



Civil Resolution Tribunal

Date Issued: March 19, 2024

File: SC-2023-008345

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhang v. Jing (dba Cream Cake Ragdoll Cattery)*, 2024 BCCRT 288

B E T W E E N :

ZHEKAI ZHANG

APPLICANT

A N D :

XU JING (Doing Business As CREAM CAKE RAGDOLL CATTERY)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about a cancelled purchase of a ragdoll kitten named Mango.

2. The applicant, Zhekai Zhang, agreed to purchase Mango from the respondent, Xu Jing, doing business as Cream Cake Ragdoll Cattery, after seeing their ad on the online marketplace Kijiji.
3. The applicant e-transferred the respondent \$2,100 for Mango. Three days later, the applicant told the respondent he wanted to cancel the purchase. The respondent said they suspected the applicant was trying to defraud them. They refused to return the applicant's money, later saying it was a breach of contract.
4. The applicant claims \$2,100. He argues he is entitled to cancel the contract under the *Business Practices and Consumer Protection Act* (BPCPA).
5. The respondent says they have suffered a loss from the applicant's breach of contract. While they say they are willing to give the applicant a refund, their submissions are inconsistent and unclear. Given their response as a whole, I find they ask me to dismiss the applicant's claim.
6. The parties are each self-represented.
7. For the reasons that follow, I agree the applicant is entitled to cancel the contract under the BPCPA, and I allow the applicant's claim.

JURISDICTION AND PROCEDURE

8. These are the Civil Resolution Tribunal (CRT)'s 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 hearing's format, 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.

ISSUE

12. The issue in this dispute is whether the applicant is entitled to cancel the parties' contract under the BPCPA.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the 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.
14. On July 21, 2023, the applicant found an advertisement from Cream Cake Ragdoll Cattery on Kijiji for ragdoll kittens. The applicant contacted the respondent about a kitten named Mango. The ad was listed in Vancouver's Kijiji marketplace, though the respondent's CRT documents show they are located in Quebec. The applicant messaged the respondent asking where the respondent was located, but the respondent did not reply.
15. The respondent operates Cream Cake Ragdoll Cattery as a sole proprietor. The respondent advertised Mango under the cattery name, used "creamcakecattery@hotmail.com" for email correspondence, and referred to themselves as the cattery's manager.

16. The parties exchanged messages about Mango and, after discussing a potential health concern, agreed to a price of \$2,100. Screenshots show the applicant specifically asked if the respondent wanted a deposit, but there is no documentary evidence that the respondent replied. Shortly after, despite having never seen Mango in person, the applicant sent the respondent \$2,100.
17. In submissions, the respondent said the applicant paid an \$800 deposit. In another place in submissions, the respondent referred to a \$500 deposit. However, the respondent did not provide any evidence to show they sought a deposit, such as text messages or emails. To the contrary, the evidence shows the applicant paid the entire price upfront. So, I find there was never any deposit amount.
18. On the applicant's request, the respondent agreed to keep Mango for 2 weeks after purchase so Mango could have additional time with its mother. The parties agreed the applicant would contact the respondent on August 6 and decide then how and when to supply Mango to the applicant.
19. On July 24, 2023, 3 days after sending the money, the applicant told the respondent he was not in a good enough financial position to keep Mango. He offered to pay a portion of Mango's price for the respondent's inconvenience. The parties ensuing conversation made it clear the respondent understood the applicant was asking for his money back.
20. The respondent did not accept the applicant's offer. Instead, the respondent suggested the applicant was engaging in fraud and demanded to see the applicant's banking information. The applicant sent a variety of screenshots, including copies of an Interac e-transfer confirmation and a partial bank statement, but the parties were unable to resolve matters.
21. After a final attempt to solve the problem on their own, on August 16, 2023, the respondent emailed the applicant that they would not refund any "deposit" due to the applicant's breach of contract. The respondent undisputedly never gave Mango to the applicant.

BPCPA

22. The applicant argues he is entitled to cancel a distance sales contract within 7 days under the BPCPA.
23. While the CRT has no jurisdiction to award remedies for a failure to comply with the BPCPA, I do have jurisdiction to apply the BPCPA in considering whether a contract is cancelled or enforceable.¹
24. BPCPA section 17 defines a distance sales contract as one where a supplier supplies goods or services to a consumer, where the contract is not entered into in person, and where the consumer cannot inspect the contract's goods.
25. Under BPCPA section 1, a supplier includes a person who participates in a consumer transaction by supplying goods to a consumer. A consumer is an individual who participates in a consumer transaction. A consumer transaction is one for the supply of goods that are primarily personal, family, or household.
26. As defined by the BPCPA, I find the respondent is a supplier and the applicant is a consumer. Similarly, I find the purchase of Mango is a consumer transaction. So, since the applicant entered into the contract online, and never saw Mango in person, I find the agreement to purchase Mango is a distance sales contract.
27. When a consumer enters a distance sales contract, BPCPA sections 19 and 46 require a supplier, such as the respondent, to provide specific information in the parties' contract. This includes, among other things, the supplier's address, telephone number, delivery arrangements, cancellation policies, and refund policies. BPCPA section 48(1) requires the supplier to provide a copy of the contract within 15 days of the parties entering it, and section 48(2) requires it to contain the information set out above.
28. While there is no formal written contract in evidence, the parties' negotiations establishing the price for Mango are contained in text messages. They do not include

¹ While not binding on me, see, eg: *McGrath v. Fisher*, 2022 BCCRT 595.

the supplier's address or phone number. As I note above, the applicant specifically asked the respondent where they were located, but the respondent did not reply. Similarly, I find the parties did not agree to arrangements on when and how the respondent would supply Mango to the applicant.

29. BPCPA section 49(1)(a) allows a consumer to cancel a distance sales contract by giving notice within 7 days if the supplier does not provide the information required by BPCPA section 48(2).
30. BPCPA section 49(1)(d) allows a party to cancel a distance sales contract at any time before the goods are delivered if the supply date is not specified in the contract and the supplier does not deliver the goods within 30 days from the date the contract is entered into.
31. I find both BPCPA sections 49(1)(a) and (d) apply here. The applicant gave notice, including his reason, 3 days after entering the contract. The contract does not include information required by the BPCPA. It also does not include a supply date, since it only says the parties will determine the supply date at a later time. As noted above, the respondent never sent Mango to the applicant.
32. The BPCPA provisions discussed above are mandatory. Given that, I find the contract is cancelled. Since there is no contract, the respondent does not have any entitlement to the applicant's money. I order him to pay the applicant \$2,100.
33. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$2,100 debt from July 24, 2023, the date he gave notice of cancellation, to the date of this decision. This equals \$69.49.
34. Under CRTA section 49 and the 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 the applicant is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

35. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,294.49, broken down as follows:
- a. \$2,100 in debt,
 - b. \$69.49 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
36. The applicant is entitled to post-judgment interest, as applicable.
37. This is a validated decision and order. Under CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member