



Civil Resolution Tribunal

Date Issued: July 3, 2024

File: SC-2023-005268

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tian v. Dallany Jewellery Design (Coquitlam) Inc.*, 2024 BCCRT 630

B E T W E E N :

XIAOHUA TIAN

APPLICANT

A N D :

DALLANY JEWELLERY DESIGN (COQUITLAM) INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about a allegedly misrepresented ring. The applicant, Xiaohua Tian, says the respondent, Dallany Jewellery Designs (Coquitlam) Inc., misrepresented the quality of a topaz ring and ruby brooch she purchased from it. She claims a \$2,200 refund for the topaz ring and costs of appraisals. The respondent say there was no misrepresentation and the purchases were a final sale.

2. Mrs. Tian is self-represented. Dallany is represented by an owner, KL.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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 court.
6. 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.

Mrs. Tian's Ruby Brooch

7. Mrs. Tian raised the issue of a ruby brooch in a document called "additional information" she uploaded as evidence. The Dispute Notice did not identify this claim, and she does not claim an amount for it in her submissions. While Dallany has provided both evidence and submissions about the brooch, I find Mrs. Tian has not made a claim for it and so I decline to resolve any dispute about the brooch.

ISSUES

8. The issues in this dispute are:
 - a. Is Mrs. Tian entitled to a refund of the \$2,000 she paid for the topaz ring, as well as the costs of appraisals?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mrs. Tian must prove her 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.
10. Mrs. Tian purchased the topaz ring for \$2,000 (\$1,785.71 plus tax) in October 2021. Though she did not provide a receipt, she does not dispute the receipt Dallany provided is accurate. On the receipt, "NO REFUNDS!" is clearly displayed along the bottom.
11. Mrs. Tian provided no details on the purchase of the ruby, but again does not dispute the receipt Dallany provided is accurate. The receipt shows the purchase price of the ring was \$4,300 (\$3,839.29 plus tax) and was bought in December 2022. The same wording about refunds appears on this receipt.
12. In April 2023, Mrs. Tian returned to have Dallany appraise her topaz ring. The parties do not say why, though I infer it was likely for insurance purposes. Dallany says this was done by an independent appraiser it sent the ring to, Federal GemLab. Federal GemLab found the clarity of the diamonds on the ring were VS2-S1, and gave the ring a resale value of \$6,500.
13. Mrs. Tian raised an issue with the date on Federal GemLab's report to support her claim that Dallany somehow defrauded her. There is no dispute Federal GemLab initially assessed the topaz ring without assessing the diamonds on the band. Federal GemLab did not change the appraisal report date after it corrected its report to include the diamonds. However, I accept Dallany's evidence that as the appraiser had

14. already opened a file for the ring, there was no need to change the date on the report. I do not find this is evidence of any fraud or misrepresentation. In any event, nothing turns on this, because the parties agree about when the appraisal was completed.
15. Mrs. Tian later had the topaz ring appraised by two other appraisers, JL Johnson Fine Jewelry Appraisers (JL Johnson) and Imperial Gem Lab Ltd. (Imperial).
16. Imperial's May 8, 2023 report found the diamonds' clarity were SI to I2 and assessed the ring's retail replacement value at \$5,898.
17. JL Johnson's May 11, 2023 report found the diamonds' clarity were SI-1 to I-1 and assessed the wholesale replacement value to be \$3,200. JL Johnson also found that the topaz was "loose in the setting and there is a glue-like residue on the edges of two of the claw tips".
18. Mrs. Tian says in her Dispute Notice that the "glue-like residue" and the loose topaz mentioned in JL Johnson report suggests that Dallany "did something" to her ring. However, I agree with Dallany that there is no mention of any "glue-like residue" on the Imperial report, which is undisputedly after the ring was out of Dallany's possession but before the JL Johnson report. To the extent Mrs. Tian is suggesting Dallany tampered with her ring or switched out the stone, I find she has not proven it did so.

