



Civil Resolution Tribunal

Date Issued: August 9, 2024

File: SC-2023-003052

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McCurrach v. Odnal Apparel Ltd.*, 2024 BCCRT 757

BETWEEN:

RICHARD MCCURRACH

APPLICANT

AND:

ODNAL APPAREL LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. Richard McCurrach ordered custom t-shirts and hoodies from Odnal Apparel Ltd. (Odnal). Mr. McCurrach says Odnal sent the wrong number of garments and used the wrong logo on half. He seeks \$5,000 in compensation, including \$1,623.30 for a full refund of the order, \$870.45 for the loss of prospective profits, \$66.15 for a refund of shipping costs, and \$2,440.20 for loss of reputation and compensation for his time spent dealing with Odnal's mistakes. Mr. McCurrach represents himself.

2. Odnal agrees some of the garments sent were incorrect. It offers a refund of \$793 for the incorrect garments, plus \$33.08 for half the shipping cost. Odnal is represented by its owner, Adam Lando.

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 that the CRT has discretion to decide the format of the hearing. There are no credibility issues in this dispute, and the parties provided fulsome written submissions. I am satisfied 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, nor was one requested.
5. Section 42 of the CRTA says that 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.

ISSUE

7. The issue in this dispute is to what extent Mr. McCurrach is entitled to his claimed damages for Odnal's breach of contract.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant Mr. McCurrach must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision. Odnal did not provide any documentary evidence, despite the opportunity to do so.
9. In November 2022, Mr. McCurrach contacted Odnal, which does business as Dad’s Printing, looking to purchase custom t-shirts and hoodies. After some discussion between the parties, Mr. McCurrach asked to order a total of 50 units, broken down as follows:

Logo 1 T-shirts		Logo 1 Hoodies		Logo 2 T-shirts		Logo 2 Hoodies	
Large	2	Large	2	Large	5	Large	5
Medium	5	Medium	5	Medium	6	Medium	6
Small	5	Small	5	Small	2	Small	2

10. Each t-shirt was to be model AA1301 and cost \$21 plus GST. Each hoodie was to be model INDSS 4500 and cost \$40 plus GST.
11. On December 5, 2022, Odnal sent Mr. McCurrach an invoice, which noted the following 51 garments were ordered:

Logo 1 T-shirts		Logo 2 T-shirts		All Hoodies	
Large	5	Large	5	Large	7
Medium	6	Medium	6	Medium	11
Small	2	Small	2	Small	7

12. Mr. McCurrach paid the \$1,623.30 invoice. Neither party explained the difference in sizes Mr. McCurrach requested compared to the sizes ultimately invoiced, so I find

they agreed to the garments as shown in the December 5, 2022 invoice that Mr. McCurrach undisputedly received and paid. On December 29, 2022, Mr. McCurrach paid an additional \$66.15 for shipping.

13. Mr. McCurrach received the garments on January 10, 2023. On January 11, 2023, he emailed Mr. Lando to advise him there were errors in the shipment. Specifically, Mr. McCurrach received 50 items instead of the 51 he paid for, and only in the following logo and sizes:

Logo 1 T-shirts		Logo 1 Hoodies	
Large	11	Large	3
Medium	12	Medium	10
Small	4	Small	10

14. Additionally, 13 of the received t-shirts were “Deluxe” brand, instead of AA1301. Odnal acknowledges it mistakenly sent 1 t-shirt less than invoiced, and that it incorrectly sent 13 t-shirts of the wrong brand. Odnal agrees to refund Mr. McCurrach for these errors, which totals \$308.70 (14 t-shirts x \$21/shirt + 5% GST).
15. I also find Odnal failed to send any of the logo 2 t-shirts or hoodies, in breach of the parties’ agreement. So, I find Mr. McCurrach is entitled to a further refund for those missing garments. For the logo 2 t-shirts, this totals \$286.65 (13 t-shirts x \$21/shirt + 5% GST). For the logo 2 hoodies, this totals \$546 (13 hoodies x \$40/hoodie + 5% GST).
16. In total, I find Odnal must refund Mr. McCurrach \$1,141.35 for the incorrect garments.

Shipping

17. Although Mr. McCurrach seeks full reimbursement of his shipping costs, I find that is not reasonable. Mr. McCurrach did receive half of the garments as ordered, and there is no indication there were any quality issues with those items. However, as Odnal

offered to reimburse Mr. McCurrach for half of his shipping costs, I order it to pay Mr. McCurrach \$33.08.

Loss of profits

18. Mr. McCurrach seeks prospective profits due to Odnal's breach of contract. He says he was planning to sell the t-shirts for \$35 each and the hoodies for \$60 each, plus tax, giving him a net profit of \$870.45.
19. The problem for Mr. McCurrach is that he has provided no supporting evidence that he would have sold the garments for that price, or at all. Although he says he had many pre-orders he was unable to fulfill, he did not provide any evidence of those pre-orders. So, I find any loss of prospective profits speculative and unproven.
20. I also note that Mr. McCurrach says he did not sell the logo 1 garments "for concern of complicating or disrupting" any resolution. However, Mr. McCurrach had a duty to mitigate his losses. This means he had to act reasonably to prevent avoidable losses resulting from Odnal's breach of contract. I find Mr. McCurrach could have sold the correctly delivered logo 1 items, as he said he had pre-orders for them, and minimized his alleged loss of profits. So, even if he had proven a loss, I would not have ordered the full amount claimed in any event. There is also no indication that the garments cannot still be sold.

Loss of reputation and time spent

21. Mr. McCurrach claims \$2,440.20 for "loss of reputation" and compensation for his time spent "managing the unnecessary proceedings". Mr. McCurrach did not explain the claim for loss of reputation, other than to say Odnal's breach prevented him from carrying out sales to his customers. Again, he did not provide any documentary evidence in support of his claim for loss of reputation. I dismiss it as unproven.
22. As for Mr. McCurrach's claim for "time spent", CRT rule 9.5(5) says the CRT does not award compensation for a party's time spent on a dispute except in extraordinary

circumstances, which I find are not present here. Mr. McCurrach also did not provide any evidence to quantify the time he spent dealing with Odnal. I dismiss this claim.

Interest and fees

23. In conclusion, I find Odnal must reimburse Mr. McCurrach a total of \$1,141.35 for its breach of contract. Mr. McCurrach is entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from January 11, 2023, this equals \$88.06.
24. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Although Mr. McCurrach was only partially successful, Odnal offered to reimburse him \$175 for his tribunal fees, so I order it to pay this amount. Mr. McCurrach did not claim any dispute-related expenses.

ORDERS

25. Within 30 days of the date of this decision, I order Odnal to pay Mr. McCurrach a total of \$1,404.41, broken down as follows:
- a. \$1,141.35 in damages,
 - b. \$88.06 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
26. Mr. McCurrach is also entitled to post-judgment interest, as applicable.

27. 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.

Andrea Ritchie, Vice Chair