



# Civil Resolution Tribunal

Date Issued: October 13, 2023

Files: SC-2022-008353, SC-2022-009681

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Heck v. 7175337 Canada Corp.*, 2023 BCCRT 878

BETWEEN:

NICOLA FLEUR HECK and MATTHEW BRUIN JAMES STAINSBY

**APPLICANTS**

AND:

7175337 CANADA CORP.

**RESPONDENT**

AND:

NICOLA FLEUR HECK

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about a contract for door and window supply and installation. This decision relates to 2 linked disputes that I find consist of a claim and counterclaim. So, I have issued 1 decision for both disputes.
2. The respondent (and applicant by counterclaim), 715337 Canada Corp., does business as Ecoline Windows (Ecoline). On April 11, 2022, the applicant (and respondent by counterclaim), Nicola Fleur Heck, hired Ecoline to supply and install a window and patio door in her home. The other applicant, Matthew Bruin James Stainsby, was undisputedly not a party to the contract and made no submissions.
3. Ecoline has not installed the window and patio door. Ms. Heck says Ecoline fundamentally breached the contract by delaying installation for several months and refusing to engage an engineer to determine whether a supporting beam was required around the patio door. In submissions, she also argues that she was entitled to cancel the contract under the *Business Practices and Consumer Protection Act* (BPCPA). Ms. Heck seeks a refund of the \$3,124.75 deposit she paid.
4. Ecoline says its contract was not cancellable. It says the contract explicitly said Ecoline would not be responsible for delay arising from a shortage of materials and Ms. Heck was responsible for complying with all applicable bylaws and building codes. Ecoline says I should dismiss Ms. Heck's claim. In the counterclaim, Ecoline seeks an order that Ms. Heck pay its \$5,000 invoice for the window and door without installation.
5. Ms. Heck represents both applicants. An employee represents Ecoline. As I explain below, I find Ms. Heck cancelled the contract as permitted under the BPCPA, so she is entitled to a deposit refund. I dismiss Ecoline's counterclaim.

## **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.

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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.
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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Was Ms. Heck entitled to cancel the contract for delay or any other reason?
  - b. Did Ecoline fundamentally breach the contract by delay or otherwise?
  - c. What remedy, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. Ecoline must prove its counterclaims

to the same standard. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

11. On April 11, 2022, Ms. Heck and Ecoline entered into a contract to supply and install a window and a patio door at Ms. Heck's home address. The 3-page contract also served as Ecoline's invoice. It said that Ms. Heck paid a \$3,124.75 down payment, leaving \$9,761.89 due on delivery.
12. As noted, Mr. Stainsby was undisputedly not a party to the contract. He made no submissions in this proceeding and Ms. Heck's submissions do not address his possible entitlement to the claimed refund. As a result, I dismiss Mr. Stainsby's claim.
13. Ms. Heck says Ecoline told her that installation would happen in July, although the contract says the project will commence in "July / August" depending on a scheduled measurement appointment. The measurement appointment undisputedly happened in April 2022. It is undisputed that work did not start in July or August.
14. Ms. Heck called and emailed Ecoline several times between July and September 2022 seeking updates on the anticipated installation date. On September 28, 2022, Ms. Heck emailed Ecoline to cancel the patio door portion of her order. Ecoline told her she was not allowed to cancel because the order was "completed and expected to ship this week." Emails show that Ms. Heck then made several attempts to speak with an Ecoline supervisor, with limited success. Ms. Heck says she continued to discuss installation because she was not aware of her cancellation rights under the BPCPA and because Ecoline assured her that the window and door would be ready soon.
15. In October, the parties discussed whether a supporting beam was necessary around the doors. On October 19, 2022, Ms. Heck emailed Ecoline again stating that she was terminating the contact for fundamental breach. She said the breaches were 1) delay and 2) Ecoline's position that Ms. Heck was responsible for retaining an engineer if she wanted one and for the cost of any supporting work the engineer

considered necessary. Ecoline maintained its position that Ms. Heck was not permitted to cancel the order.

