



Civil Resolution Tribunal

Date Issued: June 11, 2020

File: SC-2019-011065

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Deglow v. Shukaliak*, 2020 BCCRT 647

BETWEEN:

SUE ELAINE DEGLOW

APPLICANT

AND:

JAMES SHUKALIAK

RESPONDENT

AND:

SUE ELAINE DEGLOW

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about returning belongings and paying for renovations and bookkeeping. The applicant (and respondent by counterclaim), Sue Elaine Deglow, says the respondent (and applicant by counterclaim), James Shukaliak, refused to return her possessions after they stopped living together, including her bed and work files stored on his computer. Ms. Deglow claims \$1,300 for a new bed, \$2,100 for re-doing a work file, and \$1,500 for future income loss, for a total of \$4,900.
2. Mr. Shukaliak says he could not immediately return Ms. Deglow's possessions because of an undertaking he gave to a peace officer on December 6, 2019, but he returned all of her possessions later. Mr. Shukaliak also says Ms. Deglow should have backed up her work files to her own computer, so he owes her nothing.
3. Mr. Shukaliak also says Ms. Deglow hired him to renovate a house she owned, but did not pay for his labour. Mr. Shukaliak counterclaims for \$4,666.72 in unpaid labour and bookkeeping work he says he provided to Ms. Deglow. Ms. Deglow denies owing Mr. Shukaliak anything because she paid him for the value of his labour, and did not agree to pay him for the bookkeeping work, which she says he did not do.
4. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute involves a “she said, he said” scenario in many 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. I find I can properly assess and weigh the written evidence and submissions before me, keeping in mind that the CRT’s mandate includes proportionality and a speedy resolution of disputes. Therefore, I find that an oral hearing is not necessary, and I decided to hear this dispute through written submissions.
7. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. Ms. Deglow says, and Mr. Shukaliak does not deny, that they lived together for approximately 16 months until their relationship broke down, and had no children together. It appears the parties were not spouses as defined in section 3 of the *Family Law Act* (FLA). Further, the parties do not deny that the possessions at issue in this dispute are Ms. Deglow’s property. For the purposes of this dispute, I find those possessions are not family property within the meaning of section 84 of the FLA. This means this dispute does not fall under the exclusive jurisdiction of the British Columbia Supreme Court. The CRT has statutory jurisdiction to hear small claims disputes in BC valued up to \$5,000, and I find it has jurisdiction to hear this dispute.

ISSUES

10. The issues in this dispute are:

- a. Does Mr. Shukaliak owe Ms. Deglow \$1,300 or another amount for a new bed?
- b. Does Mr. Shukaliak owe Ms. Deglow \$2,100 or another amount as reimbursement for bookkeeping work she re-did?
- c. Does Mr. Shukaliak owe Ms. Deglow \$1,500 or another amount for lost future earnings?
- d. Does Ms. Deglow owe Mr. Shukaliak \$4,666.72 or another amount for unpaid renovation labour and bookkeeping work?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ms. Deglow must prove her claims on a balance of probabilities. Similarly, Mr. Shukaliak must prove his counterclaims to the same standard. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

Does Mr. Shukaliak owe Ms. Deglow \$1,300 or another amount for a new bed?

12. The undisputed evidence is that the parties' relationship broke down, and Ms. Deglow moved out of Mr. Shukaliak's house. Ms. Deglow says she arranged to pick up her belongings on December 4, 2019 and brought a rented trailer to the house on that date. Ms. Deglow says an incident occurred that prevented her from picking up her belongings, and she called the police. Mr. Shukaliak says the details of this incident are not relevant to this dispute, but acknowledges that he was charged with offences dating to December 6, 2019. I make no findings about the December 4, 2019 incident.

