



Civil Resolution Tribunal

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File: SC-2022-006586

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Estate of Mary Carter, Deceased v. HP Imports Ltd.*, 2023 BCCRT 620

B E T W E E N :

Estate of MARY CARTER, Deceased

APPLICANT

A N D :

HP IMPORTS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about store credit. Before her death, Mary Carter operated a business called British Home Store (BHS) that purchased wholesale products from the respondent, HP Imports Ltd. (HPI). The applicant, the Estate of Mary Carter, deceased, says HPI owes them a refund of \$2,036.64 for the credit balance on BHS's account at the time of its closure.

2. HPI says it did business with BHS, not Ms. Carter. It also says it only issues store credit for cancelled orders and does not provide refunds. HPI says it does not owe the applicant anything.
3. The applicant is represented by Ms. Carter's daughter, and HPI is represented by an employee or principal.

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 HPI owes the applicant a refund of \$2,036.64 for a credit balance on BHS's account at the time of BHS's closure.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss the applicant's claims.
10. At the outset, I address the parties' dispute about BHS's legal status. The applicant says Ms. Carter operated BHS as a sole proprietorship. HPI says it had a business relationship with BHS, not Ms. Carter personally, because it only sold to wholesalers, not retail customers. I find the evidence shows it is more likely than not that Ms. Carter operated BHS as a sole proprietorship such that the named applicant may claim for any amount owed to BHS. However, given that I dismiss the applicant's claims, I find nothing turns on this.
11. It is undisputed that BHS permanently closed its business on May 26, 2020, because of the COVID-19 pandemic. The applicant says that at some point before BHS's closure it had a credit balance on its HPI account, and that BHS accidentally made an overpayment to HPI by cheque. In a March 16, 2020 email in evidence, HPI told Ms. Carter's daughter that BHS had a credit balance on its account, and that it had received a cheque in the mail from BHS that day. I infer that this is the cheque the applicant refers to as an overpayment. HPI undisputedly cashed the cheque on an undisclosed date. It says it did so "as a matter of routine".
12. The applicant says HPI should not have accepted the cheque, and instead should have returned the cheque to BHS, or held it as a deposit towards a future order. However, the applicant did not submit the cheque as evidence or provide any evidence of the amount or date of the alleged overpayment. The evidence before me

indicates that BHS was still operating as of March 16, 2020 and had at least one pending or future order with HPI. The only account statement for BHS in evidence is dated December 19, 2019, and shows BHS owed HPI \$8,598.01. There is no evidence indicating the amount of BHS's account credit at the time of the alleged overpayment. There is also no evidence of BHS's order history at any time in 2020. On balance, I find the applicant has failed to establish that it made an overpayment to HPI, or that HPI should not have cashed the cheque. I also note that HPI undisputedly credited the cheque payment towards BHS's account, which is what the applicant says HPI should have done.

13. At the time of BHS's closure on May 26, 2020, it had undisputedly paid HPI for an order that had not yet been delivered. BHS cancelled that order at the time of its closure and has undisputedly not received a refund. The applicant did not provide the invoice or any other evidence of the amount of the cancelled order, but they say that after cancelling its last order, BHS had a \$2,036.64 credit with HPI. This is the amount the applicant claims as a refund in this dispute. The applicant did not submit any account statements or invoices to support the amount claimed. However, HPI acknowledges that BHS had a credit balance on its account at the time of its closure, and it does not specifically dispute the \$2,036.64 amount of the applicant's claim. So, I find that at the time of its closure, BHS had a \$2,036.64 credit balance with HPI.
14. The applicant says that none of HPI's invoices or account statements indicate that it would not provide refunds, but I find they have not established that HPI was required to provide this information on these documents. The applicant also says that HPI provided BHS with a refund in the past, but they provided no evidence to support this allegation. For its part, HPI says it did not provide refunds for cancelled orders, and that its policy was to instead apply credit for its customers' cancelled orders towards future orders. I find this is consistent with BHS's only account statement in evidence which shows that HPI credited BHS's account twice in the fall of 2019.
15. In a June 15, 2020 email to HPI, in relation to BHS's last cancelled order with HPI, Ms. Carter's daughter said, "As it was not a special order that had been brought in

specifically for her and is stock that you sell to other stores it was not an issue.” In a June 18, 2020 email, HPI responded, “Yes you are correct.” I infer from the applicant’s submissions that they interpreted “not an issue” to mean that they expected HPI to refund BHS for the cancelled order. However, I find that is not obvious from the wording of the email. I find HPI’s response is an acknowledgement that BHS had cancelled the order, not that HPI would refund BHS for the cancelled order. I find this is consistent with a September 28, 2020 email in evidence from HPI which said that the cancelled order had been “picked and palletted and was due for dispatch” when BHS cancelled it. On balance, I am satisfied that HPI’s policy was not to provide refunds for cancelled orders, but to provide account credits, which it undisputedly did here.

16. HPI says that it has ceased operating its business, has no assets, and is currently under notice of dissolution. It submitted a Notice of Commencement of Dissolution indicating it has not filed annual reports since February 18, 2019. I considered whether HPI was unable to fulfill future orders for BHS in the spring of 2020 such that BHS might be entitled to a refund for its account credit. However, the evidence before me indicates that HPI was operating at the time of BHS’s closure, and that it did not stop operating until June 2021, more than a year after BHS’s closure. The evidence before me indicates that when BHS was operating it made frequent orders from HPI. On balance, I find there is insufficient evidence to establish that HPI was unable to fulfill a future order for BHS. So, I find nothing turns on HPI’s financial circumstances.
17. Overall, I find the applicant has failed to prove that BHS is entitled to any amount of refund from HPI. I dismiss the applicant’s claims.
18. 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. Since the applicant was unsuccessful, I find they are not entitled to reimbursement of their CRT fees. HPI did not pay any CRT fees. Neither party claimed any dispute-related expenses.

ORDER

19. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member