



# Civil Resolution Tribunal

Date Issued: December 24, 2024

File: SC-2023-004327

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fung v. GPM Enterprises Ltd.*, 2024 BCCRT 1310

BETWEEN:

MAN LEUNG JOHNSON FUNG

**APPLICANT**

AND:

GPM ENTERPRISES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. This dispute is about a refund and lost wages. The applicant, Man Leung Johnson Fung, says that the respondent, GPM Enterprises Ltd., failed to deliver a package which caused him to lose his employment. He also says the respondent failed to process a refund. He claims \$395.93 for shipping fees he paid. He also claims for 6 months of lost wages and loss of year-end bonus, for a total of \$12,012. He reduced

his claim to \$5,000 to fit within the Civil Resolution Tribunal's (CRT) small claims monetary limit.

2. The respondent says it cannot provide a refund because the applicant asked for the package back after it already shipped. The respondent says it was not responsible for loss of the applicant's employment.
3. The applicant is self-represented. The respondent is represented by a director.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. 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.
5. Section 39 of the CRTA 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.
6. 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.
7. 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**

8. The issues in this dispute are:
  - a. Whether the respondent must reimburse the applicant for shipping fees, and
  - b. Whether the respondent must pay the applicant an amount for lost wages and year-end bonus.

## **EVIDENCE AND ANALYSIS**

9. 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 information that I find relevant to provide context for my decision. The respondent did not provide any evidence in this dispute, despite the opportunity to do so.
10. The applicant says his employer asked him to send a package. The respondent operates a store with UPS services. The parties agree the applicant attended the respondent's store on October 23, 2023, and paid \$395.93 to ship a package. An email confirmation shows the package's expected delivery date was October 26, 2023. I find this email confirmation reflects the parties' agreement. While October 26 was an estimated delivery date, I find it was an implied term of the contract that the shipment would be initiated within a few days.
11. The applicant says that 10 days later, he discovered that the package still had not left the respondent's store. The applicant called UPS and cancelled the package on November 2, 2023. The applicant retrieved the package from the respondent's store a few days later and shipped it using another service. The applicant says that a few weeks later, his employment as a Human Resources Manager was terminated because the package was not shipped on time.

12. The applicant says that the respondent breached their agreement by not shipping the package. As damages, he seeks return of the shipping fee as well as lost employment income.
13. The respondent denies that the package was not shipped. It says that the applicant called the store and asked for the package to be held back, but the package had already left. It says the applicant then called UPS and had the package returned to the store, which the applicant eventually picked up. The respondent says this means it could not provide a refund. The respondent says it told the applicant the estimated delivery times and so cannot be responsible for the applicant's loss of employment income.
14. The applicant provided the tracking log for the package. The log stated that a shipping label was created on October 23. The next entry on the log was dated November 2: "the package will be returned to the sender." I find the tracking log confirms that the package still had not been delivered by November 2, 2023, well after the expected delivery date of October 26.
15. Confusingly, the log stated for November 18, 2023: "This package has been delivered and can no longer be returned to the sender." The tracking log later stated that an investigation was started to locate a missing package. I note that this information is contrary to the undisputed information that the applicant picked up the package from the respondent's store. Neither party explained this discrepancy which I find was likely due to an employee input error at the respondent's store.
16. I note that the respondent did not provide any evidence in this dispute, such as any information to confirm that the respondent's package left its store before the applicant cancelled the package. When a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference against them. An adverse inference is when a decision maker, like the CRT, assumes that a party failed to provide evidence because the missing evidence would not have supported their case. The respondent has not provided any evidence that the package was shipped or when the package left its store, such

as database entries or employee statements. In these circumstances, I find that it is appropriate to draw an adverse inference, and I find that the respondent did not provide any evidence that the package shipped because it had none. Based on this adverse inference, I find that the respondent still had not shipped the package 10 days after the applicant paid for shipping, contrary to the parties' agreement.

### **Damages**

17. I find that the applicant is entitled to damages for the respondent's breach of the parties' agreement. Damages for breach of contract are intended to place an innocent party in the position they would have been in if the contract had been carried out as agreed.<sup>1</sup> Applied to this dispute, if the respondent had not breached the contract the applicant would have received the benefits of a delivered package. As it is, the applicant paid for a shipment that the respondent failed to send so I order the respondent to return to applicant the \$395.93 he paid.
18. The applicant also seeks compensation for loss of employment income. However, I find that he has not provided any evidence to support his assertion that his loss was a result of the respondent's failure to send the package, such as any letters, emails or text messages from his employer. Additionally, he has not provided evidence of his year-end bonus. So, I find this claim unproven.
19. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$395.93 from the date he paid it to the date of this decision. This equals \$23.53.
20. 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 the applicant was only partially successful in his claims, I find he is entitled to reimbursement of \$87.50, which is half his paid CRT fees. Neither party claimed dispute-related expenses.

## ORDERS

21. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$506.96, broken down as follows:
- c. \$395.93 in debt,
  - d. \$23.53 in pre-judgment interest under the Court Order Interest Act, and
  - e. \$87.50, in CRT fees.
22. I dismiss the applicant's remaining claims.
23. This is a validated decision and order. 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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Maria Montgomery, Tribunal Member

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<sup>1</sup> *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39.