Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hsu v. 7175337 Canada Corp. dba Ecoline Windows,* 2022 BCCRT 557

B E T W E E N :

HSIEN-CHANG HSU

APPLICANT

A N D :

7175337 CANADA CORP. dba ECOLINE WINDOWS, KYRYLO NITUTA, and POLINA LEVITOVA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a refund of a paid deposit for doors. The applicant, Hsien-Chang Hsu, ordered 2 doors (including installation) from the respondent, 7175337

Canada Corp. dba Ecoline Windows (Ecoline), for a total of $9,298.75. Mr. Hsu paid a $2,349.69 deposit, the amount he claims in this dispute. Mr. Hsu says he was entitled to cancel the order and get a refund of his deposit because Ecoline delayed his delivery. Mr. Hsu also says Ecoline insisted on full payment before it would do the installation, whereas Mr. Hsu says Ecoline's representative OV agreed Mr. Hsu could pay the final balance after installation.

2. Ecoline says its contract with Mr. Hsu clearly says Ecoline is not responsible for any delays. Ecoline also says Mr. Hsu's contract says Ecoline reserves the right to require full payment before delivery. Ecoline says the contract is not cancellable and that Mr. Hsu owes the full payment. Ecoline did not file a counterclaim.

3. Mr. Hsu is self-represented. The respondent Polina Levitova, Ecoline's account manager, represents all respondents. The role of the respondent Kyrylo Nituta is not explained.

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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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.

8. Ecoline says it still has the custom doors Mr. Hsu ordered and will charge him the balance of the parties' contract. I make no order about the doors or the invoice balance, since Ecoline did not file a counterclaim and because the CRT's monetary limit is $5,000 in small claims matters.

ISSUE

9. The issue in this dispute is whether Ms. Hsu is entitled to a refund of his $2,349.69 deposit because he sought to cancel the contract.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Hsu must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Mr. Hsu chose not to provide any final reply submissions, despite having the opportunity to do so.

11. At the outset, I dismiss the claims against Polina Levitova and Kyrylo Nituta. Mr. Hsu makes no claims against them personally and the undisputed evidence is that Mr. Hsu's contract was only with Ecoline.

12. As referenced above, on June 30, 2021 Mr. Hsu signed Ecoline's 3-page contract for 2 entry doors, for a total contract price of $9,398.75. The contract also served as

Ecoline's invoice and it noted Mr. Hsu's $2,349.69 paid deposit, leaving a $7,049.06 balance due.

13. At the top right of the contract's 1st page, beside the heading "Project Commencement" it said in red, "August/September", followed by "Commencement date depends on a scheduled measurement appointment." There is some indication the parties originally agreed on an October 7, 2021 installation date, although in Mr. Hsu's June 25, 2021 email to OV Mr. Hsu said the installation could not be later than the middle of September. As discussed further below, on October 28, 2021 Ecoline scheduled the installation for October 29, 2021 but Mr. Hsu refused to proceed because Ecoline demanded the $7,049.06 balance before it completed the installation.

14. As noted, Mr. Hsu makes 2 arguments about why he is entitled to a refund of his deposit. First, he says Ecoline's sales representative OV promised him an earlier delivery and that promise bound Ecoline. He says given the delivery was later, Ecoline breached the contract and owes him the refund. Mr. Hsu also argues that Ecoline breached the parties' agreement when it demanded full payment before installation was completed, because he says OV promised him that he would only have to pay the balance after the installation was done.

15. I turn first to the delivery delay. In the contract's boilerplate on the 3rd page, it expressly said that Ecoline was not responsible for any delay or failure in performance caused by the COVID-19 pandemic. It also expressly said that Ecoline would not be responsible if the delay or failure was caused by a shortage of building materials from suppliers where supply sectors are strained. It is undisputed Mr. Hsu's order was delayed due to supply shortages flowing from pandemic-related supply issues.

