



# Civil Resolution Tribunal

Date Issued: October 12, 2022

File: SC-2022-002013

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Everfresh Processing Ltd. v. J.Sun Food Corporation*, 2022 BCCRT 1115

BETWEEN:

EVERFRESH PROCESSING LTD.

**APPLICANT**

AND:

J.SUN FOOD CORPORATION

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about a restaurant's fresh food order from a supplier.
2. The applicant, Everfresh Processing Ltd. (Everfresh), says the respondent, J. Sun Food Corporation (JSun), ordered about 350 lbs of chicken, refused to accept

delivery, and refused to pay Everfresh's invoice. Everfresh seeks \$1,283.55 for the chicken order. Everfresh is represented by a business contact.

3. JSun says it rejected the delivery because it was late, so it should not have to pay anything. JSun is represented by an owner, Min Young-woong.

## **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). 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.
5. 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.
6. 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.
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 JSun must pay the claimed \$1,283.55 for the food order.

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Everfresh must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. JSun chose not to submit evidence despite having the opportunity to do so.
10. The evidence in this dispute is sparse. Everfresh refers to JSun as "the customer" but provided no contract or invoice naming JSun or anyone else. Everfresh says the customer ordered about 350 lbs of fresh chicken, for \$1,283.55. It is undisputed that the chicken was not delivered. The parties disagree about what happened.
11. Everfresh's evidence largely consists of an email thread with its freight company, CF, which is not a party to this dispute. That email thread indicates that Everfresh "c/o 21 Century Trading" was attempting to fulfill an order placed on January 5, 2022 by Baik Mi Korean Restaurant (Baik Mi). The connection between Baik Mi and JSun is not explained, although JSun does not deny that it would have paid Everfresh for the chicken, had the chicken been delivered on time.
12. CF undisputedly collected the chicken from Everfresh on January 6.
13. It is undisputed that on January 11, CF attempted to deliver the chicken to Baik Mi, but restaurant staff refused the delivery as they considered the chicken too old to be useable. Everfresh says fresh chicken is good for 2 or 3 days after shipping, so I find that by January 11, the chicken was no longer "good".
14. This parties disagree about whether CF attempted to deliver the chicken to Baik Mi on January 8, when the chicken was undisputedly still "good". Both parties say it was snowing heavily that day.

15. Call records show that at 12:46 p.m. on January 8, the CF driver called the phone number associated with Baik Mi. The call lasted 38 seconds. The parties disagree about what was said. Everfresh relies on an email from CF saying it interviewed the driver. According to that email, the driver said he called ahead to let Baik Mi know he was nearby and ready to deliver. He spoke with a woman named Herra or Hera who told him the restaurant was too busy to accept delivery that day.
16. JSun acknowledges Hera said the restaurant was busy, but says Hera did not refuse the delivery. JSun says it does not make sense that Hera would refuse delivery as the restaurant needed the chicken. Rather, JSun says the driver did not identify who they were or why they were calling.
17. There is no statement from Hera in evidence and JSun does not say why it could not provide a statement from Hera, which JSun identifies as a restaurant owner. For its part, Everfresh did not provide a statement from CF's driver.
18. Both parties thus rely on hearsay evidence, meaning a statement made outside the CRT proceeding that a party seeks to use to prove the statement's truth. Tribunals like the CRT may accept hearsay evidence where relevant, but must weigh the evidence based on its reliability and other factors. The CF driver who called Baik Mi is not a party to this dispute and neither is CF or the CF employee who interviewed the driver, so the evidence is "double hearsay". A driver has an interest in maintaining their employment by showing their employer that they attempted delivery. A freight company has an interest in showing its customer that it did not breach its contractual obligations. For these reasons, I find Everfresh's double hearsay evidence about the January 8 delivery attempt is not reliable. It might have been reliable had it been supported, for example, by a written statement from the driver, the interviewer's notes, or the driver's log, which was referenced as an attachment in CF's email but not provided as evidence in this dispute. So, I do not give either party's hearsay evidence about the January 8 phone call significant weight.
19. As noted, Everfresh bears the burden of proof as the applicant in this dispute. I find no reason to prefer Everfresh's evidence about the January 8 delivery attempt over

JSun's. So, I find Everfresh has not established that CF attempted delivery on January 8. Since there is no evidence of another delivery attempt while the chicken was still fresh, I find Everfresh has not shown that JSun is responsible for Everfresh's invoice as claimed.

20. I also note that Everfresh did not provide a copy of any contract, invoice or order between JSun (or Baik Mi) and Everfresh. Everfresh is responsible for proving each aspect of its claim, including that it had a contract with JSun, the applicable terms governing delivery, and an order for the amount claimed. I find Everfresh has not provided sufficient evidence to prove its claim.
21. For the above reasons, I dismiss Everfresh's claims, including its claim for contractual interest, which in any event was unsupported by evidence of an agreement about interest.
22. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. JSun was successful but did not pay CRT fees or claim expenses. I dismiss Everfresh's claim for reimbursement of CRT fees and registered mail costs.

## **ORDER**

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

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Micah Carmody, Tribunal Member