



Civil Resolution Tribunal

Date Issued: May 3, 2024

File: SC-2023-007155

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chisholm v. Girard*, 2024 BCCRT 425

BETWEEN:

JOYCELYNN CHISHOLM

APPLICANT

AND:

ANDRE GIRARD and TERESA GIRARD

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. The parties to this dispute are neighbours. Joycelynn Chisholm says that the respondents, Andre and Teresa Girard, agreed to share the cost of replacing the fence between the parties' properties, but have not paid her back for their share. She claims \$1,835.30 for the Girards' portion of the fence replacement.

2. Mr. Girard says that he never agreed to pay for a portion of the replacement fence. Mrs. Girard agrees that she discussed “pitching in” for the fence’s cost with Ms. Chisholm but says that she did not agree to the final cost. So, the Girards deny owing anything.
3. Each of the parties is self-represented.

JURISDICTION AND PROCEDURE

4. 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). CRTA section 2 says that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. CRTA section 39 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, so I decided to hear this dispute through written submissions.
6. 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.
7. 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.
8. I was unable to open one item of Ms. Chisholm’s evidence, which she labelled “fence prior to stain”. I infer this is a photograph of the fence. Both parties submitted several other photographs of the fence, which I was able to open. In any event, I find the photographs of the fence are not necessary to determine whether the Girards agreed to pay for a portion of it. So, I find I am able to determine the issues in this dispute

without this specific photograph. Given the CRT's mandate for speed and efficiency, I did not ask Ms. Chisholm to resubmit this piece of evidence.

ISSUE

9. The issue in this dispute is whether the Girards, or either of them, must pay Ms. Chisholm \$1,835.30 for the fence replacement.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Chisholm must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

Did Mr. Girard agree to pay for the fence?

11. As noted, Mr. Girard says that he did not have any agreement with Ms. Chisholm to pay for a portion of the replacement fence. I agree, for the following reasons.
12. The Facebook messages in evidence that Ms. Chisholm relies on are only between her and Mrs. Girard. Although the Girards are spouses, this does not necessarily mean that Mrs. Girard had the authority to bind Mr. Girard to an agreement. To establish that Mrs. Girard was authorized to make an agreement with Ms. Chisholm on behalf of Mr. Girard, Ms. Chisholm must provide clear and unequivocal evidence of such authorization.¹
13. Here, Mrs. Girard only referred to Mr. Girard in a few messages. In one message, she said that she would discuss the fence with him and get back to Ms. Chisholm. In a few messages discussing the project and payment for it, Mrs. Girard referred to herself and Mr. Girard as "we", but in others she only used "I". At no point did Mrs. Girard confirm that she had discussed the fence project with Mr. Girard or that Mr.

¹ See *Yang v. Li*, 2024 BCSC 613 at paragraph 102.

Girard had agreed to pay anything. Overall, I find the evidence does not clearly demonstrate that Mr. Girard either agreed to pay for the fence, or authorized Mrs. Girard to agree to do so on his behalf. So, I find that Mr. Girard was not a party to any alleged agreement, and I dismiss Ms. Chisholm's claims as against Mr. Girard. Where I refer to the "parties" below, I mean Ms. Chisholm and Mrs. Girard.

Did Mrs. Girard agree to pay for the fence?