13. Mr. Shukaliak signed an Undertaking Given to a Peace Officer on December 6, 2019 (undertaking). The undertaking said that in order to be released from custody, Mr. Shukaliak agreed that he would not communicate, directly or indirectly, with Ms. Deglow, and not go to any location she was known to work or reside.
14. Ms. Deglow says that because of the incident, she was unable to pick up her belongings on December 4, 2019, and Mr. Shukaliak said he was busy on December 5, 2019. Mr. Shukaliak says his lawyer advised him on December 9, 2019 to return Ms. Deglow's business and personal files. This was after Mr. Shukaliak agreed to the undertaking, so I infer that his lawyer was likely aware of it. The parties agree that Mr. Shukaliak returned some of Ms. Deglow's personal effects through a third party on December 12, 2019, but her bed and computer files were not among them.
15. Mr. Shukaliak says his bail officer advised him on December 13, 2019 that exchanging possessions was a violation of his undertaking, so he refused to return any possessions after that date. Ms. Deglow says she also contacted the bail officer around this time, who told her Mr. Shukaliak could return the possessions through a third party. There is no direct evidence before me showing what the bail officer told either party. On balance, I find it unlikely that the bail officer told Mr. Shukaliak that returning the possessions was prohibited, because Ms. Deglow sought their return through a third party, which I find would not necessarily require prohibited "indirect communication." Mr. Shukaliak did not explain why he did not ask his lawyer or a third party to arrange for the possessions' return. He also did not say why he apparently did not question the bail officer's alleged comment, which was contrary to his lawyer's advice to return the possessions.
16. On the evidence before me, I find that the undertaking did not prohibit Mr. Shukaliak from returning Ms. Deglow's possessions. Even if I found it did prohibit their return, I would have found that the undertaking was voluntary, and Mr. Shukaliak was aware of the restrictions it placed on his returning Ms. Deglow's possessions. I note that the undertaking was varied on January 20, 2020. The varied undertaking

specifically permitted Mr. Shukaliak to contact Ms. Deglow through a third party to divide property and participate in this dispute. In these circumstances, I find the varied undertaking clarified the original undertaking, rather than altering a previous prohibition on returning possessions in the original undertaking.

17. The parties agree that Mr. Shukaliak returned the bed on February 25, 2020, and the computer files on March 10, 2020. Mr. Shukaliak says the CRT dispute, initiated in late December 2019, delayed the possessions' return. Mr. Shukaliak did not describe how the CRT dispute caused any delays, and he provided a Dispute Response one month before returning the possessions, so I am not persuaded by this argument.
18. I find that Mr. Shukaliak deprived Ms. Deglow of her possessions without justification beginning on December 13, 2019. I find by doing so, Mr. Shukaliak committed the tort of trespass to chattels, meaning that he intentionally interfered with Ms. Deglow's possession of her goods without consent (see *North King Lodge Ltd. v. Gowlland Towing Ltd.*, 2005 BCCA 557 at paragraph 14).
19. What remedy is appropriate for that trespass? Ms. Deglow says that because she did not have her bed, she purchased a new one on December 21, 2019. At that time, Mr. Shukaliak had refused any further return of Ms. Deglow's possessions, and on December 18, 2019 had asked the police to stop Ms. Deglow from contacting him. I find it was reasonable for Ms. Deglow to expect her bed would be withheld for the foreseeable future, so it was reasonable for her to seek a replacement.
20. Mr. Shukaliak does not take issue with the type or price of bed purchased by Ms. Deglow. I find it appropriate to award the price of the new bed. A receipt shows that the mattress cost \$910.32 and the box spring cost \$78.68, which I find equals \$1,107.68 including tax. I order Mr. Shukaliak to pay Ms. Deglow that amount for the bed. I do not order payment of the other items and fee shown on the receipt, because Ms. Deglow did not say that Mr. Shukaliak withheld similar items, or explain the fee.

21. Turning to moving expenses, the parties agree Mr. Shukaliak paid Ms. Deglow \$200 for half the \$400 cost of moving her possessions on February 25, 2020. In her submissions, Ms. Deglow seeks the remaining \$200 cost as compensation for her unused December 4, 2019 moving trailer rental. However, I find Ms. Deglow failed to prove any December 4, 2019 moving expenses, so I order no moving expense payment. Further, I observe that an additional \$200 claim would have pushed Ms. Deglow's claims beyond the CRT's \$5,000 maximum small claim amount.

