



Civil Resolution Tribunal

Date Issued: July 11, 2019

File: SC-2019-000214

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roberts v. Palmer et al*, 2019 BCCRT 840

B E T W E E N :

JOHN ROBERTS

APPLICANT

A N D :

PAUL PALMER and BRIDGES MARINA LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a sailboat moorage agreement.
2. The applicant John Roberts moored his boat at the respondent Bridges Marina Ltd. (Bridges). From April to June 2018, Mr. Roberts paid his moorage fees monthly, in cash.

3. In July 2018, Mr. Roberts says he paid Bridges \$7,875.00 on the understanding that it would be held to his credit for future monthly moorage fees. He claims there was no annual contract for moorage. Mr. Roberts removed his boat from Bridges in September 2018. He claims a refund of \$4,921.65, which he describes as remaining with Bridges, held in trust to his credit.
4. Bridges did not file a Dispute Response. The respondent Paul Palmer, who I infer is Bridge's representative and principal, filed a Dispute Response on March 7, 2019. Although Bridges is in default, based on the evidence and submissions discussed below I find there is no basis for any findings against it.
5. Mr. Palmer says Mr. Roberts entered a written moorage contract with Bridges in April 2018. Mr. Palmer says that in July 2018 Mr. Roberts decided to change to annual moorage. Mr. Palmer says the terms of the contract remained the same. Mr. Palmer says Mr. Roberts paid annual moorage, understanding his fees were non-refundable.
6. Mr. Palmer says neither he nor Bridges owe any money to Mr. Roberts.
7. The applicant is represented by his spouse, Margaret Roberts. Mr. Palmer is self-represented.

JURISDICTION AND PROCEDURE

8. 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*. 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.
9. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects,

this dispute amounts to a “he said, he said” scenario with both sides calling into question the credibility of the other. Here, the central question is whether the parties reached a verbal agreement for annual moorage in July 2018. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

10. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
11. 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.
12. Under tribunal rule 9.3(2), 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.

ISSUE

13. The issue in this dispute is whether or to what extent Mr. Roberts is entitled to a \$4,921.65 refund of his moorage fees at Bridges for the year ending June 30, 2018.

EVIDENCE AND ANALYSIS

14. In this civil claim, Mr. Roberts bears the burden of proof on a balance of probabilities.
15. On April 5, 2018, Mr. Roberts entered a written contract (April 2018 contract) with Bridges, to moor his 60-ft sailboat. The April 2018 contract says that payments were to be made monthly, in cash.
16. I find that the April 2018 contract
 - a. specified it was for monthly moorage, not annual moorage,
 - b. listed monthly moorage rates at \$12 per foot, but only \$10 per foot if an owner enters an annual contract,
 - c. provided that “paid moorage fees” were not refundable “in any circumstances”
 - d. allowed a boat owner to vacate Bridges on 45 days written notice,
 - e. could be renewed by the owner by written notice to Bridges, by the 20th day of the last month in which the April 2018 contract expired, and
 - f. did not specify an expiry date.
17. The monthly moorage fee was \$782.25. Mr. Roberts paid this amount in each of April, May and June 2018.
18. Mr. Palmer says that on June 29, 2019 Mr. Roberts agreed to pay Bridges an annual moorage fee of \$7,875.00 for July 1, 2018 to June 30, 2019.
19. On June 29, 2018, Bridges issued Mr. Roberts an invoice for \$7,875.00. The invoice says the payment is for moorage for of a 60-foot sailboat for July 1, 2018 to June 30, 2019. The invoice does not say whether the fee is refundable or not.
20. The invoice specifies a moorage charge of \$10.00 per foot.
21. Mr. Roberts paid the \$7,875.00, by bank draft dated June 30, 2019.

22. I find that the annual moorage fee results in a lower overall payment than a monthly payment program.
23. Mr. Palmer says, and I accept, that this price difference is offered on the annual contract because Bridges has certainty of annual moorage for an assigned slip.
24. Through his representative, Mr. Roberts says that he did not have an annual moorage contract with Bridges. He says that he paid for moorage up front for the year, but understood it would be credited to his account, with monthly payments coming out of it as he used the slip.
25. A preliminary issue arises from Mrs. Roberts' submissions that Mr. Roberts could neither read nor understand the April 2018 contract, nor any subsequent agreement with Bridges in July 2018, if he made one. The implication of this submission is Mr. Roberts may not have been capable of understanding his contract(s) with Bridges, due to health issues.
26. When someone is unable to understand the meaning and effect of a contract that they purport to agree to, they are not bound by that contract. Put another way, a contract is voided where one of the parties is legally incapable of entering it.
27. A medical note from Dr. A. Natarajan, family physician to Mr. Roberts for over a decade, was filed in evidence.
28. Dr. Natarajan writes that Mr. Roberts' ability to comprehend complex written materials "sharply declined after May 2017", owing to medical issues affecting Mr. Roberts at that time
29. I find that Dr. Natarajan's note does not provide evidence about whether Mr. Roberts could understand what he was agreeing to, in either April or July 2018. Rather, Dr. Natarajan's opinion comments only that Mr. Roberts' ability to understand a contract was not as good as it was before May 2017.