14. Facebook messages in evidence between the parties show the following. On January 31, 2022, Ms. Chisholm told Mrs. Girard that she was getting some quotes on her fence and that it would not be cheap. She asked Mrs. Girard to discuss with Mr. Girard and determine their budget. Mrs. Girard responded and asked about the height of the replacement fence, as well as the quotes Ms. Chisholm had received. Mrs. Girard said that they may need to make a payment arrangement as she probably would not have the budget for it until September.
15. Ms. Chisholm said that she had received quotes of over \$10,000. She said the Girards' portion of that may be \$2,000 to \$2,300. The parties also discussed fencing materials and height. Ms. Chisholm suggested a 5-foot fence, and said that cedar panels or chain link would be cheaper than boards. Mrs. Girard asked if Ms. Chisholm would be open to a 6-foot cedar fence on the side between their properties, if the Girards were to pay a little more for the extra foot of height, so that it would match the height of their other fences. Ms. Chisholm said that she would think about this, and the parties agreed that they would both look into prices.
16. On February 1, 2022, Ms. Chisholm messaged Mrs. Girard that she had received a quote for completing the fence with 5x8 panels from a local fencer. She said that Mrs. Girard's portion would be \$1,760 plus tax, and that the panels could be "upgraded" for an additional cost. She asked if this amount was doable for Mrs. Girard. Mrs. Girard asked what the cost would be to upgrade to a 6-foot fence, and asked if they would also need 6 foot posts. She said that the price sounded doable, but that she did not know if she would have the money ready when the fencer began the work.

Ms. Chisholm responded that she was sure they could work something out, and Mrs. Girard thanked her.

17. On March 4, 2022, Ms. Chisholm messaged Mrs. Girard to say that she was getting ready to order the fence panels. After some discussion, the parties agreed that the new fence would not be attached to the Girards' existing corner posts, because the Girards did not want to replace those posts.
18. Mrs. Girard asked about the price for the Girards' share, and Ms. Chisholm responded that it would be \$1,760 plus tax, but that there would be an additional cost for extra panels and posts for a section of the fence behind the Girards' woodshed. Mrs. Girard responded "Ohh, gawd! I was imagining 2500 plus tax..i cant do that. lol". I infer that this means Mrs. Girard was unwilling to pay \$2,500 plus tax for the Girards' portion of the fence. However, I find she agreed to pay \$1,760 plus tax. In later messages, Mrs. Girard asked if the \$1,760 was for a 6-foot fence. Mrs. Chisholm confirmed that it was, and Mrs. Girard responded "Lovely!!"
19. The fence was installed on March 25, 2022. On April 4, 2022, Ms. Chisholm sent Mrs. Girard copies of the invoices and receipts for the fence materials and installation, as well as some handwritten calculations showing that Mrs. Girard's portion of the installation was \$1,835.30. Mrs. Girard responded "Thanks" with a smiley face.
20. On May 21, 2022, Ms. Chisholm asked Mrs. Girard for a timeline for payment. Mrs. Girard responded asking if Ms. Chisholm would be able to wait until September for a full payment, and Ms. Chisholm agreed.
21. Mrs. Girard did not make any payment to Ms. Chisholm in September 2022. Ms. Chisholm followed up with her in January 2023, and Mrs. Girard did not respond. In March 2023, Ms. Chisholm followed up again and Mrs. Girard said that she still intended to pay, but had limited funds available because of personal circumstances. She said she would try to work out some kind of payment plan to pay Ms. Chisholm as soon as possible. Mrs. Girard undisputedly has not paid Ms. Chisholm anything for the fence to date.

22. In submissions, Mrs. Girard says that she did not sign any agreement to pay for the fence. However, a contract can exist even without a signed document. For a valid contract to exist, the parties must agree on all essential terms, and those terms must be reasonably certain.²
23. Here, I find the parties agreed on the essential terms of the contract. Specifically, I find the parties agreed that Ms. Chisholm would pay to construct a 6-foot cedar panel fence, and that Mrs. Girard would pay a proportionate share of the overall cost of the fence for the portion between the parties' properties. I find the messages show that Mrs. Girard agreed to pay the quoted amount of \$1,760 plus tax. Mrs. Girard's subsequent confirmation that she would pay "in full" after Ms. Chisholm sent her the invoices and cost breakdown also supports a finding that the parties had a binding agreement.

Is there any reason not to uphold the parties' agreement?