Does Mr. Shukaliak owe Ms. Deglow \$2,100 or another amount as reimbursement for bookkeeping work she re-did?

22. Ms. Deglow says that Mr. Shukaliak withheld a computer file she had been working on for her bookkeeping business. Ms. Deglow says that because the deadline to complete that work was approaching, she had to re-perform the work she had done on that file before moving out on December 4, 2019. Ms. Deglow says that the duplicated work is worth \$2,100.

23. The undisputed evidence is that Ms. Deglow stored that computer file, and performed much of her bookkeeping work, on Mr. Shukaliak's home computer. Ms. Deglow says she had an external backup drive at Mr. Shukaliak's house, but she did not say whether she saved that computer file to it. Ms. Deglow says she did not have a copy of the file on her own computer or anywhere else. Further, Ms. Deglow did not say why she did not use her own computer for the work at issue. She also did not identify any plans for completing her work on time in the event Mr. Shukaliak's computer failed or otherwise became inaccessible, apart from re-doing the work.

24. I found above that Mr. Shukaliak was liable for retaining Ms. Deglow's possessions beyond December 13, 2019, and that her computer files were not returned until March 10, 2020. On the evidence before me, I find that Mr. Shukaliak's refusal to return the computer files was a significant cause of Ms. Deglow having to re-do work for a client, and that this additional work had value.

25. Under the *Negligence Act*, a person is liable for damages or loss in proportion to that person's fault in causing it. I find Mr. Shukaliak was not entirely at fault for Ms. Deglow's additional work. I find Ms. Deglow was negligent in keeping her only copy of the file on a computer she did not own or control, with a work deadline approaching and no plans to salvage the work if the computer failed or was withheld. I find her negligence significantly contributed to her needing to re-do the work. On balance, I find Mr. Shukaliak was 50% at fault for Ms. Deglow's having to do the additional work, and Ms. Deglow was also 50% at fault.
26. What was that additional work worth? Ms. Deglow invoiced Mr. Shukaliak \$1,980 before tax, which equals her \$165 monthly rate for this client multiplied by 12. That amount represents an entire year of work, but the evidence does not confirm whether she re-did an entire year of work or less than that. Further, Ms. Deglow's accounting software audit logs show that she re-did practically all the work from January 11, 2020 to January 16, 2020. The evidence does not show how many hours she worked during that time. Ms. Deglow's client contract gave a rate of \$30 per hour for additional services. On a judgment basis, I find Ms. Deglow spent 30 hours re-doing her work, which at \$30 per hour plus GST equals \$945. Mr. Shukaliak is 50% liable for this amount, so I find he owes Ms. Deglow \$472.50 for her duplicate bookkeeping work.

Does Mr. Shukaliak owe Ms. Deglow \$1,500 or another amount for lost future earnings?

27. Ms. Deglow says that she was "forced to disclose" to some clients, including one named L.C., that some of her accounting files were withheld by Mr. Shukaliak. She says that L.C. chose not to renew Ms. Deglow's contract for the next year, which would have paid her \$1,500, and that Mr. Shukaliak owes her that amount.
28. In a March 7, 2020 email, L.C. said that she wanted to discuss work delays and the safety of her personal information before continuing to work with Ms. Deglow. However, I find there is insufficient evidence showing that L.C. chose not to renew Ms. Deglow's contract because of delays or information security concerns caused by

Mr. Shukaliak, or another reason. I dismiss Ms. Deglow's \$1,500 future earnings claim.

Does Ms. Deglow owe Mr. Shukaliak \$4,666.72 or another amount for unpaid renovation labour and bookkeeping work?

29. Ms. Deglow hired Mr. Shukaliak in early 2019 to renovate a house she owned.

There was no written agreement about the work, and no detailed estimates or plans were developed. It is undisputed that Ms. Deglow would pay Mr. Shukaliak \$25 per hour for an estimated 160 hours of work. Mr. Shukaliak started work in January 2019 and did not work past March 29, 2019. The parties agree on little else.