16. The contract further said that Ecoline would "use reasonable endeavors" to deliver the goods and services within the times indicated on the contract. However, the contract further said where dates are given, they are "for general guidance only". The contract said Mr. Hsu acknowledged and agreed that he remained responsible

for the contract's full price even if he refused to accept delivery. Significantly, the contract further said that custom orders are not cancellable. It is undisputed Mr. Hsu's order was a custom order.

17. Given the contract's clear terms, I find Mr. Hsu was not entitled to cancel his order or receive a refund of his paid deposit. I also find the contract is clear that the specified delivery date was not guaranteed.

18. Mr. Hsu argues that Ecoline's sales representative OV assured him delivery would be made in September. The emails with OV that Mr. Hsu relies on pre-dated the signed June 30, 2021 contract. The contract expressly said under a "Non-waiver" heading, that no course of dealing or failure of Ecoline to enforce any contractual term should be construed as a waiver of that term. While not using these words, Ecoline essentially says that nothing OV said could amount to a waiver of its limitation of liability for any delays. Further, at the end of the contract's 3rd page, it said that the document is the "entire contract" and it superseded all prior quotes or agreements and could not be modified without both parties' written consent.

19. Mr. Hsu signed the parties' contract after the above exchanges with OV, and as noted above, that contract makes it clear Ecoline is not responsible for delays and that the custom order contract is not cancellable. In one email, Mr. Hsu acknowledged that he was directed to read the pandemic-related clauses on the contract. Yet, in his submissions he says he did not realize the terms and conditions were part of the contract. I do not accept his submission. I find the terms are clear and readily seen. I find whatever promises OV might have given Mr. Hsu, such as delivery by September, do not bind Ecoline given the formal contract's terms that was signed later.

20. Mr. Hsu submitted the 64-page decision in *Vancouver Canucks Limited Partnership v. Canon Canada Inc*., 2013 BCSC 866, which he relies on for the position that a string of emails (such as his with OV) can amount to a binding contract. I agree emails can in some circumstances together form a binding contract. However, I find nothing in that decision assists Mr. Hsu, given the parties' June 30 contract's terms

that said it was the entire contract, which Mr. Hsu agreed to after his emails with OV.

21. Next, in one of his emails to Ecoline Mr. Hsu refers to the *Business Practices Consumer Protection Act* (BPCPA). Mr. Hsu's order for the custom doors was a future performance contract as defined in the BPCPA. This is because Mr. Hsu did not fully pay for the doors nor did he receive the doors at the time the contract was made. Sections 19 and 23 of the BPCPA set out a variety of requirements that a future performance contract must contain, including a supply date. I find the parties' contract met the BPCPA requirements, including the supply date. This is because the contract specified "August/September" which I find was sufficiently precise. There is nothing in the BPCPA that says a supply date cannot later change. So, I find the BPCPA does not assist Mr. Hsu.

22. So, I find Mr. Hsu's argument about delivery delay must fail.

23. I turn then to the alleged agreement that Mr. Hsu would only have to pay after installation. I do not agree with Mr. Hsu that OV promised in his email that final payment was due only after installation. In any event, as above, OV's communications were all before Mr. Hsu signed the June 30 agreement that clearly specified the payment timing terms. So, I find Mr. Hsu was not entitled to have the doors installed before he made the final payment. I find Mr. Hsu's argument on this basis must also fail. With that, I dismiss his claim.

24. 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 Mr. Hsu was not successful, I dismiss his claim for reimbursement of CRT fees and $500 in dispute-related expenses for "legal consultation". I would have dismissed the $500 claim in any event as Mr. Hsu submitted no proof of the expense and because under the CRT's rules legal fees are only recoverable in extraordinary cases. This is not an extraordinary case. The respondents did not pay CRT fees or claim dispute-related expenses.

ORDER

25. I dismiss Mr. Hsu's claim and this dispute.

Shelley Lopez, Vice Chair