24. Mrs. Girard makes several other arguments about why she should have to pay anything for the fence replacement, which I will briefly address. First, Mrs. Girard says that local bylaws require Ms. Chisholm to have a fence to contain her dog. She provided an excerpt of the local dog control bylaw, which says that dog owners must prevent their dogs from biting, threatening, or chasing other animals, or jumping on people. I find this does not explicitly require Ms. Chisholm to fence her property, and in any event, it does not negate Mrs. Girard's agreement to pay for a portion of the fence.
25. Second, Mrs. Girard says that the fence is on Ms. Chisholm's property. She says that Ms. Chisholm acknowledged that the fence was hers alone. In support of this, Mrs. Girard provided screenshots of Ms. Chisholm referring to the fence as "my fence" in Facebook comments. Even if the fence is on Ms. Chisholm's property, which I find unproven in any event as there is no survey in evidence, the parties specifically

² See *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216.

discussed and agreed to the fence placement. I find there is no evidence that Mrs. Girard's agreement was contingent on the fence being directly on the property line.

26. Third, Mrs. Girard says that Ms. Chisholm chose a fence that was "fancier than necessary". However, the parties' messages show that Mrs. Girard rejected the less expensive option of a chain-link fence, and the parties mutually agreed on cedar panels. Mrs. Girard did not suggest a less expensive material.
27. Fourth, Mrs. Girard says that Ms. Chisholm "half-painted" the Girards' side of the fence. While photographs in evidence show that some paint from Ms. Chisholm's side of the fence has dripped onto the Girards' side in some places, I find this is a minor aesthetic issue that does not affect the parties' agreement. Ms. Chisholm had informed Mrs. Girard that she intended to paint her side of the fence, and did not say that she would paint the Girards' side. Mrs. Girard did not file a counterclaim or claim a set-off for the for the cost of removing or covering the paint drips in any event.
28. Lastly, in Mr. Girard's submissions he says that Mrs. Girard can sometimes be "persuaded" when she feels pressured by others. He says this is because conflict in Mrs. Girard's brain can lead to life-threatening seizures. While Mrs. Girard briefly addresses her medical condition in her submissions, she does not say that it caused her to agree to pay for a portion of the fence when she otherwise would not have done so. There is no medical evidence before me to support a finding that Mrs. Girard lacked capacity to freely agree with Ms. Chisholm. I find the parties' messages in evidence also do not establish that Mrs. Girard was under any duress to agree to pay for the fence.
29. In summary, I find Mrs. Girard agreed to pay Ms. Chisholm \$1,760 plus tax for the portion of the fence between the parties' properties. I find Mrs. Girard has not established any reason not to uphold this agreement. While \$1,760 plus 5% tax equals \$1,848, I find Ms. Chisholm's claim is limited to the \$1,835.30 claimed in her Dispute Notice. I order Mrs. Girard to pay Ms. Chisholm this amount.

INTEREST, CRT FEES, AND EXPENSES

30. The *Court Order Interest Act* applies to the CRT. Ms. Chisholm claims interest from September 2022. I find this reasonable, as Mrs. Girard originally agreed to pay in full in September 2022. As the parties did not agree on a specific date, I order pre-judgment interest on the \$1,835.30 from September 30, 2022 to the date of this decision. This equals \$126.67.
31. 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 Ms. Chisholm, as the successful party, is entitled to \$150 in CRT fees.
32. Ms. Chisholm also claims \$23.20 in dispute-related expenses for registered mail, which is supported by a receipt in evidence. The receipt shows this amount was for two separate deliveries, so I infer Ms. Chisholm separately mailed the Dispute Notice to each respondent. Because Ms. Chisholm was only successful against one respondent, Mrs. Girard, I award half of this amount, or \$11.60.

ORDERS

33. Within 30 days of this decision, I order Mrs. Girard to pay Ms. Chisholm a total of \$2,123.57, broken down as follows:
 - a. \$1,835.30 in debt,
 - b. \$126.67 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$161.60, for \$150 in CRT fees and \$11.60 for dispute-related expenses.
34. Ms. Chisholm is entitled to post-judgment interest, as applicable.
35. I dismiss Ms. Chisholm's claims as against Mr. Girard.

36. 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.

Alison Wake, Tribunal Member