



# Civil Resolution Tribunal

Date Issued: July 31, 2019

File: SC-2019-000352, SC-2019-000573

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ellis-Gray v. Marlene Dos Reis (dba Verde Studio)* 2019 BCCRT 923

B E T W E E N :

JAN ELLIS-GRAY

**APPLICANT**

A N D :

MARLENE DOS REIS (Doing Business As VERDE STUDIO)

**RESPONDENT**

A N D :

JAN ELLIS-GRAY

**RESPONDENT BY COUNTERCLAIM**

---

**REASONS FOR DECISION**

---

Tribunal Member:

Kathleen Mell

## **INTRODUCTION**

1. In this dispute the applicant and respondent in the second dispute, Jan Ellis-Gray contracted with the respondent, Marlene Dos Reis (Doing Business As Verde Studio), to build a canopy for his boat.
2. As there was a discrepancy in the names on the Dispute Notices I asked the parties to confirm their names. Mr. Ellis-Gray confirmed that his legal first name is Jan but that he goes by one of his middle names, Dominic. Mr. Ellis-Gray also confirmed that he named Marlene Dos Reis as respondent because he gave the deposit to her and did not believe Verde Studio was a legal entity. Ms. Dos Reis did not make a submission.
3. Based on the information I accept that the parties in both claims are the same, Jan Ellis-Gray and Marlene Dos Reis (dba Verde Studio). I have changed the style of cause to reflect this and have decided to determine both disputes together.
4. In his dispute SC-2019-000352, Mr. Ellis-Gray says the canopy was not built to an acceptable standard. Mr. Ellis-Gray acknowledges that he did get some value from some materials provided by Ms. Dos Reis, he only asks that \$610.00 of his \$1,125.00 deposit be refunded. Mr. Ellis-Gray represents himself.
5. In her dispute SC-2019-000573, Ms. Dos Reis (dba Verde Studio) says Mr. Ellis-Gray's boat frame was the problem, not the canopy she supplied. She seeks \$2,190.20 for the canvas work she did for Mr. Ellis Gray's boat. Ms. Dos Reis represents herself.

## **JURISDICTION AND PROCEDURE**

6. 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.

7. 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, she said” scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 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 therefore decided to hear this dispute through written submissions.
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 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, where permitted under section 118 of the Act c) order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

10. The issues in these disputes are
  - a. Was the canopy built to an acceptable standard, and if not, what is Mr. Ellis-Gray’s appropriate remedy?
  - b. If the canopy was properly built, what is Ms. Dos Reis’ appropriate remedy?

## EVIDENCE AND ANALYSIS

11. In a civil dispute such as this, the applicant must prove their claim on a balance of probabilities. This means Mr. Ellis-Gray must prove his claim and Ms. Dos Reis must prove hers
12. I will not refer to all the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
13. Neither party disputes that there was a verbal contract between them about a boat canopy, known as a Bimini. They exchanged emails and on April 10, 2018 Ms. Dos Reis told Mr. Ellis-Gray that doing the Bimini with side windows and drop curtain usually costs \$1,600.00, and the rain cover costs about \$650.00. Although Ms. Dos Reis pointed out if Mr. Ellis-Gray wanted to use a better plastic it would be more.
14. On April 16, 2018, Ms. Dos Reis told Mr. Ellis-Gray that the work would take about a month and if he wanted to be put on the waiting list she would need a deposit of 50%. Ms. Dos Reis noted that if Mr. Ellis-Gray brought the boat to her premises that she would try to do the work within one week. Mr. Ellis-Gray was getting other work done on the boat so the project was delayed. Mr. Ellis-Gray gave Ms. Dos Reis the \$1,125.00 deposit in May 2018. On July 9, 2018, Mr. Ellis-Gray let Ms. Dos Reis know that he was in a bay nearby and asked if she was going to come to his place to begin the canopy.
15. On July 26, 2018, Mr. Ellis-Gray texted to ask how the canopy was going because he wanted to take the boat out. Ms. Dos Reis responded that it was not ready yet and that she wanted to drop by that day and double-check something.
16. On August 9, 2018 and in September 2018, Mr. Ellis-Gray told Ms. Dos Reis that he was concerned about the canopy and that it was not taut enough, despite Ms. Dos Reis having said she would adjust it. He wanted it improved and refitted. He attached pictures provided from boats of a similar size to his showing taut canopy covers as examples of what he wanted done.

