Civil Resolution Tribunal

Date Issued: September 8, 2020

File: SC-2020-003406

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martin v. Sea to Shore Dive Services Ltd.*, 2020 BCCRT 1004

B E T W E E N :

CINDY MARTIN

APPLICANT

A N D :

SEA TO SHORE DIVE SERVICES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This dispute is about a deposit. The applicant, Cindy Martin, made an agreement with the respondent, Sea to Shore Dive Services Ltd. (Sea to Shore) for the purchase of a float box and its installation on a floathome. Ms. Martin paid Sea to Shore a deposit but, as the work was not completed, she asked for the deposit

back. Ms. Martin says that Sea to Shore has refused to return her deposit, and asks for an order that the $1,250 deposit be returned to her.

2. Sea to Shore admits that it received the deposit and that the work was not completed. However, it says that it retained the deposit as compensation for its time and materials, and that it does not owe Ms. Martin any money.

3. Ms. Martin is self-represented. Sea to Shore is represented by its principal, Randy Shore.

JURISDICTION AND PROCEDURE

4. 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.

5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, they said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT'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 in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the CRT's process and that oral hearings are not necessarily required where credibility is in issue.

6. 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.

7. 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.

ISSUE

8. The issue in this dispute is whether Ms. Martin is entitled to the return of the $1,250 deposit she paid to Sea to Shore.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.

10. In April of 2020, Ms. Martin and Sea to Shore discussed possible solutions to repair the float box on Ms. Martin's floathome. On April 16, 2020, the parties agreed that Sea to Shore would provide a replacement float box which Mr. Shore would install on Ms. Martin's floathome. The parties made this agreement under the assumption that the foam blocks on site could be used in the float box.

11. The agreement was documented on an invoice that set out the scope of work and applicable warranty coverage. The parties' agreement required a deposit of $1,250, with the remaining $1,270 due upon completion of the work. The agreement did not state that the deposit was non-refundable. Ms. Martin sent the $1,250 deposit to Sea to Shore on April 16, 2020.

12. On April 17, 2020, Mr. Shore discovered that the foam blocks could not be used on the project. This meant that the work could not be completed according to the parties' agreement.

13. The parties disagree about what happened next. Ms. Martin says that Mr. Shore told her that it would cost an additional $1,250 to $1,500 to complete the work, which she could not afford. She says that, although he was upset, Mr. Shore agreed to return her deposit as the contract was "cancelled". Although the parties tried to come to a new arrangement, Ms. Martin says that they did not reach an agreement for a new scope of work. Ms. Martin sent a letter to Sea to Shore on April 19, 2020 asking for the return of her deposit.

14. Mr. Shore denies that there was an agreement to return Ms. Martin's deposit. According to Mr. Shore, he and Ms. Martin discussed a number of options and she changed her mind several times about what she wanted to do. However, Mr. Shore states that Ms. Martin agreed to proceed with an option that required the purchase of foam, so he sourced and purchased those materials. Mr. Shore says that Ms. Martin later sent him a text message to say that she did not want to proceed.

15. Ms. Martin's position is that, as Sea to Shore did not do any work, she is entitled to the return of the full deposit. Mr. Shore says that he purchased the foam and spent "a long day" dealing with this matter, so Sea to Shore is entitled to compensation of $250 for the foam and $1,000 for a day's worth of labour.

16. There is no dispute that the parties' original agreement could not be completed as they anticipated. The original agreement did not involve the purchase of foam, and the parties agree that the lack of available foam changed the nature of the contract to something they did not contemplate. I find that this amounts to frustration of the original contract such that neither party was obligated to carry out its terms. The key issue is whether the parties came to a new agreement about how to proceed.

17. Both parties referred to text messages they exchanged, but neither party provided copies of these messages in evidence. Further, there is no new invoice or other

documentation to show a revised scope of work, the materials that would need to be purchased, or an agreed-upon price.

18. Although I am satisfied that the parties discussed possible options for Ms. Martin's floathome, based on the evidence before me, I find that there was no *consensus ad idem* (or meeting of the minds), which is an essential element for the formation of a contract (see, for example, *Webster v. Robbins Parking Service Ltd.,* 2016 BCSC 1863 (SC) at paragraph 44). I find that the parties did not form a new agreement. As Ms. Martin did not agree to pay for the foam or for Sea to Shore's time, I find that she is not responsible for these amounts and is entitled to the return of her deposit.

19. In addition to the $1,250 for the deposit, Ms. Martin is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from April 21, 2020 (being the date Ms. Martin had requested that the deposit be returned), this equals $5.80.

20. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. Martin was successful, I find she is entitled to reimbursement of $125 in CRT fees and $11.60 in postal costs as reasonable dispute-related expenses.

ORDERS

21. Within 30 days of the date of this order, I order Sea to Shore to pay Ms. Martin a total of $1,392.40, broken down as follows:

    a. $1,250 as reimbursement for the deposit,

    b. $5.80 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $136.60, for $125 in CRT fees and $11.60 for dispute-related expenses.

22. Ms. Martin is entitled to post-judgment interest, as applicable.

23. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

24. 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.

Lynn Scrivener, Tribunal Member