



Civil Resolution Tribunal

Date Issued: September 11, 2019

File: SC-2019-003086

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Oppelt v. Clarke*, 2019 BCCRT 1069

B E T W E E N :

HAROLD OPPELT

APPLICANT

A N D :

DEAN CLARKE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an agreement for mineral prospecting. The applicant, Harold Oppelt, says that he hired the respondent, Dean Clarke, to collect, bag, and tag mineral rock samples and then deliver them and data about the samples to the applicant. The applicant says that he paid the respondent, but he did not fulfill his

part of the agreement. The applicant wants a \$1,430.00 refund for work that was not completed.

2. The applicant also says that the respondent kept a metal detector worth \$379.00, a data logbook worth \$500.00 and recording tape worth \$50.00. The applicant also wants reimbursement of the \$5,775.00 he paid for another firm to obtain the data about his mines the respondent did not provide. The applicant has abandoned his claim for any amount above \$5,000.00. The applicant represents himself.
3. The respondent says that he was hired to find two mine sites and explore another set of unnamed mine shafts. He says that he performed the job and that the applicant is just unhappy that there was no connection in the “ore bodies” which meant that there was no mine. The respondent says that the metal detector was worth less than the applicant alleges. The respondent represents himself.

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* (CRTA). 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 some respects, this dispute amounts to a “he said, he 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 find I can fairly hear this dispute through written submissions.

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 make one or more of the following orders, where permitted under section 118 of the CRTA: 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

8. The issue in this dispute is whether the respondent performed the agreed mining exploration work and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
10. I will not refer to all of 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.
11. It is undisputed that the respondent entered into an agreement with the applicant to perform mining exploration work. The crux of the dispute is whether the respondent performed the required work as agreed and if not, what damage the applicant suffered.

Positions of the Parties

12. The parties met on September 5, 2018. The applicant says they agreed that the respondent would follow a 4000 foot trail from a mine shaft to a location known as the Great Gold open pits. Along the route, the respondent was to make stops and chip off, bag and tag rock samples, take photos and record the location.
13. The applicant says that the respondent brought him three rock samples on September 8, 2018. It is undisputed that the parties agreed that the respondent's expenses for that meeting were \$430.00. The parties also agreed at that time that the applicant would pay the respondent \$200.00 a day for five more days work, or \$1,000.00.
14. The applicant says that during those five days the respondent was to obtain 50 rock samples and provide a short summary along with data, including GPS or UTM information, which are both systems for assigning coordinates. He says that he gave the respondent a logbook which showed the areas he should be exploring. The rock samples and the other information were supposed to be couriered to the applicant's home office.
15. The applicant says that the respondent agreed to ship these materials to him on September 17, 2018 and that he paid the respondent the \$1,000.00 agreed to as well as the \$430.00 outstanding for the September 8, 2018 meeting, but the respondent did not provide the rock samples or the data. The applicant also says that the respondent kept his metal detector and pretended that he lost it when he fell down an open mine shaft.
16. In response to the applicant's position, the respondent says that the applicant changed his mind over the course of the time he worked for him and originally said that he did not have to collect rock samples and later asked him where they were. He says that his job was to find two lost mine sites, which he did, and he also explored other sites as required under the agreement. The respondent says that he sent the applicant GPS and UTM location data while he was in the field. The

respondent says that he got \$1,000.00 for five days but that he actually worked eight days. He says that when he fell into the mine shaft he lost \$200.00 worth of his own equipment and that he used his own tools and paid for gas. He says the job was done and he was entitled to keep the money paid. The respondent agrees that he lost the metal detector but says it was not worth much. The respondent made no submissions regarding the logbook and tape.

Evidence and Findings

17. Emails between the parties indicate that from the beginning the respondent knew he was to provide the respondent with the rock samples as well as the other data. On September 10, 2018, he told the applicant that he had 23 samples bagged and tagged. He also said that all of the samples were being professionally logged with all data being recorded in a logbook that would be included with the samples including information about rock type, sample number, UTM coordinate location and any other relevant observations.
18. The respondent also said in the September 10, 2018 email that he was hiking the grid between the two sites and that he would continue to collect samples. He said that he anticipated being done on Thursday September 13, 2018 and that he would ship the samples then along with the metal detector. He stated that the \$430.00 expenses for the September 8, 2018 meeting should be paid now and the \$1,000.00 on completion of the job on Friday, September 14, 2018. On September 11, 2018, the respondent told the applicant that he expected to collect another ten to twelve samples that day.
19. The emails show that the relationship between the parties began to deteriorate over issues about whether the respondent should be driving or walking to the mines and the metal detector's correct use and capability. The respondent told the applicant that the metal detector was like a child's toy.
20. On the morning of September 14, 2018, the respondent emailed the applicant that he had fallen into a mine and that he lost his small pack, his rock hammer, his small

camera, and the applicant's metal detector. He told the applicant that the metal detector was worth \$40.00. I note that he later changed this to being worth less than \$30.00. He said that he had worked the 5 days agreed to and that the applicant had to pay him the \$1,000.00 to receive the rest of the data. The respondent told the applicant that if he did not pay him the money he would give the information to multiple other agencies including environmental groups and newspapers.

