



Civil Resolution Tribunal

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File: SC-2022-003217

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. 1224881 B.C. Ltd. dba Swift Security Systems*,
2023 BCCRT 220

B E T W E E N :

MICHELLE CHEN

APPLICANT

A N D :

1224881 B.C. LTD. (Doing Business as SWIFT SECURITY SYSTEMS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a contract for home security system installation and monitoring. The respondent, 1224881 B.C. Ltd. (doing business as Swift Security Systems) (Swift), agreed to install a security system and monitor it for the applicant, Michelle Chen. Ms. Chen says she cancelled the contract as permitted, but Swift told her the

contract was not cancelled. Ms. Chen claims \$1,070.90 for a security equipment refund, removal costs, and a monitoring fee refund.

2. Swift says the security system was functional except for a few issues that it fixed, or that it could have fixed with Ms. Chen's permission. Swift says it did not agree to cancel the contract and remains willing and able to fix the equipment and provide monitoring services, so it owes nothing.
3. Ms. Chen is self-represented in this dispute. Swift is represented by its CEO, Philip Lee.

JURISDICTION AND PROCEDURE

4. These are the formal 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.
8. In the Dispute Notice that started this proceeding, Ms. Chen claimed a total of \$1,729.15 for a security equipment refund, removal costs, and monitoring fee refund. However, she clarified in her submissions that she seeks only \$1,070.90: \$866.25 for a security equipment refund, \$141.75 for estimated equipment removal fees, and \$62.90 for a monitoring fee refund.
9. As an alternative remedy to the full refund claimed, Ms. Chen says she would accept cancellation of the contract, a \$62.90 monitoring fee refund, and for Swift to cover the unspecified cost for a different alarm installer to repair the system Swift installed. However, I find Ms. Chen has not proven the likely cost of any such repairs. Further, as explained below, I find Swift is not liable for repairs to equipment that must be returned to it when the contract is cancelled. So, I decline to order the alternative remedy, and instead consider the requested remedy of contract cancellation with a full refund.
10. In the Dispute Notice, Ms. Chen claimed an order for “Swift to terminate our contract.” An order directing Swift to do an unspecified act related to contract termination is known in law as injunctive relief. Under its CRTA section 118 small claims jurisdiction, the CRT cannot order injunctive relief except in narrow circumstances that do not apply here. So, I find the requested contract termination order is not available here. Further, to the extent Ms. Chen’s request is for a declaration that the contract has been cancelled, I find the CRT cannot order such declaratory relief. Specifically, subject to exceptions that do not apply here, the CRT has no jurisdiction under CRTA section 118 or the law of equity to grant declaratory relief, as explained in the non-binding but persuasive decision *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. However, I note that in arriving at my decision below, I made necessary findings about whether the contract was cancelled.

ISSUE

11. The issue in this dispute is whether Ms. Chen was entitled to cancel the contract. If so, does Swift owe an \$866.25 security equipment refund, \$141.75 for the cost of removing the equipment, and a \$62.50 monitoring fee refund?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Ms. Chen must prove her claims on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence but refer only to the evidence and arguments I find relevant to provide context for my decision.
13. This dispute turns on the parties’ contract. The submitted February 11, 2022, written contract said it was the parties’ entire agreement, and no terms or representations outside of the agreement were binding on the parties.
14. The contract’s relevant parts said that “contract pricing” of \$29.95 plus GST per month would not change within the contract’s initial 3 year term. The contract referred to “service” and “equipment”, but did not say whether Swift agreed to install specific equipment, what the monthly charge was for, or if there were other charges. However, as discussed below, the parties agreed that Swift would install a home security system, after which it would provide alarm monitoring services for a monthly fee.
15. The contract said the agreement for “service” was “for 3 years unless otherwise noted,” and could be renewed for additional 1 year terms. It also said, “cancellation requires at least 30 days written notice.” Viewed in the context of the entire document, I find the contract was for a 3-year term, but could be terminated by either party on 30 days’ written notice. So, contrary to Swift’s assertion, I find the contract did not say Ms. Chen had to give Swift 30 days’ notice to address problems and “discuss terms.” However, as explained below, nothing turns on that.
16. Ms. Chen undisputedly requested contract cancellation on April 23, 2022. In a May 2, 2022 email to Swift, Ms. Chen cited several sections of the *Business Practices and*

Consumer Protection Act (BPCPA), including those about cancellation of direct sales contracts that failed to include required information. So, although neither party directly mentioned the BPCPA in their submissions, I find both were alive to the possibility that the BPCPA might allow Ms. Chen to cancel the contract and request a refund. In any event, the BPCPA sections discussed below are mandatory, and the parties do not dispute that they agreed to the written contract.

