



# Civil Resolution Tribunal

Date Issued: March 31, 2023

File: SC-2022-004449

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Larkin v. Zadel Jewellery Studio Inc.*, 2023 BCCRT 268

B E T W E E N :

LISA LARKIN

**APPLICANT**

A N D :

ZADEL JEWELLERY STUDIO INC., WANDA ADELE VAN TONDER,  
and JOHANNES VAN TONDER

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about a gemstone ring. The applicant, Lisa Larkin, purchased the ring from the respondent, Zadel Jewellery Studio Inc. (Zadel). The respondents, Wanda Adele Van Tonder and Johannes Van Tonder, are both employees and directors of Zadel.

2. Ms. Larkin says that the respondents agreed to alter her ring to include a laboratory-grown blue sapphire. Ms. Larkin says that the respondents breached the contract by providing a blue spinel stone instead. She seeks \$1,747.60 as compensation. Ms. Larkin originally claimed \$2,497.60 but agrees that higher amount would result in double recovery.
3. Zadel denies breaching the contract. It says it is unsure how Ms. Larkin could have ended up with a spinel stone. The Tonders say they never contracted with Ms. Larkin in their personal capacity and say the claims against them should be dismissed.
4. Ms. Larkin represents herself. Mrs. Tonder represents the respondents.
5. For the reasons that follow, I find Ms. Larkin has partially proven her claim.

## **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 whether any respondents are liable for breach of contract, and what remedies, if any, are appropriate.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Larkin as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. In November 2020, Ms. Larkin emailed Zadel asking it to design and provide a custom gemstone ring. Zadel documented the sale in an email invoice dated November 16, 2020. The total price was \$3,135 plus tax. Of this amount, \$2,120 was for the ring, \$775 was for a yellow moissanite stone, \$180 was for 2 diamonds, and \$60 was for repairs and a chain. A credit card statement shows that Ms. Larkin ultimately paid Zadel \$3,212.16 for the ring.
13. The ring held the moissanite stone in place using "claws". On December 30, 2020, Ms. Larkin texted Zadel. She said that the claws were snagging on her clothes and the ring was too tight.
14. In October 2021, Ms. Larkin and Zadel agreed by email that Zadel would remake the ring. Zadel agreed to replace the moissanite stone with a "lab created blue sapphire". Zadel added in a November 2, 2021 email that it would use a "created sapphire" in the final product. On November 4, 2021, Zadel texted Ms. Larkin to select from 2 "Lab

created Sapphires” (capitalization in original) shown in a photo. Ms. Larkin selected 1 of them.

15. A November 25, 2021 invoice and receipt show that Ms. Larkin paid \$324.80 for Zadel to newly remake the ring. The invoice said the ring included a “LABORATORY GROWN BLUE SAPPHIRE”. Zadel also took back the moissanite stone and exchanged some of Ms. Larkin’s diamonds for larger diamonds in the new ring.
16. Ms. Larkin subsequently obtained a February 22, 2022 appraisal from a gemologist, HL. HL noted that the ring used a “synthetic blue spinel”. I find from the photos that the blue spinel resembles a blue sapphire. However, it is undisputed that spinel gemstones and sapphires are not the same.

***Are any respondents liable for breach of contract?***

17. The Tonders say, and I accept, that they are Zadel’s employees and directors. At law, officers, directors and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation. See *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. There is no indication the Tonders ever contracted with Ms. Larkin in their personal capacities. Zadel issued the invoices in evidence and collected all payments from Ms. Larkin. Given this, I find the Tonders are not personally liable for Zadel’s obligations. I dismiss Ms. Larkin’s claims against the Tonders.
18. This leaves Ms. Larkin’s claims against Zadel. I find it clear from the October and November 2021 emails and the November 2021 invoice that Zadel contracted to remake Ms. Larkin’s ring and provide a laboratory-grown or laboratory-created blue sapphire.
19. Zadel provided submissions on the difference between laboratory grown versus laboratory created sapphires. I find little turns on this. The evidence shows that Ms. Larkin contracted to buy a sapphire and not a spinel gemstone. Zadel did not say that spinel gemstones or sapphires are equivalent, nor is there any evidence to suggest that they are the same. So, I find Zadel was obligated to provide a sapphire, and the

key issue is whether it did so. Mr. Larkin relies on an appraisal from HL to show that she did not receive a sapphire. Zadel does not directly dispute accuracy of HL's appraisal. It says it "just can't get to the core of what happened or where we may have gone wrong".

