



# Civil Resolution Tribunal

Date Issued: December 12, 2018

File: SC-2017-005055

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gamble v. Catchpole*, 2018 BCCRT 836

BETWEEN:

Richard Gamble

**APPLICANT**

AND:

Darren Catchpole

**RESPONDENT**

AND:

Richard Gamble

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This dispute is about an agreement to build a fence.
2. The applicant Richard Gamble says he built a fence for the respondent Darren Catchpole, but was not paid. Mr. Gamble claims \$1,338.61 for construction and \$540 for money paid to his “helper”.
3. Mr. Catchpole says the fence was built incorrectly. He counterclaims, saying the applicant’s mistakes cost him \$1,575 to fix.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (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.
6. 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.
7. 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.
8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

- a. order a party to do or stop doing something;
- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Is Mr. Gamble entitled to payment of \$1,338.61 for the fencing work performed?
  - b. On the counterclaim, is Mr. Catchpole entitled to reimbursement of \$1,575 for fencing work he says needed to be re-done?

## **EVIDENCE AND ANALYSIS**

10. In his civil claim, as the applicant Mr. Gamble bears the burden of proof on a balance of probabilities. Mr. Catchpole bears the same burden of proof in his counterclaim. I have only referred to the evidence and submissions where needed to explain my decision.
11. Mr. Gamble says he was hired to build a fence 5 feet 5 inches high at the gate, gradually increasing to 7 feet 2 inches high where the property met the road.
12. Mr. Gamble says he bought and cut lumber to those specifications. After he did so, he says Mr. Catchpole asked for a 6 foot 2-inch-tall fence instead.
13. Mr. Catchpole disagrees. He says he hired Mr. Gamble to build a 6 foot 2-inch-tall fence, to match an existing fence on his property. He says Mr. Gamble then cut several of the fence posts too short, meaning that the fence could not be built to the required height without buying new material.

14. Mr. Catchpole says the applicant quoted him \$1,600 for labour to build the fence and said the work would be done in about four days.
15. Mr. Gamble worked on the fence in July 2017. When Mr. Gamble failed to build the fence as agreed, including cutting several fence posts too short, Mr. Catchpole says he stopped the work and hired another contractor to repair and finish the job.
16. On July 17, 2017, Mr. Catchpole bought six 10 ft fir posts from Dave's Contracting, for \$300.
17. On August 10, 2017, Mr. Catchpole was invoiced by the second contractor \$2,450 for repairing, reinstalling and completing work on the fence. This invoice specifies that four posts had to be removed and reinstalled, and that several panels also needed reinstallation using screws. The invoice includes costs for building gates and trimming the fence posts.
18. On August 11, 2017, Mr. Gamble invoiced Mr. Catchpole for \$1,338.61, made up of rental of a builder's level, wood screws, nails and pins, and labour. The invoice does not specify number of hours or the hourly rate for labour. This invoice was prepared only after the fence was completed by another contractor.
19. Mr. Gamble admits that he did not complete work on the fence.
20. Due to the timing of his invoice, lack of detail in it, and the absence of other evidence supporting Mr. Gamble's account of events, I prefer Mr. Catchpole's evidence about the verbal agreement reached between the parties. I find that Mr. Catchpole asked Mr. Gamble to build a 6ft 2-inch fence. I find that Mr. Gamble agreed to build the fence for an estimated cost of \$1,600.
21. The photographs filed in evidence by the respondent show defects in fence height, and panel board placement. I prefer Mr. Catchpole's evidence and find that Mr. Gamble made errors, including cutting the fence posts too short, resulting in wasted materials and a need for the fence to be re-done. Mr. Gamble failed to complete the fence to a satisfactory standard.

22. I find that Mr. Gamble has not met the burden of proving he is entitled to the \$1,338.61 he claims for the fence.

### ***Counterclaim***

23. I found that Mr. Gamble breached the contract reached with Mr. Catchpole to build the fence to a satisfactory standard. Damages for the breach of contract should put Mr. Catchpole in the position he would have been in had the contract been performed.

24. In his counterclaim, Mr. Catchpole seeks reimbursement of \$1,575, representing part of the cost of hiring a second contractor to fix the fence.

25. Mr. Catchpole says total costs to repair and rebuild the fence were \$3,125, broken down as:

- a. \$2,450 in labour,
- b. \$400 for replacement posts,
- c. \$325 in wood waste (1x6 panel boards and lost materials that were incorrectly cut by the applicant), and
- d. tractor to pull out incorrectly cut posts.

26. Based on the invoices Mr. Catchpole filed in evidence, I find that he had to pay for replacement posts, and to have the fence repaired and aspects of it reinstalled. The purchase of four replacement 10-foot posts supports my finding that Mr. Gamble cut some of the posts too short.

27. Mr. Gamble says the counterclaim is inflated because the new contractor charged \$75.00 per hour, whereas his labour rate was \$30.00 per hour.

28. Mr. Catchpole disagrees. He says Mr. Gamble's initial quote was for \$50 an hour for two laborers and estimated completion time of 4 days at \$400/day, for a total cost of \$1,600.

29. Again, I prefer Mr. Catchpole's evidence. I find Mr. Catchpole was promised a satisfactory fence and Mr. Gamble failed to build it. Mr. Gamble cannot succeed in defending the counterclaim even if there were different labour rates. I do not find \$75 per hour is an unreasonable rate for the replacement fence labour, in the circumstances.
30. I find that Mr. Catchpole has proven his counterclaim, which is a portion of the total price he paid the second contractor. I accept the \$1,575 amount as a reasonable amount representing the fencing work and materials that needed to be re-done but excluding the costs of completing the fence, which Mr. Catchpole should pay the second contractor to do as he does not have to pay Mr. Gamble
31. Because he did not fulfil his part of the verbal agreement to build the fence, Mr. Gamble is not entitled to payment. I find that he must pay Mr. Catchpole \$1,575, for materials that needed to be replaced and work that needed to be redone.
32. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Catchpole is entitled to reimbursement of \$125 in tribunal fees.
33. Mr. Catchpole is entitled to pre-judgement interest under the *Court Order Interest Act* (COIA) from August 10, 2017, the date the second contractor charged for the work, to the date of this decision.

## **ORDERS**

34. Within 10 days of the date of this order, I order Mr. Gamble to pay Mr. Catchpole a total of \$1,724.05, broken down as follows:
  - a. \$1,575 in damages for breach of the fencing contract,
  - b. \$24.05 in pre-judgment interest under the COIA from August 10, 2017, and
  - c. \$125 for tribunal fees.

35. Mr. Catchpole is entitled to post-judgment interest, as applicable.
36. Mr. Gamble's claims are dismissed.
37. 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.
38. 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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Julie K. Gibson, Tribunal Member