



# Civil Resolution Tribunal

Date Issued: May 17, 2019

File: SC-2018-007592

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pratt v. Express Custom Trailer Mfg. Inc.*, 2019 BCCRT 603

B E T W E E N :

Gordon Pratt

**APPLICANT**

A N D :

Express Custom Trailer Mfg. Inc.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a refund of a \$1,000 deposit the applicant, Gordon Pratt, paid through his contractor carpenter DS for the respondent, Express Custom Trailer Mfg. Inc., to build a set of metal stairs. DS is not a party to this dispute. The

applicant says he changed his mind and under the *Business Practices Consumer Protection Act* (BPCPA) is entitled to the deposit back.

2. The respondent says DS paid it the \$1,000 deposit and provided drawings. When the respondent had nearly completed the stairs, it says the applicant emailed asking for a contract and his deposit back. The respondent told him it was too late for a refund. The respondent says the stairs are ready on payment of an outstanding bill of \$881 plus tax. There is no counterclaim before me.
3. The applicant is self-represented. The respondent is represented by Tony Ethier, who I infer is either a principal or employee. For the reasons that follow I allow the applicant's claims in this dispute.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

6. 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.
7. Under tribunal rule 9.3(2), 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.

## **ISSUE**

8. The issue is whether the respondent must pay the applicant \$1,000 as a refund of the deposit the applicant's contractor paid the respondent for the construction of metal stairs, since completed.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. There is no written contract in evidence before me, and I find there never was one. The applicant admits that he did not contract directly with the respondent. He says in mid-April 2018 "through my carpenter I contracted" with the respondent for the construction of metal stairs for his house. The applicant says the agreed timeline was 2 weeks, which the respondent did not meet. The parties agree that the agreed price was \$1,800 plus tax.
11. The evidence shows that on May 4, 2018 DS gave the applicant's \$1,000 cheque to the respondent who cashed it on May 15, 2018. The applicant's evidence shows there were brief calls made between the parties on May 24, 2018. However, it is also undisputed that all substantive communications about the stairs' construction

were dealt with by DS, not the applicant himself, until around June 1, 2018. Nothing turns on the precise date.

12. Next, the respondent says the stairs were started, or nearly done, when the applicant asked for the deposit back. The applicant says at most they could have been only half done. Nothing turns on the difference, given my conclusions about the BPCPA set out below.
13. The applicant says he changed his mind about the stairs, because he came to believe the respondent was trying to raise the price (on the basis that the respondent said railings were not included). The respondent's June 9, 2018 email makes it clear it was never charging extra for railings. The respondent says the applicant later wanted wood stairs instead of metal ones. Given my conclusions below about the BPCPA, nothing turns on the applicant's reason for cancellation.
14. It is undisputed the respondent has refused to pay the applicant \$1,000 for the requested deposit refund, on the basis the contract was with DS and because the stairs work had been started, if not largely completed, when the applicant asked for the \$1,000 back.
15. Under the law of contract, while the applicant paid the deposit, he was not the contracting party with the respondent – DS was. I find the facts do not support a conclusion the applicant was the contracting party and DS was only the applicant's agent. However, nothing turns on it even if I am incorrect about that, given the consequences flowing from the respondent's failure to comply with the BPCPA, as discussed below.
16. On June 1, the applicant emailed the respondent that DS was no longer representing him. The same day, the applicant sent the respondent a completed form titled 'Notice of Cancellation of a Future Performance Contract', as provided under section 23(5) of the BPCPA, and that he had terminated the contract and required the respondent to provide a refund.
17. So, what are the relevant provisions of the BPCPA?

18. Under the BPCPA, a “consumer” is defined as an individual who “participates in a consumer transaction” but does not include a guarantor. There is no suggestion in the evidence before me the applicant was a guarantor, which is not a defined term under the BPCPA. I find the applicant was a consumer because by providing the \$1,000 deposit to the respondent who cashed the cheque, the applicant participated in the transaction, even though the respondent’s contract was with DS.
19. A “consumer transaction” is defined to include a supply of goods or services by a supplier to a consumer for purposes that are primarily personal, family or household. There is no question the respondent was a supplier. Significantly, the definition of “supplier” states they are a supplier whether or not there is a contract between them and the consumer. This supports my conclusion that it does not matter that the respondent contracted with DS and not with the applicant directly.
20. Section 17 of the BPCPA defines a ‘future performance contract’ as being one between a supplier and consumer for goods or services for which the supply or payment in full of the total price is not made at the time the contract is made or partly executed.
21. Because the custom order for the stairs was made without full payment and without supply being provided at the time, I find that order fell within the definition of a future performance contract. This was certainly the case at the time the May 4, 2018 \$1,000 deposit cheque was provided.
22. Sections 19 and 23 of the BPCPA state that for future performance contracts, among other terms not relevant to this dispute, the contract must set out the supplier’s name, business address and other contact information, the date the contract was made, a detailed description of the goods or services, an itemized purchase price, the total price, and a detail statement of the terms of payment. In addition, the contract must set out the supply date and the date the supply will be complete, and if there are periodic payments, the amount of each.

23. Section 23(2)(c) says the supplier must give a copy of the future performance contract to the consumer within 15 days after the contract is entered into. As noted, there was no written contract at all and nothing provided to the applicant. I find the respondent therefore breached section 23(2)(c).
24. Section 23(5) states a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than 1 year after the date the consumer receives a copy of the contract if the contract does not contain the required information, as summarized above. As noted above, the applicant did so on June 1, 2018.
25. I acknowledge that the consequences of the respondent's failure to comply with the BPCPA are onerous. It made custom stairs for the applicant as ordered and expended resources on the work. I infer the respondent has no use for the custom stairs it still retains. However, the BPCPA governs and I am bound to apply it. Given the respondent's failure to comply with the BPCPA and under its terms about cancellation, I find the respondent must refund the applicant the \$1,000.
26. The applicant is entitled to pre-judgment interest on the \$1,000 under the *Court Order Interest Act* (COIA), from June 1, 2018 when he sent the Notice of Cancellation.
27. The applicant was successful. In accordance with the Act and the tribunal's rules, I find the applicant is entitled to reimbursement of \$125 in tribunal fees. He is also entitled to reimbursement of \$21 in dispute-related expenses related to serving the Dispute Notice, which I find reasonable.

## **ORDERS**

28. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,161.62, broken down as follows:
  - a. \$1,000 in debt,

b. \$15.62 in pre-judgment interest under the COIA, and

c. \$146, for \$125 in tribunal fees and \$21 in dispute-related expenses.

29. The applicant is entitled to post-judgment interest as follows.

30. 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.

31. 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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Shelley Lopez, Vice Chair