30. One of Ms. Deglow's daughters, AG, and a renovation contractor, RD, lived in Ms. Deglow's house. Mr. Shukaliak says RD began renovations on the house, which were very deficient, so Ms. Deglow asked Mr. Shukaliak to fix them and complete other work. Ms. Deglow says she hired Mr. Shukaliak to assist with renovations.

31. Mr. Shukaliak submitted a \$4,000 invoice dated May 30, 2019, for 160 hours of labour. Each of the invoice's 7 labour line items was 1 to 2 short sentences, each describing 13 to 34 hours of work. There was no further breakdown. Ms. Deglow says Mr. Shukaliak created the invoice in response to her claims for her personal possessions. Mr. Shukaliak does not say when he created the invoice. I find Mr. Shukaliak did not create the invoice until at least October 2019, because some of the invoice's comments are dated October 2019, and there is no evidence of an earlier version of the invoice. Given its short work descriptions and long-delayed creation, I find the invoice provides little reliable evidence of the work performed.

32. Both AG and RD provided written statements saying that Mr. Shukaliak did not perform 160 hours of work. While I acknowledge that AG is Ms. Deglow's daughter, I accept that both her statement and RD's are sufficiently unbiased and reliable, since they do not appear to be exaggerated and they address topics that would be within their knowledge. The statements indicate that Mr. Shukaliak performed about 40 hours of work. A different carpenter estimated that the described work should

have taken about 40-48 hours, although he did not have experience in all the types of work Mr. Shukaliak performed. Mr. Shukaliak did not provide time sheets or other evidence showing how much work he did, that were created near the time he did it. On balance, I find that Mr. Shukaliak likely worked for no more than 80 hours.

33. Mr. Shukaliak says he asked for a payment schedule from Ms. Deglow, which she provided on May 29, 2019 and which shows that she owed him for 160 hours of labour. Mr. Shukaliak later signed the document and put Ms. Deglow's name on it. Ms. Deglow says the document was her personal budgeting notes that Mr. Shukaliak retrieved from her possessions after she moved out, and is not a promise to pay. The document is not signed by Ms. Deglow, and in the circumstances, I find that it contains no promise to pay, and does not acknowledge an exact amount owing.
34. Ms. Deglow says she paid Mr. Shukaliak over time, when she was able to. She provided bank account statements and a ledger describing these payments. I find the ledger shows Ms. Deglow made payments for renovation labour from January 10, 2019 to September 12, 2019. It indicates that Ms. Deglow made payments by e-transfer, cash, and transfers to Mr. Shukaliak's credit card, which are consistent with her bank account statements. Most payments are for materials with the "excess to labour," but the labour amount is not indicated. Mr. Shukaliak does not refute this payment evidence, except for generally denying he had been paid anything. I find that Ms. Deglow made payments on May 4, 2019, June 6, 2019, and September 12, 2019 exclusively for labour, which total \$2,200, and also paid an unspecified additional amount in labour through "excess" materials payments.
35. Turning to work quality, Mr. Shukaliak says any work deficiencies were either RD's work or unfinished work that he was unable to complete. Ms. Deglow says Mr. Shukaliak's work was deficient in many ways. RD provided a written statement and photos describing Mr. Shukaliak's deficient and incomplete work. I place little weight on this evidence because I find this subject requires expert evidence, and I find there is insufficient information showing that RD is an expert under the CRT's rules.

Further, the photos provided are of poor quality and are dated about one year after Mr. Shukaliak stopped working. I find that RD's statement and photos fail to confirm that any deficiencies or incompletions were caused by Mr. Shukaliak.

