



Civil Resolution Tribunal

Date Issued: January 16, 2023

File: SC-2022-001922

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Laverock v. Cayer*, 2023 BCCRT 40

BETWEEN:

EDWARD LAVEROCK

APPLICANT

AND:

CURTIS CAYER, CAYER CONTRACTING INC., and 4 BOYS MFG
INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a refund for a boat loader that was not delivered as promised.
2. The applicant, Edward Laverock, says the respondent, Curtis Cayer, sold him a boat loader to be built by the respondent, 4 Boys Mfg Inc. (4 Boys), and installed by the respondent Cayer Contracting Inc. (Cayer Contracting). Mr. Laverock says the loader

was not delivered or installed, so he cancelled the order and requested a refund, which he says he has not yet received. Mr. Laverock claims \$3,818 which is the amount he says he paid Cayer Contracting for the loader.

3. 4 Boys denies receiving Mr. Laverock's boat loader order, or any money for the boat loader. It says it contracted with Mr. Cayer to sell 4 Boys' boat loaders for a commission, but that Mr. Cayer was not authorized to accept money from customers directly or use a different email address than that provided by 4 Boys. I infer 4 Boys argues that it is not bound by Mr. Cayer's agreement with Mr. Laverock.
4. Both Cayer Contracting and Mr. Cayer are technically in default, as neither responded to the Dispute Notice. I address that further below.
5. Mr. Laverock is self-represented. 4 Boys is represented by a director.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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

10. The issue in this dispute is which of the respondents, if any, must refund Mr. Laverock the \$3,818 he says he paid toward the boat loader.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one the applicant Mr. Laverock must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the provided submissions and weighed the evidence, but only refer to that which is relevant to explain my decision. I note that 4 Boys provided no evidence, despite having the opportunity to do so.

Mr. Cayer and Cayer Contracting

12. Mr. Laverock signed proof of service forms for both Mr. Cayer and Cayer Contracting Ltd. on April 8, 2022. Based on these forms and the submitted, signed, proof of receipt, I am satisfied that both Mr. Cayer and Cayer Contracting were properly served with the Dispute Notice by registered mail under the CRT rules. As noted above, neither Mr. Cayer nor Cayer Contracting responded to this dispute within 30 days of receiving the Dispute Notices, as required under CRT rule 3.1. So, I find that both Mr. Cayer and Cayer Contracting are in default.
13. Liability is assumed in default decisions. Further, in an October 6, 2021 email, Mr. Cayer agreed to refund Mr. Laverock the money he paid to Cayer Contracting. So, I find both Mr. Cayer and CCI are liable to refund Mr. Laverock’s \$3,818 payment.

4 Boys

14. Mr. Laverock says he contacted 4 Boys through its website (loadmyboat.com) to buy a boat loader to be installed on his truck. I infer he filled out a form on the website, asking for someone to contact him.
15. Mr. Laverock says he was contacted by Mr. Cayer. Mr. Cayer emailed Mr. Laverock with included photos of various boat loaders on trucks on January 16, 2021. The signature block on the email identifies Mr. Cayer as the Director of Sales and Marketing for 4 Boys, with an email address of curtis@4boysmfg.com.
16. Mr. Laverock says he spoke with Mr. Cayer on the phone. Later on January 16, 2021, Mr. Cayer emailed Mr. Laverock about “purchase and payment info as discussed”, including a \$4,368 purchase price for the loader and installation, requiring \$3,818 due immediately. The email directed Mr. Laverock to e-transfer payment to Cayer Contracting at loadmyboat@gmail.com. The email was sent from the load my boat email address, not the 4boys email address, although Mr. Cayer used the same signature block, indicating he was the Director of Sales and Marketing for 4 Boys. I find this email sets out the terms of Mr. Laverock’s purchase agreement.
17. Mr. Laverock says he paid \$3,818 to Cayer Contracting at loadmyboat@gmail.com. Although he provided no supporting evidence such as bank records, I accept Mr. Laverock’s statement as it is uncontradicted and consistent with Mr. Cayer’s email instructions.
18. The first question is whether 4 Boys is bound by the January 16, 2021 email agreement. In other words, was Mr. Cayer acting as 4 Boys’ agent?
19. The law of agency applies when a principal (4 Boys) gives authority to an agent (Mr. Cayer) to enter into contracts with third parties (Mr. Laverock) on the principal’s behalf. The principal will be liable for the agent’s conduct if the agent had actual or apparent authority (see *Keddie v. Canada Life Assurance Co.*, 1999 BCCA 541).

