World. Leeward says due to an internal accounting issue its invoice had a calculation error that resulted in Leeward billing Mr. Salehi $1,099.64 less than it claims it should have. Leeward claims that amount.

2. Mr. Salehi says in July 2021 he paid the full amount owing as shown on Leeward's invoice. Mr. Salehi denies owing anything more.

3. Leeward is represented by its owner, Tony Chen. Mr. Salehi is self-represented.

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). CRTA section 2 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.

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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

6. CRTA section 42 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.

7. 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

8. The issue in this dispute is whether Mr. Salehi owes Leeward anything further for the cabinets and countertops it sold him.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Leeward must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.

10. Mr. Salehi admits that on May 11, 2021 he agreed to purchase kitchen cabinets and countertops from Leeward. On June 9, 2021 Mr. Salehi undisputedly paid Leeward $1,000 and on July 26, 2021 he paid $5,436.91, for a total of $6,436.91. Mr. Salehi is undisputedly satisfied with the goods Leeward sold him.

11. As noted above, this dispute arises from Leeward's own accounting system error, which reflected a calculation error in its "grand total". In short, Leeward's invoice billed a "grand total" of $6,302.51, exclusive of certain extra items Mr. Salehi added on. By Leeward's own admission, its excel spreadsheet program that generated its invoice had an error in it, and the grand total for all of the listed line items should have been $7,536.55 (including the extras). Before the extras, the $6,302.51 "grand total" should have read $7,375.27.

12. Before the extras were added as handwritten annotations, Leeward's "Order Form" has 3 line items for the materials and 4 line items for labour (both including line items for applicable taxes). Each line item has a sub-total dollar figure that when added up total $7,375.27. Yet the typed "grand total" on the contract is only $6,302.51. The

difference is $1,072.76. Leeward's $1,099.64 claim is based on the difference between the "real" $7,536.55 total and the $6,436.91 Mr. Salehi paid.

13. Mr. Salehi's position is that it was Leeward's mistake and it is not open to Leeward to seek payment of the $1,099.64 6 months after Mr. Salehi's payment and the transaction had completed.

14. I turn then to the relevant law.

15. In contract law, there is what is known as "the law of mistake". As discussed in *Hannigan v. Hannigan*, 2007 BCCA 365, citing *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co*. (2003), 2003 ABCA 221, there are 3 types of mistake: common, mutual, and unilateral. Common mistake is where the parties make the same mistake. Mutual mistake occurs when both parties are mistaken, but their mistakes are different. In a mutual mistake, the parties misunderstand each other and are "not on the same page". Unilateral mistake is where only one of the parties is operating under a mistake. In other words, if the other party is not aware of the one party's erroneous belief, then the case is mutual mistake. If the other party knows of it, it is a unilateral mistake.

16. The law of mistake says that a mistaken party is generally entitled to relief only when the other party knew or should have known about the mistake, remained silent, and 'snapped' at the offer. See *256593 BC Ltd. v. 456795 BC Ltd. et al*, 1999 BCCA 137, citing *McMaster University v. Wilchar Construction Ltd*., 1971 CanLII 594 (ONSC). I find no evidence that Mr. Salehi knew about the mistake and remained silent about it. I accept his undisputed evidence that he only learned of the error when Leeward contacted him about it.

17. I find Leeward's incorrect "grand total" was a common mistake. Again, both parties at the time the invoice was issued and paid believed the "grand total" figure was accurate, when in fact it was not because it reflected a calculation error.

18. With common mistake, the agreement is acknowledged and what remains to be determined is whether the mistake was so fundamental as to render the agreement

void or unenforceable on some basis. Whether or not the mistake goes to the root of the contract is often important. A "fundamental" mistake is one that involves a fact which, "constitutes the underlying assumption on which the entire contract was based" (see *Munro v. Munro Estate* (1995), 1995 CanLii 1393 (BCCA), as cited in *Berthin v. Berthin*, 2015 BCSC 78).

19. I find Leeward's representation that the "grand total" was the $6,436.91 Mr. Salehi paid rather than the higher figure was a fundamental mistake. I say this because the price difference is significant. While Leeward submits "every item was discussed one by one", it provided no evidence of this, such as contemporaneous emails or store records. So, I find there is no evidence before me that Mr. Salehi agreed to any grand total other than the one he was presented with. Given the number of line items, I do not find it unreasonable that Mr. Salehi did not understand there was an error, noting Leeward's representative did not either.

20. Given I find it was a fundamental mistake, I find an agreement based on the higher actual total is unenforceable.

21. I also find my conclusion is supported by Leeward's employee's representation to Mr. Salehi when it first attempted to collect the difference. After Mr. Salehi refused to pay more, that employee wrote to Mr. Salehi stating that Leeward had made a mistake and it was a "lesson learnt" and indicated the matter was considered resolved. I do not agree with Leeward's reply submission that the employee felt threatened and only "wrote an email on her own". I dismiss Leeward's claim.

22. 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. As Leeward was unsuccessful, I dismiss its claim for reimbursement of paid CRT fees. Mr. Salehi paid no fees and no dispute-related expenses were claimed.

ORDER

23. I dismiss Leeward's claim and this dispute.

Shelley Lopez, Vice Chair