



Civil Resolution Tribunal

Date Issued: March 4, 2024

File: SC-2023-001423

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yeung v. Costar Home Energy Ltd*, 2024 BCCRT 216

BETWEEN:

WILLOCK YEUNG

APPLICANT

AND:

COSTAR HOME ENERGY LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about a refund for insulation services.
2. Willock Yeung hired Costar Home Energy Ltd. (Costar) to install a tankless boiler. While discussing the boiler, Costar also offered to upgrade Mr. Yeung's attic

insulation. Mr. Yeung says Costar told him he would ultimately receive government rebates covering the entire cost of the insulation renovation and necessary energy audits. Mr. Yeung agreed to upgrade his insulation. The total insulation project cost, including necessary energy audits, was \$2,681.70, which he paid upfront.

3. Mr. Yeung received government rebates covering some, but not all, of the insulation project's cost. His final out-of-pocket cost was \$893.10.
4. Mr. Yeung says he only agreed to upgrade his insulation because Costar told him the entire cost would be covered by rebates. He claims \$893.10 for his out-of-pocket costs, arguing both breach of contract and misrepresentation under the common law. Additionally, he argues Costar engaged in unconscionable and deceptive business practices under the *Business Practices and Consumer Protection Act* (BPCPA).
5. Costar says it never promised the entire cost would be covered by rebates. It says there was an innocent misunderstanding between the parties about how its representative described the rebate process. It asks me to dismiss Mr. Yeung's claim.
6. Mr. Yeung is self-represented. Costar is represented by a manager.
7. For the reasons that follow, I dismiss Mr. Yeung's claim.

JURISDICTION AND PROCEDURE

8. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.
9. CRTA section 39 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.

10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
11. Where permitted by CRTA section 118, 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.
12. Mr. Yeung argues a number of provisions of the BPCPA. He alleges that Costar committed or engaged in misrepresentative and deceptive practices under BPCPA sections 5 and 9, that he justifiably relied on Costar under BPCPA section 8, and that I should award punitive damages under the BPCPA. I note section 9 of the BPCPA addresses unconscionable (not misrepresentative) acts or practices.
13. However, BPCPA section 171 states that the Provincial Court has jurisdiction over damage or loss for failure to comply with the BPCPA. The CRT does not have jurisdiction to award remedies for a breach of the BPCPA. While the CRT can consider the BPCPA in claims for breach of contract, I note those provisions do not apply in this case.
14. Under CRTA section 10, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues. So, to the extent Mr. Yeung seeks damages under the BPCPA, I refuse to resolve those claims.

ISSUES

15. The issues in this dispute are:
 - a. Did Costar breach the parties' agreement?

b. Did Costar misrepresent the rebates available to Mr. Yeung?

EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, Mr. Yeung, as applicant, must prove his claims on a balance of probabilities. 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.
17. By way of background, I note this dispute concerns rebates for attic insulation upgrades provided through two different programs: the federal Greener Homes program and a provincial program run by Fortis BC.
18. Mr. Yeung says he reached out to Costar to inquire about a tankless water boiler. During the conversation, Costar's representative, L, brought up the issue of attic insulation. Mr. Yeung says L told him the cost of attic insulation, plus necessary audits, was fully covered by government rebates.
19. The parties did not prepare any formal written contract, but did exchange text messages, in Chinese, about the insulation and rebates. The parties agree L quoted \$1,946.80 as the total, after-tax cost of insulation. There is no dispute the insulation upgrade's final cost was 10 cents less - \$1,946.70, fully paid by Mr. Yeung.
20. It is also undisputed that to qualify for the federal rebates, Mr. Yeung needed to conduct audits before and after the insulation upgrade. He did so, paying \$735 total. Including audits, the insulation project's total cost was \$2,681.70.
21. Mr. Yeung undisputedly received federal and provincial rebates totaling \$1,788.60. From the federal program, he received \$600 for the insulation and \$600 for the audits. From the provincial program, he received \$588.60. So, he ultimately paid \$893.10 out-of-pocket for insulation and audits.
22. So, what did Costar tell Mr. Yeung about the available rebates?

