

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Boxmaker, Inc. v. Prime Packaging Company,*
2024 BCSC 879

Date: 20240522
Docket: S233804
Registry: Vancouver

Between:

The Boxmaker, Inc.

Plaintiff

And

**Prime Packaging Company Ltd. d.b.a. Racer Printing and Box Manufacturing,
and Austin Tran**

Defendants

Before: The Honourable Madam Justice Duncan

Reasons for Judgment

Counsel for the Plaintiff:

H. Mallabone
E. De Paoli
H. Goodridge, Articled Student

Counsel for the Defendants:

R.C. Stephens

Place and Date of Trial/Hearing:

Vancouver, B.C.
April 26, 2024

Place and Date of Judgment:

Vancouver, B.C.
May 22, 2024

[1] The plaintiff, The Boxmaker, Inc. (“Boxmaker”), brings an application for a summary trial to resolve what, at first, appeared to be a simple issue concerning the non-payment of an invoice by the defendants.

[2] The defendants, Prime Packaging Company Ltd. doing business as Racer Printing and Box Manufacturing (“Racer Boxes”) and Austin Tran, maintain that this matter is not suitable for resolution by summary trial as there are credibility issues that cannot be determined by way of affidavit. Additionally, Racer Printing has a counterclaim against Boxmaker.

[3] Counsel for Boxmaker has been aiming to have its claim resolved by summary trial date last October. Counsel for Racer Printing says he does not have the expert report concerning damages for loss of business, which is a prominent feature of the counterclaim.

[4] Having heard the submissions of counsel and reviewed the materials, I am not satisfied this matter is currently suitable for disposition as a summary trial, but not because of Racer Printing’s laches in preparing its counterclaim. Rather, there is an evidentiary gap in the Boxmaker’s materials.

[5] Rule 9-7(15) of the *Supreme Court Civil Rules* provides:

- (15) On the hearing of a summary trial application, the court may
 - (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application,

....

[6] All parties to an action must come to a summary trial prepared to prove their claim, or defence, as judgment may be granted in favour of any party, regardless of which party has brought the application, unless the court is unable to find the facts

necessary to decide the issues or it would be unjust to decide the issues in this manner: *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-34.

[7] I will set out the facts in a summary fashion.

[8] Boxmaker produces custom cardboard boxes. A customer submits an order, specifying the details such as size, configuration, and materials. Boxmaker then produces a quote for the job. If the customer approves the quote, the customer goes on to provide artwork. A sample or proof is produced by Boxmaker and the client can then approve or request changes. If the proof is approved, the customer sends a purchase order and payment. Payment is either “up front” or on credit terms offered by Boxmaker.

[9] Austin Tran, as a representative of Racer Printing, executed a credit application package for a \$100,000 credit limit with Boxmaker on September 20, 2022. Boxmaker did not advise Racer Printing or Mr. Tran that there was any issue with the credit application.

[10] In mid-October 2022, Racer Printing submitted an order for custom boxes for keto cookies. The order was relatively small, under \$5,000 USD. Boxmaker did not advise Racer Printing of any shortcomings or limitations in Racer Printing’s credit application.

[11] Days later, on October 18, Ethan Yeung of Racer Boxes asked Boxmaker project manager Marcie Wilson for a quote for 7,550 boxes to contain electrolyte lemonade. This was a significantly larger order than the keto cookie order.

[12] Marcie Wilson added the electrolyte lemonade order to Boxmaker’s Trade Quote email to get the order into the quoting queue. Doreen Franson, a special project estimator with Boxmaker, provided Mr. Yeung with the pricing on October 19. Mr. Yeung sent a link to the artwork required on October 24.

[13] On October 25, Mr. Yeung asked Marcie Wilson for the PDF proof “tomorrow morning” as the client was pushing hard for the job and wanted it delivered by November 14.

[14] Between October 24 and 26, Racer Boxes provided the artwork, Boxmaker developed a prototype, Racer Boxes approved it and the financial terms were confirmed.

[15] In the midst of these email discussions, specifically on October 25 and 26, Racer Boxes emphasized that they needed to deliver the order to their customer by November 14. Boxmaker “penciled” the order in for November 14 and Racer Boxes issued a purchase order on October 26.

[16] A week later, on November 2, an account representative for Boxmaker advised the account controller of Racer Boxes that she had a problem with Racer Boxes’ credit and sought additional credit references. This was a surprise to Racer Boxes, whose representative Mr. Tran had executed the credit application over six weeks earlier with no complaint from Boxmaker.

[17] Racer Boxes attempted to provide additional credit references to get the order completed on time, but ended up paying half the cost of the order upfront as a deposit on November 7. Boxmaker released the order to production, but advised it would not be ready for delivery until November 22.

[18] The delay by Boxmaker in pursuing further credit checks delayed the production of Racer Boxes’ order for the electrolyte lemonade boxes beyond what was originally stipulated by Racer Boxes. Then Racer Boxes’ customer, Organika, pointed out some defects in the box design and pushed for a discount on the job. Racer Boxes ultimately discounted the job but lost Organika as a client. This is the essence of the counterclaim. Racer Boxes maintains that time was of the essence in the production of the electrolyte lemonade boxes and that Boxmaker negligently misrepresented elements of its ability to meet the order.

[19] What is missing from the plaintiff's materials or submissions is any explanation as to why Boxmaker took an incremental approach to checking Racer Boxes' credit references. Specifically, there is no evidence concerning why it was not made clear to Racer Boxes that their initial credit application was only approved up to a certain limit and there is no evidence this shortfall was brought to Racer Boxes' attention before Boxmaker accepted the electrolyte lemonade box order that Racer Boxes had specified was required by November 14.

[20] Racer Boxes takes the position that time was of the essence and they made that known to Boxmaker. Racer Boxes pleads that Boxmaker breached its contract by failing to deliver the product within the time required and by delivering a product which was grossly deficient in quality. Racer Boxes also counterclaims for damages for lost profits as a result of losing Organika as a customer due to Boxmaker's failure to deliver the product on time.

[21] The evidentiary gap set out at para. 19 leaves the court with an unanswered question: why did Boxmaker accept Racer Boxes' order for the electrolyte lemonade boxes, then delay it to complete credit checks, in light of Racer Boxes' clear emphasis on a delivery date of November 14? This gap prevents me from finding the facts necessary to give judgment on the summary trial application. To be clear, it is not in the interests of justice to decide this matter as a summary trial on the basis of the materials filed.

[22] The plaintiff's application for judgment pursuant to summary trial is dismissed, but not on its merits. Unless there are matters of which I am unaware, the defendants are entitled to their costs at Scale B.

"Duncan J."