



Civil Resolution Tribunal

Date Issued: January 18, 2024

File: SC-2023-001744

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Top-Notch Embroidery and Digitizing Ltd. v. Joto Paper Ltd.*,
2024 BCCRT 54

B E T W E E N :

TOP-NOTCH EMBROIDERY AND DIGITIZING LTD.

APPLICANT

A N D :

JOTO PAPER LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about 2 rolls of silver reflective vinyl. The applicant, Top-Notch Embroidery and Digitizing Ltd. (Top-Notch), purchased the 2 rolls from the respondent, Joto Paper Ltd. (Joto). Top-Notch says both vinyl rolls were defective. It says that Joto later provided a defective replacement roll and returned the other roll

after wrongly concluding it was not defective. Top-Notch seeks a full refund of \$2,096.23 for the 2 rolls that are still in its possession.

2. Joto denies liability. It disagrees that both rolls were defective. It also submits that Top-Notch is not entitled to a refund under the terms of the parties' contract.
3. A director represents Top-Notch. An employee or principal represents Joto.
4. For the reasons that follow, I dismiss Top-Notch's claim.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did Joto breach the contract by providing defective vinyl?
 - b. Is Top-Notch entitled to a refund?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Top-Notch as the applicant must prove its 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.
11. A November 29, 2021 invoice shows that Top-Notch paid \$1,056.47 for a roll of reflective vinyl. The invoice also said that Joto shipped the vinyl using a third-party courier. The email correspondence indicates that Top-Notch intended to use the vinyl by attaching it to clothing through heat pressing. The parties documented their agreement in the above-noted invoice and another one mentioned below.
12. Joto says the following. Joto sent the above-ordered roll, but its expected delivery was slow, either because it was "stuck" at the courier or because it came from a distant warehouse. Joto subsequently found it could send another, closer roll to arrive faster and did so. Joto initially did not charge for the second roll and offered to pay to ship back the extra roll. Ultimately, Top-Notch decided to keep and purchase both rolls.
13. Top-Notch does not directly disagree with this account, and to the extent that it does, I find Joto's version of events supported by the evidence. According to Joto's December 13, 2021 invoice, the initially ordered vinyl became "stuck" at the courier's depot. The invoice also said that Joto sent another roll and Joto would not charge for the second roll until the courier found the other roll. Further, Joto followed up by email in April 2022. Joto's representative said the attached delivery receipts showed that

Top-Notch received both rolls but did not pay for or return either roll. Joto asked for an explanation.

14. On June 8, 2022, Top-Notch acknowledged it had found both rolls. Its representative authorized Joto to charge Top-Notch's credit card for the 2 rolls. Given this, I find that Top-Notch explicitly agreed to purchase 2 rolls.
15. Between September 30 to November 22, 2022, Top-Notch and Joto exchanged emails that show the following. Top-Notch advised Joto that the 2 rolls were both defective. Top-Notch said it had used some of 1 roll and not the other. Top-Notch asked Joto to replace one roll and refund the other one.
16. Joto replied that Top-Notch was well beyond the 30-day return window to request replacement or reimbursement. Top-Notch said that it could not check on the quality of the product until it used it, which was relatively recently. Joto agreed to pay to retrieve both rolls for inspection. After receiving them, Joto determined that 1 of the rolls was defective but the other unused roll was not. It replaced the defective roll and sent 2 rolls back to Top-Notch.
17. In mid-November 2022, Top-Notch acknowledged that it received both rolls. However, it said that, contrary to Joto's assurances, both rolls were defective. Top-Notch asked for a refund of \$2,096.23 rather than for any further replacements.
18. Joto replied that Top-Notch was outside the 30-day window to request a refund. However, it said it would take back the rolls and provide store credit for future purchases. It said that Top-Notch had to pay to return them to Joto. Top-Notch disagreed and kept the 2 rolls.

Did Joto breach the contract by providing defective vinyl?

19. I find that it was at least an implied term that Joto agreed to provide vinyl suitable for heat pressing. I say this because the November 2022 emails show that Joto agreed that a roll was defective because the roll's vinyl showed damage after Joto heat pressed it. Joto willingly replaced the roll, as noted above.

20. I find this shows Joto initially breached the contract by providing at least 1 defective roll. However, as Joto replaced the roll, I find the main issue is whether the 2 rolls currently in Top-Notch's possession are defective. I say this because there is no indication that Top-Notch suffered any other potentially compensable loss.
21. The emails in evidence provide conflicting accounts about whether the replacement roll and returned roll are defective. Top-Notch says both rolls are defective. However, it did not provide any other evidence to corroborate this claim. For example, it did not provide any statements from employees or pictures of the vinyl to show it did not work properly. Against Top-Notch's assertion is Joto's assertion that the 2 rolls are not defective, in both the emails and in submissions.
22. I find there is essentially an evidentiary tie on the quality of the 2 rolls. As stated earlier, Top-Notch bears the burden of proof. Given the lack of evidence on this key point, I find it unproven that the 2 vinyl rolls in Top-Notch's possession are defective.
23. For completeness, I also note that Top-Notch did not identify any contact terms that would allow it to return the vinyl for a refund in these circumstances. Both invoices said that Top Notch had to provide return and credit requests to Joto within 30 days of the invoice date. Top-Notch waited several months before advising Joto that it wanted a refund or store credit. So, even if I found these terms applied, they would not assist Top-Notch.
24. For all those reasons, I dismiss Top-Notch's claims.
25. 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 dismiss Top-Notch's claims for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDER

26. I dismiss Top-Notch's claims and this dispute.

David Jiang, Tribunal Member