



# Civil Resolution Tribunal

Date Issued: July 30, 2018

File: SC-2017-007645

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pearson et al v. The Owners, Strata Plan VIS 1801*, 2018 BCCRT 397

**B E T W E E N :**

Chalmer Pearson and Heather Pearson

**APPLICANTS**

**A N D :**

The Owners, Strata Plan VIS 1801

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This small claims dispute is about an alleged breach of a settlement agreement.
2. The applicants, Chalmer Pearson and Heather Pearson, own a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 1801 (strata).
3. In June 2017, the parties signed a settlement agreement related to a previous dispute filed with the Civil Resolution Tribunal (tribunal). The applicants say the strata owes \$724.50 under the agreement, and seek an order for payment of that amount.
4. The strata says the money claimed by the applicants is now owed under the terms of the agreement.
5. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in

a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

10. The issue in this dispute is whether, under the terms of the settlement agreement, the strata must pay the applicants \$724.50.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. In December 2016, the applicants filed a dispute against the strata.
13. A tribunal case manager facilitated mediation between the parties, and the parties signed a settlement agreement. The agreement was dated June 8, 2017, but the correspondence shows it was signed shortly after June 8.
14. The agreement says it is a “full and final settlement of the Dispute”. It says the parties would cooperate to carry out a project in the rear yard of the applicants’ strata lot, consisting of the following:
  - Raising the yard level by up to 8 inches
  - Replacing the existing retaining wall with one made of either allan blocks or cinder blocks, at the applicants’ option, and raising the wall to the height required by the raised land.

15. The agreement says the applicants could hire whomever they chose to complete the project. The agreement also contains further details about payment for the project, including that the strata would pay the cost of materials “pertaining to” the wall, subject to the following conditions:
- The applicants would pay for any price difference between allan blocks and cinder blocks.
  - The applicants would pay for any extra blocks required to raise the level of the property.
16. The applicants say the new retaining wall is now complete, and they paid for all the labour and materials. The applicants say that under the terms of the settlement agreement, the strata owes them \$724.50 for the retaining wall, made up of \$94.50 for disposal of wood and fill and \$630 for cinder blocks.

*\$94.50 for Disposal of Wood and Fill*

17. The applicants say that in order to begin building the foundation of the new retaining wall, it was necessary to remove and dispose of the wooden ties from the old wall, and also remove and dispose of 2 loads of fill that were dug out. The contractor’s December 9, 2017 invoice shows that wood and fill disposal cost \$90 plus GST, for a total of \$94.40.
18. The applicants say that under the settlement agreement, the strata must pay for these disposal charges. The strata says this is not included in the settlement agreement.
19. While I accept that disposal was a necessary part of the project, it is not mentioned in the settlement agreement. The agreement says only that the strata will pay the cost of materials “pertaining to” the wall. It says the applicants will pay for labour, as well as for future repair and maintenance. This indicates that the parties had no “meeting of the minds” about disposal costs when they signed the settlement agreement.

20. I find that disposal of wood and fill is not a “cost of materials pertaining to the Wall”, and in fact is more similar to a labour cost, as the fee is related to the effort and expense of taking the wood and fill away.
21. The burden of proving the claim for disposal costs is on the applicants. The settlement agreement does not specify that the strata must pay, so I find the applicants have not met this burden, and the strata is not obligated to pay for wood or fill disposal.

*\$630 for Cinder Blocks*

22. The strata says it does not have to pay the applicants’ \$630 claim for cinder blocks because none were purchased. The evidence shows that the applicants’ contractor used allan blocks rather than cinder blocks to build the new wall. Allan blocks are a brand of cement building blocks with a special shape for interlocking. The invoices provided by the applicants show they bought allan blocks (identified as AB) in November and December 2017.
23. Paragraph 4(a) of the settlement agreement says the strata must pay for the cost of materials pertaining to the wall, but the applicants must pay for the difference, if any, between the cost of allan blocks and cinder blocks.
24. The strata’s correspondence says the applicants are not entitled to any reimbursement for the cinder blocks unless they can produce an invoice for their purchase. This assertion is contrary to the terms of the settlement agreement. While there is no way for the applicants to produce an invoice for cinder blocks they never bought, paragraph 4(a) of the agreement nonetheless says the strata must pay for what cinder blocks would have cost, and the applicants must pay the difference.
25. The applicants claim \$630 for cinder blocks. I find this amount is not supported by any evidence, and is contrary to the estimates provided by the applicants’ contractor.

26. The contractor wrote in his December 21, 2017 email that using cinder blocks for the wall would have essentially made no difference in the overall cost of the materials, as he would have had to fill the blocks with concrete after placing them, and the labour costs would have been higher. While I accept this evidence from the contractor, it is not determinative of this dispute. Based on the wording of paragraph 4(a) of the agreement, if the contractor had used cinder blocks and a lot of concrete, the strata would have been obliged to pay for both the concrete and the cinder blocks. Since allan blocks were used, the strata only had to pay for the cost of the allan blocks minus the cost of cinder blocks, plus the other building materials actually used (my emphasis).
27. The applicants claim for \$630 is based on a hypothetical cost breakdown set out in the contractor's email, as well as a December 3, 2017 quote from the contractor. Neither of these documents indicate that cinder blocks would have cost \$630. Instead, the \$630 estimate includes \$280 for cinder blocks and caps, plus amounts for other materials such as sand, gravel, as well as delivery fees. Similarly, the contractor's December 21 email said the cinder blocks would have cost \$280.
28. I am persuaded by this evidence from the contractor, and I accept it. I also note the \$280 quote for cinder blocks is amount is very close to the \$267.97 the strata says the cinder blocks should have cost, even though the strata also did not provide any invoice or catalogue printout showing the price of cinder blocks.
29. The applicants are therefore entitled, under the terms of paragraph 4(a) of the agreement, to reimbursement of \$280 plus GST (\$294) for what cinder blocks would have cost. The applicants are also entitled to reimbursement of the contractor's December 9, 2017 invoice for additional building materials in the amount of \$105 which were actually used in the retaining wall. While the December 9 invoice totals \$241.50, the applicants admit that \$42 was for a fence post not covered by the settlement agreement, and I have already found that the strata is not responsible to pay the \$94.50 on that invoice for wood and fill disposal.

30. In conclusion, I find that based on the wording of the June 2017 agreement, the strata must reimburse the applicants a total of \$399 for building materials pertaining to the retaining wall.
31. The applicants are also entitled to interest under the *Court Order Interest Act* (COIA), as set out below in my order.
32. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicants were substantially successful, so I order that the strata reimburse them \$125 paid in tribunal fees.

## **ORDERS**

33. I order that within 30 days of this decision, the strata pay the applicants a total of \$526.75, broken down as follows:
  - a. \$399 as reimbursement for building supplies,
  - b. \$2.75 in prejudgment interest under the COIA, and
  - c. \$125 for tribunal fees.
34. The applicants are also entitled to post-judgment interest under the COIA.
35. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
36. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a

tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Kate Campbell, Tribunal Member