17. Ms. Dos Reis worked on the canopy on October 1, 2018 and Mr. Ellis-Gray texted on October 6, 2018 that the front section looked way better but his concern was now the back section was collecting water. He sent a picture showing the state of the boat after the rain the previous day. He asked if the drop and sides would take care of this and asked Ms. Dos Reis to complete the work as soon as possible as Mr. Ellis-Gray had to run a bilge pump to drain the water. Ms. Dos Reis responded that once the side windows and rain cover were on it should make it right, and for the first time said the problem was with the frame. However, Ms. Dos Reis still said all should be right once it was finished.
18. On November 1, 2018, Ms. Dos Reis wrote that she finished the covers and hoped Mr. Ellis-Gray had a chance to look at it. She said that she did her best to adjust the frame again but that there was not much she could do with the frame. Ms. Dos Reis noted that the issue was partly that the frame had an extra bar where usually there were only two on a small boat like his. She also said that the extra bar was extending the frame way too far and there was not much angle between the two bars at the back as they were almost the same height. She also stated that she could not tell the level of it without being in the water.
19. Ms. Dos Reis ended the email by telling Mr. Ellis-Gray that she put an extra strap in the middle and the rain cover should help with keeping it tight, but if water still puddles on it, Mr. Ellis-Gray will have to get the water off the top and not let it stay there because it will only make the top stretch and then leak.
20. Mr. Ellis-Gray was travelling and responded to Ms. Dos Reis November 1, 2018 email on November 20<sup>th</sup>. He noted that he got the invoice, which I infer was attached to the email, but that the end result did not meet his expectations for a brand new canopy. He said that from the first time it was fitted, he was not happy with how tight it was. He also stated that when Ms. Dos Reis took on the project and started making patterns she did not indicate that there was any issue with the frame and it was only after trying to adjust the canopy a few times that Ms. Dos Reis decided that the frame was the issue. He noted that his having to remove water

from the roof of the canopy was totally impractical as the canopy's purpose was to be able to leave the boat protected for periods of time in and out of the water.

21. Ms. Dos Reis argues on several occasions Mr. Ellis-Gray knew there was a problem with the frame from the beginning and helped adjust it at one point. She claims at the same time that Mr. Ellis-Gray did not tell her there was a problem with the frame so she presumed there was not one. I find these statements contradictory. Mr. Ellis-Gray denies that he ever helped adjust the frame and says Ms. Dos Reis only brought this up after he complained about the quality of the work. He also submits that he has since contacted other professionals who have told him that the first thing you do when building a canopy is consider the frame.
22. I find it noteworthy that in Ms. Dos Reis's argument in her joined dispute that she states that she does not build frames as a reason why this is not what should have been expected of her. However, in her December 12, 2018 email to Mr. Ellis-Gray she states that she had been in the business for 20 years and she deals with frame people all the time and also builds frames.
23. On December 13, 2018, Ms. Dos Reis told Mr. Gray-Ellis that she tried to adjust the canopy several times but that the problem was with the cheap aluminum frame on the boat and that when you try to make the canopy taut it with this type of frame it tends to deform. She also said that with a frame that has no crown this would make the canopy dish.
24. There is no proof that Ms. Dos Reis brought any of this to Mr. Ellis-Gray's attention before building the canopy. Based on the evidence before me, I prefer Mr. Ellis-Gray's evidence that he had no knowledge of an issue with the frame.
25. Mr. Ellis-Gray was willing to try and resolve the issue and said that he was going to get a frame builder out to look at the boat and give their feedback. He said if the frame was the issue and the frame builder committed to being able to fix or replace the frame such that the canopy would work, he would pay the balance of the

invoice. If the frame builder did not think they could make the canopy work with the frame or a new frame, Mr. Ellis-Gray said they would need to talk about next steps.