20. As noted, 4 Boys says Mr. Cayer did not have actual authority to act as agent in the January 16, 2021 agreement. It says Mr. Cayer was not authorized to take Mr. Laverock's money directly and was only authorized to direct customers to pay 4 Boys for the loaders. 4 Boys also says Mr. Cayer's January 16, 2021 email came from an email account other than the 4 Boys authorized email address. I infer 4 Boys argues that Mr. Cayer acted beyond the scope of his authority by taking Mr. Laverock's funds for himself or for Cayer Contracting.
21. However, even if Mr. Cayer acted outside his actual authority, 4 Boys may still be liable if Mr. Cayer acted with apparent authority.
22. Apparent authority is concerned with the principal's representations and conduct toward the third party (see *Keddie*). The question is whether a reasonable person in Mr. Laverock's shoes would reasonably infer Mr. Cayer had the authority to act as 4 Boys' agent in the circumstances. Entrusting the agent with certain duties can impliedly represent the agent's authority to act (see *Thiessen v. Clarica Life Assurance Co.*, 2002 BCCA 501). Finally, where an authorized agent exceeds their actual authority in contracting with a third party, the principal remains bound by that agent's actions, although the principal may have a claim against the agent directly (see *Barnett v. Rademaker et al*, 2004 BCSC 1060).
23. In this case, I find 4 Boys entrusted Mr. Cayer to sell boat loaders on behalf of 4 Boys, using 4 Boys' website and email address. I find 4 Boys represented Mr. Cayer as its agent for the purpose of making sales agreements between 4 Boys and customers like Mr. Laverock.
24. I accept that Mr. Cayer used a different email address when contracting with Mr. Laverock. However, given the similarity between that email address and 4 Boys' website address, I would not expect a reasonable person to inquire about the address or suspect Mr. Cayer of acting outside his authority as 4 Boys' agent. Further, I find Mr. Cayer's request that Mr. Laverock pay Cayer Contracting, rather than 4 Boys directly, would not raise Mr. Laverock's suspicions, given that Mr. Cayer claimed that Cayer Contracting would install the loader. For all these reasons, I find Mr. Laverock

reasonably assumed Mr. Cayer was acting within his authority as agent for 4 Boys in agreeing to sell a boat loader to Mr. Laverock.

25. As noted in *Toronto-Dominion Bank (TD Canada Trust) v. Currie*, 2017 ABCA 45, when an agent has actual authority but that authority is limited, it is up to the principal to prove that the limitations were conveyed to the third party that relied upon the agent. Although Alberta cases are not binding on me, I find the principal is consistent with the reasonable person analysis test set out in *Thiessen*.
26. Here, I find 4 Boys has not shown it notified Mr. Laverock or its potential customers of any limits on Mr. Cayer's authority and so, I find 4 Boys is bound by the January 16, 2021 contract. I find 4 Boys breached the contract by failing to provide a boat loader to Mr. Laverock and so it must reimburse Mr. Laverock the \$3,818 he paid for the loader.

Alternative liability in tort

27. Mr. Laverock also says Mr. Cayer and Cayer Contracting were engaged in trickery or deception to fraudulently divert the purchase funds for their own benefit. I accept 4 Boys' submission that Mr. Cayer failed to forward Mr. Laverock's boat loader order, or his purchase funds, to 4 Boys. I find Mr. Cayer's actions breached the expected standard of care of a reasonable salesperson to take care of a customer's payment and order the requested product from the manufacturer. So, even if Mr. Cayer were not in default, I would find him liable in negligence.
28. As a defaulting party, Cayer Contracting is also liable in negligence.
29. I acknowledge 4 Boys' arguments that it was unaware that Mr. Cayer was using an alternate email address, diverting purchase payments to Cayer Contracting, or failing to place orders with 4 Boys. However, when an agent commits a tort in the scope of their agency role, then the agent and principal are jointly and severally liable, even if the principal did not know about or derived no benefit from the actions, so long as the agent had apparent authority to commit them (see *Thiessen*). As I find Mr. Cayer was

acting within his apparent authority to sell 4 Boys' boat loaders, I find 4 Boys is vicariously liable for Mr. Cayer's negligence.

30. So, even if I had not found 4 Boys liable in contract, I would still find it vicariously liable for Mr. Cayer's negligence. While a third party generally can only recover against either the agent or the principal for breach of contract, a principal is jointly and severally liable with their agent for any liability in tort (*Keddie v. Horne*, 1999 BCCA 541). So, I find 4 Boys, Mr. Cayer, and Cayer Contracting are jointly and severally liable to refund Mr. Laverock his \$3,818 payment.
31. The *Court Order Interest Act* applies to the CRT. I find Mr. Laverock is entitled to pre-judgment interest on the \$3,818 from the October 6, 2021 approximate date he demanded the refund to the date of this decision. This equals \$52.78.
32. 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. As the successful applicant, I find Mr. Laverock is entitled to reimbursement of his paid \$175 in CRT fees, plus \$24.54 for registered mail costs, which I find are reasonable dispute-related expenses.

ORDERS

33. Within 14 days of the date of this order, I order 4 Boys, Cayer Contracting, and Mr. Cayer to, jointly and severally, pay Mr. Laverock a total of \$4,070.32, broken down as follows:
- a. \$3,818 as a refund for the boat loader cost,
 - b. \$52.78 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$199.54, for \$175 in CRT fees and \$24.54 for dispute-related expenses.
34. Mr. Laverock is entitled to post-judgment interest, as applicable.
35. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sherelle Goodwin, Tribunal Member