



Civil Resolution Tribunal

Date Issued: June 3, 2020

File: SC-2019-009796

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fraser v. Sadeghizadeh*, 2020 BCCRT 611

BETWEEN:

CRAIG FRASER

APPLICANT

AND:

POURIA SADEGHIZADEH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for fence construction.
2. The applicant, Craig Fraser, says he hired the respondent, Pouria Sadeghizadeh, to build a section of fence. The applicant says he paid the respondent a \$5,000 cash deposit, but later instructed the respondent not to build that section of fence. The

applicant says he has \$4,000 in fence materials ordered by the respondent, but the respondent still owes him \$1,000 because no work was completed on the fence section.

3. The respondent says that while his company, Acro Construction Group Ltd. or Acro Construction Ltd. (Acro), provided fence construction estimates to the applicant, the respondent did not receive a deposit or perform any work on the fence section. He says fence materials were ordered, but when the applicant refused to pay for them, Acro used them to complete construction of a neighbour's fence. The respondent denies owing the applicant anything.
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 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute involves a "he said, he said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the tribunal's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written

evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the applicant paid the respondent a deposit, and if so, is the applicant entitled to a refund of any amount?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove his claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
11. The background to this dispute is that, according to the applicant, the respondent gave him an October 2018 estimate for building a first section of fence, and another estimate several days later for building a second section of fence. The applicant says the respondent built the first fence section outside of his property line, on a neighbour's property. However, the applicant does not claim anything in this dispute for that first fence section, and says he might make a future claim about it. So, I make no findings about the first fence section.
12. The applicant says that before he discovered the alleged problem with the first fence section, the respondent agreed to build the second fence section. The applicant says he paid the respondent a \$5,000 cash deposit for the second fence

section. The applicant says the respondent ordered \$4,000 of fence materials that were delivered to his property, but the applicant then instructed the respondent not to proceed with construction of the second fence section because he was unhappy with the first fence section. The applicant says no work was performed on the second fence section, so the respondent owes him the \$1,000 balance of the deposit.

13. The respondent has a different version of events. He says there was an oral agreement to do some work on the applicant's fence. It is undisputed that the respondent was also building a fence for the applicant's neighbour. The respondent says because he was already doing the neighbour's fence work, he ordered fence materials for the applicant without requiring a deposit. The respondent says when the applicant refused to pay for the materials, he used them to complete the neighbour's fence. Other than providing an October 2018 estimate, the respondent denies performing any work on the second fence section for the applicant.
14. To be successful, the applicant has the burden of proving that he paid the respondent a \$5,000 deposit. I find the evidence fails to show the applicant paid that deposit, for the following reasons.
15. The applicant submitted a copy of the second fence section estimate, on which he had written that he paid the respondent "contractor/owner" a \$5,000 cash deposit on October 17, 2018. The applicant signed the estimate but did not date his signature. Neither the respondent nor anyone else signed or wrote on the estimate.
16. The applicant says he has no receipt for the deposit because the respondent said he did not have his receipt book and would provide a receipt later. However, the applicant does not explain why he did not ask the respondent to write and sign a receipt on a piece of paper, or on the applicant's signed copy of the estimate, at the time the cash changed hands.
17. I note that Acro issued the estimate, not the respondent. I find there is no evidence before me showing that the respondent was acting in his personal capacity, as

opposed to as a representative of Acro, in discussing and arranging for construction of the second fence section. But given the outcome of my decision, I do not need to determine whether the respondent was acting in his personal capacity in allegedly accepting a deposit.

18. The applicant says he still has the fence materials, which he says the respondent purchased with the deposit money. The applicant provided a photo of fence materials, but it is undated. The respondent says he used the fence materials to complete the neighbour's fence, although initially he thought he might have returned them. On the evidence before me, I am unable to determine what happened to the fence materials. So, on balance, I find the applicant has not proven the fence materials were purchased with deposit money.
19. There are no bank account withdrawal records, witness statements, photographs of a cash handover, correspondence, or any other evidence that shows the applicant paid the respondent a \$5,000 deposit. On the evidence before me, I find the applicant has not met his burden of proving that he paid the respondent a deposit. As a result, I find the respondent does not owe the applicant a refund of a deposit. I dismiss the applicant's claim.

Tribunal Fees and Expenses

20. 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. I see no reason in this case not to follow that general rule. The applicant was unsuccessful, so is not entitled to reimbursement of any fees. Further, although the applicant claims \$200 for his time spent preparing and serving this dispute, the tribunal does not generally compensate parties for their time, even when successful, and I decline to do so here. I also do not order reimbursement of any service fees, in part because the applicant submitted no evidence showing the amount of service fees paid. No other expenses were claimed.

21. The respondent is the successful party. He requests reimbursement of a \$50 tribunal fee he paid for setting aside a default decision in this dispute. The respondent needed to request this cancellation because of the applicant's claims, which I have dismissed. So, I order the applicant to pay the respondent \$50 for tribunal fees.

ORDERS

22. Within 30 days of the date of this order, I order the applicant to pay the respondent \$50 for tribunal fees.

23. The respondent is entitled to post-judgment interest, as applicable.

24. I dismiss the applicant's claims.

25. 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. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

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

Chad McCarthy, Tribunal Member