



Civil Resolution Tribunal

Date Issued: April 12, 2022

File: SC-2021-007317

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tao v. Ancient Mariner Awnings & Signs Ltd.*, 2022 BCCRT 421

BETWEEN:

SUYI TAO

APPLICANT

AND:

ANCIENT MARINER AWNINGS & SIGNS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Suyi Tao, paid the respondent, Ancient Mariner Awnings & Signs Ltd. (AMAS), a \$3,124.27 deposit for an awning. Miss Tao says AMAS gave a 1.5 month

estimate to complete the awning and installation but AMAS kept delaying. Miss Tao never received the awning and claims a \$3,124.27 refund of the paid deposit.

2. In its Dispute Response filed at the outset of this proceeding, AMAS says Miss Tao cancelled the contract, and the contract says in such a case AMAS has the right to retain the deposit. AMAS says it owes nothing.
3. Miss Tao is self-represented. AMAS is represented by its principal, Ken Meiklejohn.

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 AMAS breached the parties' contract and whether Miss Tao is entitled a refund of her \$3,124.27 paid deposit.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Miss Tao must prove her 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. I note that AMAS did not provide any written arguments or file any documentary evidence, despite having the opportunity, including extensions, to do so.
10. On April 19, 2021, Miss Tao asked AMAS for a quote for an awning with installation. The parties signed a contract on May 6, 2021 and Miss Tao paid a \$3,124.27 deposit that day by cheque. None of this is disputed.
11. Miss Tao submitted a copy of her contract with AMAS. It includes a term that that the parties could add a clause specifying a delivery date. Contrary to AMAS's assertion in its Dispute Response filed at the outset of this proceeding, there is nothing in the agreement that says the paid deposit is non-refundable.
12. Miss Tao says Mr. Meiklejohn verbally gave her a 1.5 month estimate to complete the awning and its installation, meaning installed by mid-June 2021. She says she called him several times in June and July 2021 for a status update and was always told it was delayed. I accept this evidence because AMAS provided no evidence or argument to dispute it.
13. Miss Tao says that during one of their phone conversations, Mr. Meiklejohn agreed that if the awning was not ready by late September 2021, she could cancel the contract and receive a full refund. Miss Tao emailed Mr. Meiklejohn on September 22, 2021 to cancel the contract since it could not be installed by the end of September. She says she also phoned him that date, and he agreed to cancel the contract but

said that he did not know when he would send her the refund. Again, I accept this evidence because it is undisputed. I find it is also consistent with the tenor of Miss Tao's September 22, 2021 email to AMAS requesting cancellation and a refund because the awning would not be installed by the end of September.

14. Given my findings above, I find AMAS agreed to modify the parties' contract and provide an installed awning by September 30, 2021 at the latest or else AMAS would refund the deposit. I accept the undisputed evidence AMAS has not provided the awning and has not provided the requested refund. Even if AMAS had not expressly made the agreement to refund the deposit, I would have found Miss Tao entitled to the deposit's refund given I find AMAS breached the parties' amended contract about the awning's delivery timing. I find Miss Tao is entitled to a \$3,124.27 refund.
15. The *Court Order Interest Act* (COIA) applies to the CRT. I find Miss Tao is entitled to pre-judgment interest under the COIA on the \$3,124.27. Calculated from September 22, 2021 (the contract's cancellation date) to the date of this decision, this interest equals \$7.80.
16. 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 Miss Tao was successful, I allow her claim for reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

17. Within 21 days of this decision, I order AMAS to pay Miss Tao a total of \$3,307.07, broken down as follows:
 - a. \$3,124.27 in debt,
 - b. \$7.80 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
18. Miss Tao is entitled to post-judgment interest, as applicable.

19. Under CRTA section 48, 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.

20. Under CRTA section 58.1, the Provincial Court of BC can enforce a validated copy of the CRT's order. 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 a Provincial Court of BC order.

Shelley Lopez, Vice Chair