Misrepresentation

19. Fraudulent misrepresentation occurs when the seller makes a false statement of fact that the seller knew was false or was reckless about whether it was true or false, and the misrepresentation induced the purchaser into buying the item (see *Ban v. Keleher*, 2017 BCSC 1132).
20. Negligent misrepresentation occurs when the seller carelessly or negligently makes a representation to the purchaser that is untrue, inaccurate, or misleading, and the

purchaser reasonably relied on the misrepresentation (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).

21. Here, Mrs. Tian alleges Dallany misrepresented the quality of the ring and the brooch. With respect to the topaz ring, she says KL told her the diamonds were VS clarity. However, she provides no evidence of this other than her own submissions and did not raise it before the appraisal. Dallany denies KL told her this when the ring was purchased. The receipt only gives diamonds' weight, not their clarity.
22. Mrs. Tian also says in her Dispute Notice she "noticed the diamonds were of a lesser clarity" after Federal GemLab's appraisal, and this is why she had it appraised twice more. She does not say why she did not notice this when she bought the ring or in the 1.5 years she had the ring. All three appraisers value it higher than what Mrs. Tian paid for it.
23. Mrs. Tian says in her Dispute Notice the topaz was "stated to be natural", but the appraisals found it was irradiated. I infer she means Dallany told her the topaz was natural. Imperial's report says "natural diamond and blue topaz ring". I find Mrs. Tian has not proven that a stone being irradiated means it is not natural.
24. I turn now to the ruby brooch. While Mrs. Tian has not made a claim for the brooch, I consider it for context of the parties' interactions. Mrs. Tian says she asked if the ruby was treated and was told it was not. Again, Mrs. Tian relies only on her own submissions, and did not raise the issue before the appraisal.
25. The receipt for the brooch does not mention any treatment. While Dallany denies it told Mrs. Tian the brooch was untreated, it specifically does not dispute the ruby is treated. Imperial Labs' report on the ruby says "evidence of heat treatment", but still appraised the brooch higher than what Mrs. Tian paid for it. I accept that the ruby was heat treated. However, I find Mrs. Tian has not proven Dallany misrepresented the brooch, and so I find it does not assist her in her claim about the ring.
26. I find Mrs. Tian has not proven, on the balance of probabilities, that Dallany or KL made any statements about the clarity of the diamonds or the topaz.

27. So, I find Mrs. Tian has not proven she is entitled to a refund of the ring based on misrepresentation.
28. Dallany says the ring was a final sale, and the receipts supports this. Mrs. Tian does not dispute this. I find the parties did not agree the ring could be returned, and certainly not over a year after it was purchased. As Mrs. Tian has not proven misrepresentation of the ring, I find she is not entitled to a refund.

Sale of Goods Act

29. While the parties do not mention it, the *Sale of Goods Act* (SGA) applied to this sale. SGA section 18(a) says there is an implied warranty in every sale of goods contract that the goods sold will be reasonably fit for a particular purpose where (1) that purpose is made known to the seller, (2) the buyer relies on the seller's skill or judgment, and (3) the seller's business is to supply those goods.
30. I find SGA section 18(a) applies to the ring, since Dallany is undisputedly in the business of selling jewelry. However, I find Mrs. Tian has not proved the ring was not reasonably fit for normal use. The evidence shows she had it in her possession for over a year with no issues.
31. 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. As Mrs. Tian was unsuccessful, I dismiss her claim for reimbursement of fees and dispute-related expenses, including appraisal fees. While Dallany was successful, it did not pay any fees.
32. Dallany claims \$800 for "witness if needed and paper report". However, as it did not provide any witness statements or invoices for reports, I dismiss this claim.

ORDER

33. I dismiss Mrs. Tian's claims, Dallany's claim for dispute-related expenses and this dispute.

Amanda Binnie, Tribunal Member