17. BPCPA section 17 says a future performance contract is a contract between a supplier and a consumer for the supply of goods or services for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Section 17 lists certain exceptions that I find do not apply to the parties' contract. Here, I find the parties' February 11, 2022 contract was a future performance contract, because at the time it was made Swift had not yet installed and monitored the alarm system and Ms. Chen had not yet paid for it.
18. The BPCPA also says a direct sales contract is a contract between a supplier and a consumer for the supply of goods or services that is entered into in person at a place other than the supplier's permanent place of business, subject to exceptions that I find are not applicable here. I find the parties likely agreed to the contract remotely on the internet, as they signed it electronically and there is no evidence that Ms. Chen attended Swift's place of business. So, I find the February 11, 2022 contract was also a direct sales contract.
19. Although submitted correspondence shows Ms. Chen discussed alternative cancellation remedies with Swift, I find she ultimately requested, including in this CRT dispute, a refund of all amounts paid under the contract, after which she says she will give the alarm equipment back to Swift. For the following reasons, I find Ms. Chen was entitled to cancel the contract and receive a full refund under the BPCPA.
20. BPCPA sections 21 and 23 say that a consumer may cancel a direct sales contract or future performance contract within 1 year after receiving a copy of the contract if the contract does not contain certain required information set out in sections 19, 20, and 23. That required information includes the supply date, the date on which the

supply of goods or services will be complete, the place where the contract was entered into, the supplier's telephone number, a detailed description of the goods or services to be supplied under the contract, and their itemized purchased prices. I find the February 11, 2022 contract contained none of that required information. In particular, although the contract said Swift would provide unexplained services for 3 years, it did not describe any alarm equipment sales, installation, or related pricing.

21. Further, as noted the February 11, 2022 contract said that no terms or representations outside of the agreement were binding on the parties. So, under that contract term, I find no other documents formed part of the parties' contract, including Swift's March 10, 2022 invoice. Even if that invoice had formed part of the contract, I find it did not contain the required supply date, date on which the supply will be complete, or place where the contract was entered into. The invoice totalled \$866.25, which Ms. Chen undisputedly paid. Ms. Chen also paid a total of \$62.90 as shown in 2 monthly alarm monitoring invoices in evidence.
22. I find the parties' contract did not meet the requirements of BPCPA sections 19, 20, and 23. So, I find Ms. Chen was entitled to cancel the contract by giving Swift notice within 1 year of receiving a copy of it, which she undisputedly did.
23. BPCPA section 27 says that if a consumer cancels a contract, the supplier must refund to the consumer "all money received in respect of the contract" within 15 days after the cancellation notice was given. Swift undisputedly provided no refund. So, I allow Ms. Chen's claim, for \$866.25 for the paid March 10, 2022 alarm equipment invoice, and the 2 submitted alarm monitoring invoices totalling \$62.90. This equals \$929.15.
24. I note that BPCPA section 28 says when a direct sales or future performance contract is cancelled, the consumer must return any goods received under the contract by delivering them to the supplier. However, BPCPA section 21(5) says that in a direct sales contract, the consumer may retain possession of the goods until all money paid by the consumer is refunded.

25. Regardless, although Ms. Chen says in the Dispute Notice that she will make the alarm equipment available for pickup after the refund is issued, I find she does not specifically claim an order for Swift to pick up the equipment after she receives the refund. So, I make no such order. Also, I would not order Swift to pick up the equipment in any event, because as noted BPCPA section 28 says the consumer must deliver the goods to the supplier. Further, there appears to be no reason to order the equipment's return even if it had been claimed, because the parties' correspondence shows that Swift wants the equipment returned, and as noted Ms. Chen does not take issue with giving the equipment back to Swift after receiving the refund.
26. Finally, I find nothing in the BPCPA requires a supplier to pay for the consumer's costs of uninstalling goods supplied under a contract that is later cancelled. As noted, the BPCPA requires the consumer, here Ms. Chen, to deliver the goods to the supplier. BPCPA section 28(3) also indicates that the consumer must take reasonable care of any returned goods. I find this implies that Ms. Chen is responsible for any costs of uninstalling the alarm equipment and delivering it to Swift after the cancellation refund is issued. Further, even if Ms. Chen was entitled to the cost of removing that equipment, I find she has not proven that cost. The November 17, 2022 estimate she submitted was addressed only to "Michelle" and was for a "Service Call Attendance" and "Labour" with no other information or explanation. For the above reasons, I decline to order Swift to pay Ms. Chen \$141.75 for equipment removal costs.

CRT Fees and Expenses

27. Ms. Chen declined any claim to interest in this dispute, so I order no interest payments.
28. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Ms. Chen was partly successful in this dispute, so I find she is entitled to half her paid

CRT fees, which equals \$75. Ms. Chen also claims \$43.23 for Dispute Notice mailing expenses, which I find is a reasonable amount. So, given that she was partly successful, I allow her request for half that amount, which equals \$21.61. Swift paid no CRT fees and claimed no CRT dispute-related expenses, so I order no further reimbursements.

ORDERS

29. I order that, within 15 days of the date of this order, Swift pay Ms. Chen a total of \$1,025.76, broken down as follows:

- a. \$929.15 in debt,
- b. \$75 in CRT fees, and
- c. \$21.61 in CRT dispute-related expenses.

30. Ms. Chen is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable. I dismiss the balance of Ms. Chen's claim.

31. 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.

Chad McCarthy, Tribunal Member