21. The applicant told the respondent to provide him with the delivery slip showing the samples and data were shipped and he would put the money in the respondent's bank account. The respondent told him to pay before the bank closed or "all bets" were off. At 3:48 p.m. that same day, the respondent told the applicant if he received the money that day, he would ship the material on Monday September 17, 2018. The applicant submits that the banks were closing so he deposited the money on September 15, 2018. The applicant provided receipts which show that he deposited \$430.28 on September 12, 2018 and \$1,000.00 on September 15, 2018 into the respondent's account. The respondent does not dispute that he received this money. The respondent did not ship the rock samples or any other materials.
22. On September 17, 2018, the respondent told the applicant in an email that he was told many times that he was supposed to be paid for the work and not the samples. I infer this to mean that the respondent was alleging the "work" was verbal information about the mine, and not the data and the rock samples. He indicated that he was cutting off contact with the applicant. I note that the respondent has not submitted evidence to support his claim that he did not have to provide the samples and other data and the emails show that he knew he was supposed to be doing this and he said he was.
23. When the respondent did not provide the samples and data, the applicant went to the police and in the course of that investigation the respondent said that he dropped the samples out at the "mine site." He said that he deleted all information about the applicant's mines and no longer knew the coordinates of where he

dropped them off. The respondent did not say when he dropped the samples off at the mine site.

24. The respondent does not explain why he did not ship the rock samples and data to the applicant or, if he dropped them off at a mine site, why he did not tell the applicant about it at the time. I find the evidence establishes that the applicant paid for the rock samples and data and the respondent promised to courier it. There is no reasonable explanation for the respondent dropping it off somewhere in the field for the applicant to search for and recover, especially without any coordinates. Based on this, I find that the respondent breached the parties' agreement.

Damages

25. Since I find that the respondent breached the agreement and did not deliver all the samples and data, the next issue is what damages the applicant suffered. The applicant paid the respondent \$1,430.00 for 5 days exploration and expenses. I find the first \$430.00 was for the three rock samples which the applicant provided on September 8, 2018, as well as his expenses. Therefore, the applicant is not entitled to reimbursement of this amount.
26. In considering the \$1,000.00 payment, the respondent claims he did half the work by providing verbal information about the mines. I find that this is not what the applicant paid the respondent to do. The respondent was to provide hard data in the form of samples, photographs, and coordinates. Because the respondent did not do this, I find the applicant is entitled to reimbursement of the \$1,000.00.
27. The applicant says that because he did not receive this information he was not able to complete documents about his mine claims, due on December 26, 2018, that would confirm his ownership for the next year and that he had to hire another company to get the data for him. He says that this cost him \$5,775.00 and that the respondent is also responsible for this expense. The applicant provided a receipt for this, but it is dated January 26, 2018, eight months before the events involving the parties. Also, the evidence indicates that at the time of making the agreement the

applicant did not tell the respondent about why he needed the information or the damages he would suffer if he did not obtain it, and only mentioned it for the first time on September 27, 2018 by email.

28. I find that at the time of making the agreement the applicant did not indicate that he was hiring the respondent for this purpose. The applicant has also not proved that he had to pay this amount because the respondent did not complete the work. Therefore, I dismiss the applicant's claim for hiring another company.
29. The applicant requests reimbursement for the metal detector, a logbook, and recording tape which he says the respondent did not return with the samples and the data. The respondent says he lost the metal detector while working and disputes it was worth the amount claimed by the applicant. He says it was more like a child's toy and not worth the amount claimed by the respondent. He has suggested varying amounts saying it was worth between approximately \$30.00 to \$50.00. The respondent makes no submissions on the other items. The applicant did not provide any evidence to establish how much these items were worth. Accordingly, I dismiss his claim for these items.
30. Therefore, I find that the applicant has only proved he is entitled to reimbursement of the \$1,000.00 payment. He is also entitled to interest under the *Court Order Interest Act* (COIA) from the date of the September 15, 2018 payment until the date of this order.
31. Under section 49 of the CRTA, 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 the applicant was successful in his claim that the respondent breached the agreement, he is entitled to have his \$175.00 tribunal fees reimbursed. There were no dispute-related expenses claimed.

ORDERS

32. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$1,192.86, broken down as follows:
- a. \$1,000.00 reimbursement for the September 15, 2018 payment,
 - b. \$17.86 in pre-judgement interest under COIA, and
 - c. \$175.00 as reimbursement for tribunal fees.
33. The applicant is also entitled to post-judgement interest under the COIA. The applicant's other claims are dismissed.
34. Under section 48 of the CRTA, 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.
35. Under section 58.1 of the CRTA, 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