



Civil Resolution Tribunal

Date of Original Decision: September 30, 2020

Date of Amended Decision: October 2, 2020

File: SC-2020-001766

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Verwold v. Rob Meikle, dba Kodiak Fence*, 2020 BCCRT 1104

B E T W E E N :

SCOTT VERWOLD

APPLICANT

A N D :

ROB MEIKLE (Doing Business As KODIAK FENCE)

RESPONDENT

A N D :

SCOTT VERWOLD

RESPONDENT BY COUNTERCLAIM

AMENDEDⁱ REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about payment for a chain-link fence.
2. The applicant Scott Verwold says he hired the respondent Rob Meikle (Doing Business As Kodiak Fence) to construct a chain-link fence for \$2,850.
3. Mr. Verwold says he accidentally overpaid Mr. Meikle by \$1,425. Mr. Verwold claims \$1,425, to refund the overpayment. Mr. Verwold also says Mr. Meikle left the job incomplete, and claims \$285, 10% of the total, for items left unfinished.
4. Mr. Meikle says he completed the fencing job and does not owe Mr. Verwold any refund. Mr. Meikle denies receiving an extra e-transfer of \$1,425.
5. Mr. Meikle counterclaims for \$1,800, for 1 day's wages and stress for a day he took off to address the dispute with Mr. Verwold. Mr. Verwold denies liability for the \$1,800 and asks me to dismiss the counterclaim.
6. Mr. Verwold and Mr. Meikle are each self-represented.

JURISDICTION AND PROCEDURE

7. 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.
8. The CRT 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. Specifically, Mr. Verwold says he sent Mr. Meikle two e-transfers on November 5, 2018, but Mr. Meikle says he received only

1 payment. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by observing personal demeanour in a courtroom or tribunal proceeding. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

9. 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
10. 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.
11. 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.

ISSUES

12. The issues in this dispute are:
 - a. Did Mr. Verwold overpay Mr. Meikle by \$1,425, such that Mr. Meikle must refund him that amount?
 - b. Did Mr. Meikle leave the fencing work 10% incomplete, such that Mr. Verwold is entitled to a \$285 refund?
 - c. Is Mr. Meikle entitled to \$1,800 compensation for a missed day of work as time spent dealing with the dispute, or in damages for stress?

EVIDENCE AND ANALYSIS

13. In this civil claim, Mr. Verwold bears the burden of proof on a balance of probabilities. Mr. Meikle bears the same burden to prove his counterclaim. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
14. The following facts are undisputed:
 - a. Mr. Verwold hired Mr. Meikle to build a chain link fence for \$2,850, inclusive of GST.
 - b. On October 28, 2018, Mr. Verwold paid Mr. Meikle \$1,425 by cheque.
15. The parties disagree about what happened next.
16. On November 5, 2018, Mr. Verwold sent an e-transfer to Mr. Meikle for the remaining \$1,425 that was due. Mr. Meikle then informed Mr. Verwold that the e-transfer did not go through.
17. Mr. Verwold says he sent a second e-transfer of \$1,425, resulting in an overpayment of \$1,425 to Mr. Meikle. Mr. Meikle says he only received one e-transfer of \$1,425.

Did Mr. Meikle receive an overpayment of \$1,425 from Mr. Verwold?

18. Mr. Meikle provided a copy of a bank statement for November 2 to 7, 2018, which shows he received one e-transfer of \$1,425 from Mr. Verwold on November 5, 2018.
19. Mr. Verwold also provided a copy of a bank statement showing that he sent two separate \$1,425 e-transfers to Mr. Meikle on November 5, 2018. Mr. Verwold provided a printout of a chat with a customer service agent at his bank, confirming that two separate e-transfers of \$1,425 were sent to Mr. Meikle on November 5, 2018, as identified by unique e-transfer numbers.

20. Mr. Verwold provided a transcript of a customer service chat, mentioned above, that there were two complete transfers. I find Mr. Meikle, on the other hand, could have deposited an overpayment into a separate account for which he did not provide a statement. On balance, I accept Mr. Verwold's evidence about what happened and find that Mr. Verwold overpaid Mr. Meikle by \$1,425. To allow Mr. Meikle to keep the extra \$1,425 would be what the law calls "unjust enrichment", since there is no valid basis for him to keep those funds: see *Kosaka v. Chan*, 2009 BCCA 467 at paragraph 11.

21. I order Mr. Meikle to refund Mr. Verwold the \$1,425 overpayment.

Was the fencing job incomplete?

22. Mr. Verwold says Mr. Meikle left the fencing job about 10% unfinished. Mr. Mielke disagrees, saying the fence job is complete.

23. Mr. Verwold provided a series of photographs of the fence to support this aspect of his claim. The photographs show a large fenced area. Looking at them, I am unable to determine whether the fencing work is incomplete. The photographs appear to depict a complete project.

24. Mr. Verwold did not provide a written agreement about the scope of work, nor did he explain the specifics of what was left incomplete. He also did not submit any written evidence that he asked Mr. Meikle to address incomplete areas. I find that Mr. Verwold has not met the burden to prove that the job was incomplete, nor to prove that incomplete items would cost \$285 to repair.

25. For these reasons I dismiss Mr. Verwold's claim to \$285 refund for incomplete work.

Is Mr. Meikle entitled to \$1,800 for time and stress due to dealing with the dispute?

26. I dismiss Mr. Meikle's claim for \$1,800 for dispute-related expenses or damage for time spent on the dispute. Mr. Meikle says he spent time explaining the payments to Mr. Verwold, while missing a day of work. Mr. Meikle did not explain why an entire

day off work was required to explain the payments. The CRT generally does not order a party to pay another party compensation for time spent, except in extraordinary circumstances: see Rule 9.5(5). I find this dispute about payment under a contract is not extraordinary, being an uncomplicated debt claim.

27. As far as Mr. Meikle's stress, I would have dismissed his claim even if he had succeeded in the main dispute, because there is no objective or expert evidence establishing compensable damages for stress.

Interest, CRT Fees and Dispute-Related Expenses

28. The *Court Order Interest Act* applies to the CRT. Mr. Verwold is entitled to pre-judgment interest on the \$1,425 from November 5, 2018, the date of the double payment, to the date of this decision. This equals \$51.87.

29. 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. I see no reason in this case not to follow that general rule. Because he was largely successful, I find Mr. Verwold is entitled to reimbursement of \$125 in CRT fees. I dismiss Mr. Meikle's claim for CRT fees. Neither party claimed dispute-related expenses aside from those discussed above.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Meikle to pay Mr. Verwold a total of \$1,601.87, broken down as follows:

- a. \$1,425 in debt, as reimbursement for the overpayment,
- b. \$51.87 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 CRT fees.

31. Mr. Verwold is entitled to post-judgment interest, as applicable.

32. I dismiss the remaining claims and Mr. Meikle's counterclaims.
33. 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.
34. 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.

Julie K. Gibson, Tribunal Member

ⁱ Amendment Notes: Amendments made to correct an inadvertent error at paragraph 30, under the authority in s. 64 of the *Civil Resolution Tribunal Act*.