***Was Ms. Heck entitled to cancel the contract?***

16. Ms. Heck says she is entitled to a return of her \$3,124.75 deposit for several reasons. I begin with her BPCPA cancellation rights because I find the BPCPA is determinative. At the outset, I note that Ms. Heck initially argued that the contract was a direct sales contract, which can be cancelled if the product is not supplied within 30 days of the supply date. A direct sales contract is one between a supplier and a consumer for the supply of goods or services entered into in person at a place other than the supplier's permanent place of business. Ms. Heck undisputedly signed the contract in her home. However, section 5 of the *Consumer Contracts Regulation* (CCR) states that sections 19 to 22 of the BPCPA do not apply if the direct seller attends at the place where the contract is signed following a request that was made at least 24 hours in advance by the consumer, or a relative or friend of the consumer. While I have no evidence about such a request, I find it unlikely that Ecoline visited Ms. Heck's home unsolicited. I find Ms. Heck likely contacted Ecoline, particularly given her evidence that Ecoline's work needed to fit into her larger renovation timeline.
17. Ms. Heck alternatively argues that the contract was a future performance contract. A future performance contract is a contract between a supplier and a consumer for the supply of goods and services for which the supply or full payment is not made at the time the contract is made, subject to certain exceptions that I find do not apply here. I find the parties' contract was a future performance contract because the window and doors were not supplied up front and Ms. Heck only paid a deposit.
18. Although Ms. Heck only raised the future performance contract issue in reply submissions, I find it is not procedurally unfair to consider it. First, Ms. Heck's argument in her initial submissions was that she was entitled to cancel the contract under the BPCPA. Second, compliance with the BPCPA is mandatory. Third, Ecoline relies on a previous CRT decision, *7175337 Canada Corp. dba Ecoline Windows v.*

*Hsu*, 2023 BCCRT 306. Ecoline says its contract in that case met the requirements set out in BPCPA sections 19 and 23, which apply to future performance contracts. So, I find Ecoline was alive to the issue that its contract was required to comply with BPCPA sections 19 and 23.

19. BPCPA section 19(m) says the contract must contain a notice of the consumer's rights of cancellation, in the prescribed form and manner. Section 7 of the CCR says the notice must be prominently displayed in a clear and comprehensible manner. If the notice is not on the first page, the first page must contain a prominent statement directing the consumer to the part of the contract containing the notice. I find the contract here does not comply with this requirement. It does not contain any notice of the consumer's cancellation rights under the BPCPA. It does not refer to the BPCPA at all.
20. In *Hsu*, the CRT vice chair found that Ecoline's contract met the BPCPA's requirements. Although Ecoline likely uses template contracts, I have no evidence that the contract in this dispute contained the same terms as the contract in that dispute. Further, CRT decisions are not binding on me, it does not appear that the issue of the contract's notice of cancellation rights was raised in that dispute.
21. Here, in the contract's boilerplate terms on the third page, it says orders cannot be cancelled after production has started. However, BPCPA section 3 says that any waiver or release of a person's rights, benefits, or protections under the BPCPA is void except where expressly permitted by the BPCPA. I find the BPCPA does not expressly permit the parties to contract out of its future performance contract cancellation rights. This means I find the invoice's "no cancellations" condition does not supersede Ms. Heck's cancellation rights under the BPCPA.
22. Under BPCPA section 23(5), because the contract did not contain the notice of cancellation rights required under section 19(m), Ms. Heck was entitled to cancel the contract by giving notice of cancellation not later than one year after the date she received the contract. I find she did so by email on October 19, 2022.

23. BPCPA section 27 says that if a consumer cancels a contract, the supplier must provide a full refund within 15 days after the cancellation notice was given. Ecoline undisputedly provided no refund. So, I allow Ms. Heck's claim for a \$3,124.75 refund.
24. Ms. Heck's only obligation after cancelling the contract was to return any goods received. She undisputedly did not receive the window or door she ordered. Otherwise, the contract was at an end, meaning both parties were relieved of their future obligations. On that basis, I dismiss Ecoline's counterclaim for \$5,000 for payment of its alleged supply costs.
25. Based on the above, I do not need to consider Ms. Heck's alternative arguments that Ecoline fundamentally breached the contract through delay or by refusing to hire an engineer and pay for any related structural work.
26. The *Court Order Interest Act* applies to the CRT. Ms. Heck is entitled to pre-judgment interest on the \$3,124.75 from November 3, 2022, which was 15 days after notice of cancellation, to the date of this decision. This equals \$122.04.
27. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. Heck was successful, so I find she is entitled to reimbursement of \$200 in paid CRT fees. I dismiss Ecoline's claim for reimbursement of \$50 in CRT fees. Neither party claims dispute-related expenses.

## **ORDERS**

28. Within 21 days of the date of this order, I order Ecoline to pay Ms. Heck a total of \$3,446.79, broken down as follows:
  - a. \$3,124.75 in debt,
  - b. \$122.04 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$200.00 in CRT fees.

29. Ms. Heck is entitled to post-judgment interest, as applicable.

30. I dismiss Mr. Stainsby's claims.

31. I dismiss Ecoline's counterclaims.

32. 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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Micah Carmody, Tribunal Member