36. Ms. Deglow says Mr. Shukaliak's electrical work was deficient. She provided an electrician's estimate, but I find it does not specifically indicate how much checking and repairing Mr. Shukaliak's previous electrical work would cost. Mr. Shukaliak acknowledges that he renovated a bathroom and installed a bathtub, which Ms. Deglow says was installed improperly and leaked. Ms. Deglow provided a \$122.33 plumber's invoice for repairing a leaking bathtub drain, which said that the bathtub and drain were installed incorrectly, may need to be removed to repair any further leaks. On balance, I find that Mr. Shukaliak installed the bathtub improperly.

37. So, does Ms. Deglow owe anything further to Mr. Shukaliak for renovation labour? On the evidence before me, I find she does not. I find that Mr. Shukaliak worked for no more than 80 hours, which equals \$2,000. Ms. Deglow paid Mr. Shukaliak at least \$2,200. Further, Mr. Shukaliak installed Ms. Deglow's bathtub improperly, resulting in leaks and a potential need for re-installation. Overall, I find that Ms. Deglow has already paid Mr. Shukaliak for the value of his renovation work.

38. I now turn to Mr. Shukaliak's claim for \$680 in bookkeeping work he performed for Ms. Deglow. Mr. Shukaliak does not say specifically what work he did. His December 6, 2019 invoice was for 17 hours of "bookkeeping services" at \$40 per hour.

39. Ms. Deglow says she paid Mr. Shukaliak \$40 per hour for bookkeeping in the past, but she does not say that she asked Mr. Shukaliak to do the bookkeeping at issue here. I find Ms. Deglow's accounting software audit logs show that Mr. Shukaliak performed none of the invoiced work near the dates he claimed. Mr. Shukaliak suggests that the audit logs are incomplete or otherwise inaccurate. However, he did not provide a reasonable explanation of how that was possible or evidence to support his position, so I am not persuaded by his argument. Ms. Deglow also provided email correspondence showing that some of Mr. Shukaliak's alleged

bookkeeping was for a client that was no longer in business, so there was no work to do. On balance, I find that Mr. Shukaliak has not met his burden of proving that Ms. Deglow requested, or that he performed, the claimed bookkeeping services.

40. I dismiss Mr. Shukaliak's counterclaims for unpaid renovation labour and bookkeeping services. As noted above, I allow Ms. Deglow's claim in part, and order Mr. Shukaliak to pay her \$1,107.68 for wrongfully withholding her bed and \$472.50 for duplicate bookkeeping work, which equals \$1,580.18. I dismiss Ms. Deglow's other claims.

CRT FEES, EXPENSES, AND INTEREST

41. Ms. Deglow is entitled to interest under the *Court Order Interest Act*. I find that interest on the \$1,107.68 bed amount is calculated from the December 21, 2019 purchase date, and interest on the \$472.50 bookkeeping amount runs from the January 16, 2020 completion date. Interest is calculated from those dates until the date of this decision, and equals \$14.04.
42. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Deglow was partly successful in her claims, so I find she is entitled to reimbursement of half her CRT fees, which equals \$62.50. Mr. Shukaliak was unsuccessful, so I find he is not entitled to CRT fee reimbursement. He did not claim any expenses.
43. Ms. Deglow seeks \$392 in legal fees as an expense. Under CRT rule 9.5(3), the CRT will not order payment of legal fees unless there are extraordinary circumstances which make it appropriate. I find that this was not a legally complex dispute, and that the circumstances of this case are not extraordinary. Further, the submitted invoice lacks detail, and there is no proof that the legal fees were for this dispute. Ms. Deglow also sought an unspecified amount for computer file retrieval services, but provided no proof of that expense. I order no expense reimbursement.

ORDERS

44. Within 30 days of the date of this order, I order Mr. Shukaliak to pay Ms. Deglow a total of \$1,656.72, broken down as follows:
 - a. \$1,580.18 in damages for failing to return a bed and extra bookkeeping work,
 - b. \$14.04 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
45. Ms. Deglow is entitled to post-judgment interest, as applicable.
46. I dismiss Ms. Deglow's remaining claims, and Mr. Shukaliak's counterclaims.
47. Under section 48 of the CRTA, the CRT 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 CRT'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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
48. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Chad McCarthy, Tribunal Member