30. There was no other evidence, aside from Mrs. Roberts' assertion, that Mr. Roberts was incapable at the time of the contract(s) with Bridges. I note that part of the Dispute Notice is written in the first person, as though Mr. Roberts prepared it.
31. For these reasons, I find that the weight of the evidence does not support a conclusion that Mr. Roberts was legally incapable of entering a moorage contract with Bridges in spring and summer 2018.
32. The remaining questions are whether the parties:
 - a. remained in the April 2018 contract or agreed to either an extension of the April 2018 contract as of July 2018,
 - b. made a new verbal agreement in July 2018, for annual moorage, on a non-refundable basis, or
 - c. made a new verbal agreement in July 2018 to have a full payment made, but on a refundable basis as to any unused balance.
33. In July 2018, Mr. Palmer says Mr. Roberts decided to change to an annual moorage agreement. Mr. Palmer says Mr. Roberts made this decision because the moorage would then be \$1,512.00 less than if Mr. Roberts paid monthly for the year.
34. No new written agreement was prepared.
35. On September 25, 2018, Mr. Roberts removed his boat from Bridges. It is undisputed that Mr. Roberts did not provide written notice that he was leaving.
36. Mr. Palmer provided evidence about a conversation he had with Mr. Roberts at Bridges in December 2018. Mr. Roberts' did not dispute the precise details of this conversation but gave fewer details of what was said. I accept Mr. Palmer's evidence about this conversation. I find that Mr. Roberts asked Mr. Palmer to refund of the balance of his annual moorage fee. Mr. Palmer refused. Mr. Palmer suggested that Mr. Roberts attempt to sublet his slip for the balance of the year.

The parties agree that Mr. Palmer then offered Mr. Roberts \$1,000, which he refused.

37. I find that the July 2018 contract was a new verbal agreement between Bridges and Mr. Roberts. I say this because the April 2018 contract was not changed to reflect annual billing, nor was it formally extended by written notice.
38. Mr. Roberts says that he became unhappy with his slip at Bridges because he had been told by a Bridges employee that he and his wife could live aboard their boat. This permission later changed after “neighbours along the marina were complaining.” Because there is no evidence to corroborate this assertion, I find that no assurance was made that Mr. and Mrs. Roberts could live aboard. The April 2018 contract specified that Bridges did not permit living at the slip. I find that Mr. Roberts was aware of this restriction, and that it was an implied term of the July 2018 contract.
39. Mr. Roberts also says his slip had “insufficient draft” meaning his boat might hit the bottom. No direct evidence was offered to prove this contention, such as a photograph of the slip water level. I find that Mr. Roberts has not proven a problem with the slip that would amount to a breach of the July 2018 agreement by Bridges.
40. When there is no written contract, the party trying to prove that the verbal contract exists must prove that the parties agreed on essential terms of the agreement. Here, I find that Bridges has proven a verbal agreement, based largely on the information shown in the July 2018 invoice.
41. Mr. Roberts argues that the \$7,875 he paid was to be held to his credit, and in trust for him. The language of the invoice demonstrates otherwise. It specifies the whole year and provides the annual moorage rate, discounted from the monthly rate. For these reasons, I find that Mr. Roberts has not met the burden upon him to prove that the monies paid were something other than the annual moorage fee. There would be no benefit to Bridges to offer reduced annual moorage rates if the user could claim a pro-rated refund balance at any time.

42. Because the July 2018 invoice specifies that the moorage charge is for the year and provides for the lower annual moorage rate of \$10 per hour, I find that Mr. Roberts verbally agreed to enter an annual contract with Bridges on these terms.
43. I also find that Mr. Roberts understood that, in exchange for the lower annual moorage price, his moorage fee would be non-refundable. I find that this was implied term of the July 2018 agreement, consistent with the price and term specified in the invoice, and with prior dealings between Mr. Roberts and Bridges.
44. For these reasons, I find that Mr. Roberts paid the \$7,875 to Bridges as a non-refundable annual moorage fee. I dismiss his claims and this dispute against Bridges and Mr. Palmer.
45. 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. As neither Bridges nor Mr. Palmer paid any fees, I make no order in this regard.

ORDER

46. I dismiss Mr. Roberts' claim and his dispute.

Julie K. Gibson, Tribunal Member