



# Civil Resolution Tribunal

Date Issued: November 2, 2020

File: SC-2020-004808

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Graves v. Rockora Developments Inc.*, 2020 BCCRT 1240

B E T W E E N :

JAMIE GRAVES and KYLE GRAVES

**APPLICANTS**

A N D :

ROCKORA DEVELOPMENTS INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a residential construction project. The applicants, Jamie Graves and Kyle Graves, hired the respondent, Rockora Developments Inc. (Rockora), to

build a safety fence around their property. The Graveses say Rockora delayed and failed to complete the job. The Graveses seek \$2,371 as reimbursement of the 75% deposit they paid Rockora for the fence.

2. Rockora admits the project was delayed, but says the Graves' request for a full reimbursement of their paid deposit fails to account for preparation work it did. Rockora originally denied it owes any refund, but submits the Graves owe for 23 hours of work and so it owes only the \$772.90 difference to the Graveses.
3. Jamie Graves represents the applicants. Rockora is represented by its owner, Michael Resch.

## **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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says 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, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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 in the interests of justice.
6. Section 42 of the CRTA says 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 the Graveses are entitled to a refund of any of the \$2,371 deposit they paid to Rockora, or, whether Rockora is entitled to retain any of it as payment for work done.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the Graveses as the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The evidence shows that in mid-November 2019 the parties agreed Rockora would construct a safety fence around the Graves' property, for a total price of \$3,161.92 inclusive of GST. The evidence shows the Graveses wanted the fence built quickly, to separate and secure their yard from the adjacent road.
11. Rockora's 75% deposit invoice for \$2,371.44 is dated November 14, 2019, and among other things says "work will commence once" BC One Call identified underground utilities in the Graves' front yard. Rockora's November 21, 2019 invoice shows the Graveses paid the requested deposit, leaving a \$790.92 balance owing on completion of the fence. I find these two invoices comprised the parties' contract and there is nothing stating "no refunds" on them. I note the Graves' rounded down their CRT claim from \$2,371.44 to just \$2,371.

12. It is undisputed and I find the Graveses provided Rockora all relevant background information, including site surveys, by mid-December 2019. However, afterwards Rockora repeatedly made excuses about why it was not able to begin work (including Mr. Resch sustaining an arm injury in December 2019), none of which were the Graves' fault or responsibility under the contract.
13. It is undisputed that in December 2019 Rockora marked the property with staked flags to indicate where each of the fence posts should be built. The Graveses say this work took an hour on-site, which I accept as Rockora does not dispute it. The Graveses say that marking was the only work Rockora completed. Based on the Graves' current photo of their property, the staked flags have since been removed, and there is, as noted, still no fence.
14. The evidence shows that between January and June 2020 the Graveses contacted Rockora several times asking about progress, and for the most part Mr. Resch just kept saying he was working on it or would provide a start date which was then missed. On February 11, 2020, Mr. Resch texted Mr. Graves, as set out in a text transcript that Mr. Resch did not dispute was accurate (quote reproduced as written, except where noted):

Yes it will be started next week maybe even sooner. If its not started by Friday Feb 21<sup>st</sup> you will receive a full refund. ... we will keep our promise or full refund no matter what work had been started. ... hoping to break ground on the weekend but don't want to say something I can't guarantee. But I will and do guarantee it will be resumed by the date in question.

15. It is clear the "date in question" in the above quoted text was February 21, 2020. I also find that in context, Mr. Resch was promising to actually start fence construction by that date, and if he did not he agreed to refund the deposit regardless of what other preparation work he might have done. There is no dispute no work started on February 21, 2020.

16. On February 21, 2020, Mr. Resch texted Mr. Graves saying that he would give a refund. Mr. Graves agreed to extend to a February 24 start date, but if Mr. Resch did not start that day he wanted a refund. Mr. Resch agreed and said, “sounds good”. However, again it is undisputed work did not start on February 24, 2020.
17. In this proceeding, Rockora’s essential defence to a full refund is that it had started work, by communicating with the City of Chilliwack and BC One Call, and by ordering materials and arranging for equipment (an auger) that admittedly was never delivered to the Graves’ property. The evidence shows that after February 24, 2020, Mr. Resch only replied that he was still waiting for auger equipment. I find the parties’ contract was a fixed price contract and any delay in obtaining necessary equipment was Rockora’s responsibility, not the Graves’.
18. Similarly, weather delays and the COVID-19 pandemic are not reasons for Rockora to retain the Graves’ deposit, particularly since they paid in November 2019 and despite multiple promises to begin, Rockora still had not started actual construction by June 2020. I find Rockora’s overall delay unreasonable.
19. I find the evidence clearly shows the Graveses never consented to an indefinite delay and any extensions they agreed to were for work to start within a few days or else they wanted a refund, which I find never actually happened. Based on the parties’ texts, I find Rockora promised a refund and failed to provide it.
20. In any event, I find Rockora’s alleged “behind the scenes” efforts to obtain equipment does not amount to actually starting work on the Graves’ fence project. While Rockora submits “work on site is only part of the scope of work”, there is no evidence before me that it actually did any significant work for the Graves’ benefit, beyond staking flags in the Graves’ yard. I find Rockora’s efforts to secure rental equipment are part of its own overhead or cost of doing business, and those efforts are not part of their “work” on the Graves’ project. Further, to the extent Rockora says it bought materials for the Graves’ project, it provided no evidence, such as an invoice, and no evidence that any materials that were bought could not be used for another project or returned.

21. I find Rockora has not proved it did 22.83 hours of work “behind the scenes” at \$70 per hour for a total of \$1,598.10. There is also no supporting evidence for the claimed 22.83 hours, such as time sheet records. There is also no evidence the Graveses agreed to pay that hourly rate or by the hour at all. Contrary to Rockora’s submission, I find it was a fixed-price contract even though Rockora’s November 14 invoice had “Estimate” at the top. While I acknowledge Rockora exchanged a few emails with the City of Chilliwack and perhaps Fortis Gas, I find that work was of no value to the Graveses given Rockora’s significant delay after December 2019.
22. In short, I find the only substantive work Rockora did was to stake out flags for the fence’s placement in December 2019. Given Rockora never did any more work and repeatedly made excuses through June 2020, I find the Graveses reasonably removed those flags from their yard. I find the staking was ultimately of no value to the Graveses. I find Rockora breached the contract for failing to start the fence project after the valueless staking. I find Rockora must refund the \$2,371 deposit.
23. I acknowledge the Graveses have about 12 of Rockora’s flag stakes. Rockora did not set out a value for them and they appear to be thin metal stakes with a plastic flag. I find there is no basis to order any set-off, given the stakes’ apparently nominal value. Rockora did not file a counterclaim for the stakes, and so I make no order about them.
24. The *Court Order Interest Act* (COIA) applies to the CRT. I find the Graveses are entitled to pre-judgment COIA interest on the \$2,371, calculated from November 21, 2019 to the date of this decision. This equals \$31.89.
25. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to the recovery of their CRT fees. I find the Graveses are entitled to reimbursement of \$125 in paid CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

26. Within 21 days of this decision, I order Rockora to pay the Graveses a total of \$2,527.89, broken down as follows:

- a. \$2,371 in debt,
- b. \$31.89 in pre-judgment COIA interest, and
- c. \$125 in CRT fees.

27. The Graveses are entitled to post-judgment interest, as applicable.

28. 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.

29. 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.

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Shelley Lopez, Vice Chair