26. Mr. Ellis-Gray was then out of town for a couple of days but when he returned he found that Ms. Dos Reis had removed the canopy from his boat. He said that he did not agree to this and also said that the frame builder could not assess the frame or tweak the frame to work with the canopy without the canopy.
27. Multiple texts and emails then went back and forth with Ms. Dos Reis refusing to return the canopy or allow Mr. Ellis-Gray to be involved in the discussions with the frame builder. Ms. Dos Reis took the position that the framer did not need the canopy to straighten out the frame. It also refused to allow Mr. Ellis-Gray to pick up the canopy.
28. On December 7, 2018, Mr. Ellis-Gray sent Ms. Dos Reis an email saying he had been calling, texting, and emailing but had not heard back. He noted the framer said that without the canopy it did not want to comment on whether it could adjust the frame to suit the fabric. Mr. Ellis-Gray said he wanted to resolve the issue so that his boat was protected over the winter and again offered to come to Ms. Dos Reis' premises to pick the canopy up. He said he wanted a plan in place for fixing the issue by the end of December 11, 2018.
29. Ms. Dos Reis responded on December 7, 2018 and said if Mr. Ellis-Gray wanted the canopy back he had to e-transfer the balance as she had spent too much time on it.
30. Mr. Ellis-Gray said that this suggestion was unreasonable and pointed out he paid the deposit in May and that Ms. Dos Reis said that it should take 6 weeks to complete the canopy. Mr. Ellis-Gray says if Ms. Dos Reis would not allow the frame to be adjusted with the canopy, he would start over elsewhere and wanted his deposit back.
31. Ms. Dos Reis responded that the 6 weeks did not refer to a completion date but to the normal waiting period to start the project. I note that in the original emails Ms. Dos Reis said she would complete the job in a week if Mr. Gray-Ellis brought the

boat to her premises. However, I infer that Ms. Dos Reis' position is that the original contract did not have a completion date.

32. On December 11, 2018, after a proposed meeting with Ms. Dos Reis and the framing company failed, Mr. Ellis-Gray said he was going to have somebody else build the canopy from scratch, which he did on December 20, 2018.
33. Ms. Dos Reis points to her willingness to work with Mr. Ellis-Gray's framer or to supply her own framer as proof that as late as December 2018 and early January 2019 she was still willing to resolve things with Mr. Ellis-Gray. However, these later offers were made after Mr. Ellis-Gray had informed Ms. Dos Reis that he had hired somebody else to do the job. I therefore find that nothing turns on this submission.
34. Even up to her last email on January 10, 2019, Ms. Dos Reis was still only suggesting having her framer look at the boat or having Mr. Ellis-Gray's framer call her. She was still not willing to provide the canopy.
35. Ms. Dos Reis provided a picture looking upward at the canopy. I am unable to tell from the angle in the photograph whether the canopy is sagging and since Ms. Dos Reis has admitted there is a problem which needs to be fixed I do not see how this helps her position.
36. Mr. Ellis-Gray has provided a picture taken from above showing the water pooling and the canopy sagging under its weight. He has also provided a picture where the boat is on the water in clear weather. There is no water pooling on the boat, but the canopy is still sagging and is not taut.
37. When a party, in this case Ms. Dos Reis, holds herself out as qualified to perform a specific trade, the law implies a warranty into the contract that she will perform the job in a professional manner consistent with the standards of the trade and employ the proper skill and care required to perform the task at hand. I find these terms were implied into the contract between the parties.



38. I find that Ms. Dos Reis had access to the boat and saw the frame before she built the canopy and, if these issues existed, they should have been addressed before the canopy was built. Also, if the boat needed to be put in the water this also should have been done before the canopy was built. Ms. Dos Reis has indicated that she is very experienced, not only in building cavasses but also with frames. She says that the problem is the cheap aluminum frame and what happens when one tries to put a taut canopy over it. She also says the problem is that the boat has an extra bar. I find that Ms. Dos Reis breached the standard of care by building the canopy which did not fit correctly and did not serve the main purpose it was built for; specifically given that she knew the structure of the frame and the aluminum material it was made of before she started the canopy.
39. Based on the evidence, I find that Mr. Ellis-Gray has proved that Ms. Dos Reis performed substandard work and ultimately did not give Mr. Ellis-Gray the canopy so he could try to salvage the work that was completed. Ms. Dos Reis has provided no explanation as to why she removed the canopy. She states that she would not return it because it was not necessary for the framer to make an assessment. I do not accept this argument. It is reasonable that the framer did not want to give an opinion on whether the canopy would work, given adjustments to the frame may have been necessary, without seeing the canopy. I reject all Ms. Dos Reis's arguments regarding Mr. Ellis-Gray refusing to resolve the issue by hiring a framer or using one it supplied. Without the canopy there was no point in Mr. Ellis-Gray taking these steps.
40. Therefore, I find that Ms. Dos Reis breached the terms of the agreement. I say this because she built an ill-fitting and unfinished boat canopy.
41. Even if I had not decided that Ms. Dos Reis breached the terms of the agreement, I also note that the *Business Practices and Consumer Protection Act* (BPCPA). BPCPA applies to the contract because Ms. Dos Reis meets the definition of "supplier", as it is a person who in the course of business participated in a consumer