20. As it is key evidence, I will discuss HL's appraisal in some detail. I find that the appraisal is expert evidence for the following reasons. HL wrote that they prepared the appraisal to document the ring's replacement cost for insurance purposes. So, I find HL is likely neutral given their report's purpose. I also find that HL provided their qualifications as required under CRT rule 8.3(2). HL said their qualifications included being a graduate gemologist (GG), an accredited senior gemologist with the Accredited Gemological Association (AGA), and a master gemologist appraiser of the American Society of Appraisers. HL also attached a CV that included their education, recently attended workshops, and professional memberships.
21. HL wrote that Ms. Larkin's ring was centered by a round faceted dark blue synthetic spinel of 1.58 carats. They noted the spinel had a chip off its pavilion and slight abrasions on the crown facets. They provided a total retail replacement value for the ring, as new and excluding tax, of \$4,500.
22. In contrast, Zadel provided copies of 2 different appraisals of the ring. The first is dated November 19, 2020. The second is dated November 25, 2020. I find it likely that the second appraisal is misdated as it is about the ring Zadel remade in November 2021, but nothing turns on this. They are both authored by Mr. Tonder. In the first appraisal, Mr. Tonder appraised the ring at a value of \$7,225 with the moissanite gemstone. In the second appraisal, Mr. Tonder said the ring had a "Round Brilliant Cut Laboratory Grown Blue Sapphire" and the ring's value was \$6,452.
23. I find both of Mr. Tonder's appraisals are not expert evidence and put little weight on them. I reach this conclusion primarily because they are written by Mr. Tonder. I find he is not neutral as he is an employee and director of Zadel and is also a party to this dispute. Additionally, I place greater weight on HL's appraisal because it outlines the

author's qualifications in detail. Mr. Tonder's appraisals do not outline his qualifications in the same manner.

24. The respondents also provided a witness statement from LB, a graduate gemologist and certified goldsmith. However, LB did not appraise the ring at issue, comment on any of the appraisals in evidence, or comment on the differences between a sapphire and spinel gemstone. So, I find LB's statement has limited relevance to this dispute.
25. Given the above, I accept HL's opinion that the ring has a spinel gemstone and is worth approximately \$4,500. I find that Zadel breached the contract by providing Ms. Larkin a synthetic blue spinel gemstone instead of a laboratory grown or laboratory created blue sapphire. The question is what damages are appropriate.
26. Generally speaking, damages for breach of contract are meant to put the innocent person in the same position as if the contract had been carried out. See *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39. I find that the appropriate measure of damages would be the cost to replace the spinel in the ring with a laboratory grown sapphire, less any value the blue spinel has, as Ms. Larkin has not returned it to Zadel. Ms. Larkin provided a May 3, 2022 estimate to provide a laboratory grown blue sapphire and set it in the ring. The cost is \$1,657.60 inclusive of tax, which I note is slightly less than the claimed amount of \$1,747.60. I accept the estimate as a starting point for damages.
27. As for the spinel, which as noted above is chipped, there is no direct evidence of its current value. HL appraised Ms. Larkin's ring holistically without saying how much the spinel was worth. On a judgment basis, I find it is only worth \$200 given that it is damaged. So, I award Ms. Larkin a total of \$1,457.60.
28. The *Court Order Interest Act* applies to the CRT. Ms. Larkin is entitled to pre-judgment interest on damages of \$1,457.60 from November 25, 2021, the date of Zadel's invoice, to the date of this decision. This equals \$32.40.
29. 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. I see no reason in this case not to follow that general rule. I find Ms. Larkin is entitled to reimbursement of \$125 in CRT fees as she was largely successful. Ms. Larkin also claims \$125 for HL's appraisal. However, there is no receipt or invoice to support this claim, and the appraisal itself does not say it cost anything. So, I dismiss this claim for reimbursement.

## **ORDERS**

30. Within 30 days of the date of this order, I order Zadel to pay Ms. Larkin a total of \$1,615, broken down as follows:

- a. \$1,457.60 as damages for breach of contract,
- b. \$32.40 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

31. Ms. Larkin is entitled to post-judgment interest, as applicable.

32. I dismiss Ms. Larkin's remaining claims, including all claims against the Tonders.

33. 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.

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David Jiang, Tribunal Member