23. The parties disagree on the precise translation of L's text message setting out the insulation rebates. Each party provided their own translation, but neither was from a certified translator. I note the CRT rules do not require parties to provide certified translations, but where parties disagree, a certified translation may be given additional weight.
24. The parties agree that L began by texting that he was making an estimate. While there are slight differences between their translations, both use variations of the word "estimate." I find this means L was acknowledging the rebate amount is uncertain and would depend, at least in part, on other factors.
25. Next, the parties agree L's texts say the insulation rebate is \$900 plus \$600 to \$1,800. There is no breakdown to explain which rebate is from which program, or what portion – if any – is to cover audit costs instead of insulation costs. The text message is also unclear as to how any final rebate amount is determined from the range provided.
26. The parties disagree about how L's text message explains the "maximum" rebate. Mr. Yeung translates L's message to read "...covering the full cost of the project." Costar translates it to read "...up to this amount to reach the maximum cost of the project."

Contract

27. First, I address Mr. Yeung's submission that Costar breached the parties' contract. To do that, Mr. Yeung must prove the parties agreed to a term that required Costar to be responsible if the insulation project was not fully covered by rebates. For the reasons that follow, I find he has not.
28. Whether there is an enforceable contract involves an objective test based on what a reasonable person in the parties' situation would have believed and understood, rather than on the parties' subjective beliefs. This means it does not matter what Mr. Yeung personally believed the parties agreed to. The contract's essential terms must

be sufficiently clear, and the party seeking to rely on the contract must show there was a matching offer and acceptance of those terms.¹

29. Mr. Yeung says L told him the insulation project's cost would be fully covered by rebate. Costar specifically says its salesman, L, never told Mr. Yeung the project would be totally free, either in writing or orally. Costar's statement about what L said is hearsay evidence, which is permitted by the CRT.
30. So, what terms can I infer from the parties' text messages and conduct?
31. I find the contract between the parties required Costar to upgrade Mr. Yeung's insulation and Mr. Yeung to pay Costar's invoice. However, I find the text messages and the parties' actions are not clear enough for me to infer a term guaranteeing Costar's would be responsible for the difference if its invoice was not fully covered by rebates.
32. The parties provide competing translations that give rise to different interpretations. Mr. Yeung's understanding was that "the full cost of the project" would be covered. Costar's understanding was that there was a "maximum cost of the project" that would be covered.
33. However, even if I accepted Mr. Yeung's translation, I find L's use of 'estimate' and provision of an apparent range of potential rebates makes it clear the rebate's final value was variable. I compare this to L's quote of a firm, clear, and unambiguous project cost. I find these text messages make it unlikely that L guaranteed the full cost would be covered.
34. I also note the parties' text messages do not include any discussions about the energy audit, its costs, or any rebates associated with it. These are apparently outside the scope of the parties' conversation about rebates, so I find Mr. Yeung has not proven Costar made any promises about the audits.

¹ See: *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216, at paragraphs 66 to 69.

35. Mr. Yeung and L exchanged further text messages after Mr. Yeung had received his rebates. However, while I have reviewed them, I find they do not help me clarify any terms the parties initially agreed to.
36. Mr. Yeung also provided Costar's ads that say, in part, attic insulation is free. However, he does not say he depended on these ads in agreeing to install insulation. They also do not form part of the parties' contract. Mr. Yeung does not say he discovered Costar through its ads or contacted Costar because of the ads' promises about rebates. Instead, he specifically says L introduced him to the idea of upgrading his attic insulation while they discussed a tankless boiler. So, I find the ads do not help him.

Misrepresentation

37. Mr. Yeung also argues Costar misrepresented the total amount of available government rebates. While I refuse to resolve Mr. Yeung's claim for misrepresentation under the BPCPA, I have considered whether he has proved his claim under the common law tort of negligent misrepresentation.
38. To prove the tort of negligent misrepresentation, Mr. Yeung must show that Costar owed him a duty of care, its representation was untrue, inaccurate, or misleading, Costar made the representation negligently, Mr. Yeung reasonably relied on it, and Mr. Yeung's reliance resulted in damages.²
39. Given their relationship as service provider and consumer, I accept Costar had a duty of care. Generally, the applicable standard of care requires a company to take reasonable care to ensure their representations are accurate and not misleading.
40. Here, I find Costar did not make a negligent misrepresentation. I find L provided an estimate of Mr. Yeung's expected rebate of \$900 plus \$600 to \$1,800. Mr. Yeung ultimately received a rebate of \$1,788.60. This is within the range L provided.

² See: *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC).

41. So, I find Mr. Yeung has not proven Costar misrepresented the rebate to which Mr. Yeung was entitled.

ORDER

42. Under CRTA section 10, I refuse to resolve Mr. Yeung's potential claims for damages for unconscionable and deceptive practices under the BPCPA.

43. I dismiss Mr. Yeung's remaining claims, and this dispute.

Christopher C. Rivers, Tribunal Member