



# Civil Resolution Tribunal

Date Issued: November 9, 2020

Files: SC-2020-002827 and SC-2020-004846

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bishop v. Parkon Construction Ltd.*, 2020 BCCRT 1260

B E T W E E N :

KHRISTIAN BISHOP

**APPLICANT**

A N D :

PARKON CONSTRUCTION LTD.

**RESPONDENT**

A N D :

SARA FITZPATRICK

**RESPONDENT BY THIRD PARTY CLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about a basement renovation job done in a home owned by the third party respondent, Sara Fitzpatrick. The respondent, Parkon Construction Ltd. (Parkon), hired the applicant, Khristian Bishop, to do the carpentry work for the job.
2. In dispute SC-2020-002827, Mr. Bishop claims \$1,984.50 in payment from Parkon. In dispute SC-2020-004846, a third party claim against Ms. Fitzpatrick, Parkon says Ms. Fitzpatrick is responsible for any money owing to Mr. Bishop.
3. Mr. Bishop is self-represented. Parkon is represented by its principal, Mike Parker. Ms. Fitzpatrick did not participate in this proceeding and so is in default as discussed below.

## **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.

## **ISSUES**

8. The issue in these disputes is whether Parkon owes Mr. Bishop the claimed wages and if so, to what extent if any must Ms. Fitzpatrick indemnify Parkon.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Mr. Bishop must prove his claims on a balance of probabilities. Parkon must similarly prove its third party claim. 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. As noted above, Ms. Fitzpatrick is in default and so she did not provide evidence or submissions. Parkon chose not to provide any evidence or submissions for either Mr. Bishop's claim or its third party claim, despite having the opportunity to do so.
10. First, Mr. Bishop's claim. Mr. Bishop and Parkon agreed in their respective applications to the CRT that initially Mr. Bishop was Parkon's employee but at some point he became an independent contractor. In its Dispute Response Parkon says Mr. Bishop ceased being an employee on January 10, 2020, at which time he became a self-employed contractor for the period at issue, namely January 13 to 23, 2020.
11. As noted, Mr. Bishop admits he became a contractor, but says his contract was always with Parkon, and that it was never transferred to Ms. Fitzpatrick. In contrast, Parkon said in the Dispute Notice for its third party claim that Ms. Fitzpatrick directed Mr. Bishop during the period in question. Parkon says that Ms. Fitzpatrick did not pay Parkon any of the "\$36,000 plus" she owed, and so all sub-trades, including Mr.

Bishop, "have not been paid". However, Parkon also said that Mr. Bishop continued to work for Ms. Fitzpatrick and was paid directly by her. Mr. Bishop denies receiving payment from Ms. Fitzpatrick.

12. As noted above, Parkon submitted no evidence and made no submissions. There is nothing before me to support Parkon's assertion that Mr. Bishop's employment for the period in question was with Ms. Fitzpatrick directly. I do not accept that unsupported assertion.
13. Mr. Bishop says Parkon owes him \$1,984.50 for his January 27, 2020 invoice, which was for 52.5 hours of work at \$36 per hour, done on 8 days between January 13 and 23, 2020. I accept this is reasonable and accurate, as it is entirely undisputed.
14. So, I find Parkon owes Mr. Bishop \$1,984.50. Parkon's contract of employment was with Mr. Bishop, and so Parkon is the entity that owes Mr. Bishop for his completed work. This is independent of Ms. Fitzpatrick's obligation to indemnify Parkon, discussed below.
15. While Parkon submitted no evidence or submissions, Ms. Fitzpatrick was served in accordance with the CRT's rules and she failed to file a Dispute Response as required. As noted, she is in default. Liability is generally assumed in defaults, and so here I find Ms. Fitzpatrick is responsible to indemnify or reimburse Parkon for the award I have ordered Parkon to pay Mr. Bishop. I will address the total award below, inclusive of interest and CRT fees.
16. Next, I turn to Mr. Bishop's submission in which he asks for an additional 2 weeks' severance, for a total of \$2,880. I dismiss this claim because it was not set out in the Dispute Notice and because there is no evidence that Mr. Bishop's agreement with Parkon contemplated severance pay. Mr. Bishop alleges that Parkon's refusal to pay him is a "personal issue" for Parkon and not about Mr. Bishop's work. I have insufficient evidence to support this conclusion. I note there is no written employment agreement in evidence and Mr. Bishop does not argue their agreement had a severance provision. There is no suggestion Mr. Bishop was wrongfully terminated

such that he would be entitled to common law damages. Rather, the issue is about payment for work done. The parties also agree Mr. Bishop was an independent contractor at the material time, and so entitlements under *the Employment Standards Act* (ESA) do not apply. I note that the CRT has no jurisdiction to order payment of ESA entitlements in any event. I dismiss the request for \$2,880 in severance.

17. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Bishop is entitled to pre-judgment COIA interest on the \$1,984.50, from January 27, 2020, to the date of this decision. This equals \$19.71.
18. 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 Mr. Bishop was substantially successful and so he is entitled to reimbursement of \$125 in paid CRT fees. No dispute-related expenses were claimed. In addition to indemnifying Parkon for the awards payable by Parkon to Mr. Bishop, I also order Ms. Fitzpatrick to reimburse Parkon \$75 in paid CRT fees.

## **ORDERS**

19. Within 21 days of this decision, I order Parkon to pay Mr. Bishop a total of \$2,129.21, broken down as follows:
  - a. \$1,984.50 in debt,
  - b. \$19.71 in pre-judgment COIA interest, and
  - c. \$125 in CRT fees.
20. Within 30 days of this decision, I order Ms. Fitzpatrick to pay Parkon a total of \$2,204.21, broken down as follows:
  - a. \$2,129.21 in indemnity for Parkon's debt obligations to Mr. Bishop, and
  - b. \$75 in CRT fees.

21. Mr. Bishop and Parkon are respectively entitled to post-judgment interest, as applicable.
22. 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.
23. 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