transaction by supplying, or offering to supply, goods or services to a consumer, here, Mr. Ellis-Gray.

42. Under section 23 of the BPCPA Ms. Dos Reis contract with Mr. Ellis-Gray was a “future performance” contract that, among other things, required specification of a completion date. Ms. Dos Reis says that a supply date was not given. As such, Mr. Ellis-Gray was entitled to cancel the contract within one year, which he did on December 20, 2018 when he told Ms. Dos Reis that he had hired somebody else to perform the work. Because of the law set out in the BCPCA, I find Mr. Ellis-Gray was entitled to cancel the agreement. As set out above, I also dismiss on the grounds unrelated to the BPCPA, specifically that Ms. Dos Reis did not perform the work agreed upon and the work performed was not satisfactory. Therefore, I find Mr. Ellis-Gray’s claim should be allowed.

### ***Remedy***

43. Ms. Dos Reis says that Mr. Ellis-Gray has the drop curtain, rain cover, and a console cover that are worth more than the deposit he is claiming back. She did not provide any proof of the value of these products. Ms. Dos Reis wants the full cost of the three items or \$1,430.00 plus \$550.00 in extras that were not part of the quote, for a total of \$1,980.00. She does not itemize these extras or detail their costs.
44. Although Mr. Ellis-Gray initially requested that the \$1,125.00 deposit be returned, in his argument he said 50% of the initial amounts quoted for these items is a fair payment for the rain and drop curtain. He submitted that the new company made them fit with the new canopy and, although they do not look as good, they are functional. He also says he is willing to pay the full price of the console cover, so he is proposing that only \$610.00 be refunded. On balance, I find Mr. Ellis-Gray’s position is reasonable.
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 Mr. Ellis-Gray was successful in his claim he is

entitled to have his tribunal fees of \$75.00 reimbursed by Ms. Dos Reis. As Ms. Dos Reis was not successful, I dismiss her claim for tribunal fees.

### ***Dispute SC-2019-000573***

46. In light of my conclusions above, I find Ms. Dos Reis' (dba Verde Studio) dispute must be dismissed. Ms. Dos Reis did not fulfill the parties' contract because the canopy built was substandard. I have addressed the amounts including the extras claimed by Ms. Dos Reis above in making my order that Mr. Ellis-Gray receives a refund of only part of his deposit.

47. I note that Ms. Dos Reis also requested reimbursement for somebody she hired to work on this dispute. Even if Ms. Dos Reis was successful I would not have allowed this expense because, just as the tribunal does not usually allow parties to recover legal fees, it does not usually award compensation for a party hiring somebody to assist with the dispute.

48. I dismiss Ms. Dos Reis' (dba as Verde Studio) claim.

### **ORDER**

49. Within 30 days of this decision, I order Ms. Dos Reis to pay Mr. Ellis-Gray a total of \$697.35, broken down as follows:

- a. \$610.00 as a partial refund of his deposit,
- b. \$12.35 in pre-judgement interest under the *Court Order Interest Act* (COIA) on the amount of the partial refund accruing from the date of the May 13, 2018 deposit, and
- c. \$75.00 as reimbursement for tribunal fees.

50. Mr. Ellis-Gray is also entitled to post-judgement interest under the COIA.

51. 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.
52. 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 passes. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Kathleen Mell, Tribunal Member