



Civil Resolution Tribunal

Date of Original Decision: January 8, 2021

Date of Amended Decision: January 11, 2021

File: SC-2020-007254

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Loeffeler v. Holzner*, 2021 BCCRT 23

B E T W E E N :

GERHARD LOEFFELER

APPLICANT

A N D :

WOLFGANG HOLZNER

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about money owing for sold goods. The applicant, Gerhard Loeffeler, says he sold 4 bundles of pipes for \$3,250, and that the payment was received by

the respondent, Wolfgang Holzner. Mr. Loeffeler claims that amount, which he says Mr. Holzner did not forward to him as agreed.

2. Mr. Holzner does not deny owing Mr. Loeffeler the claimed \$3,250. However, he says Mr. Loeffeler agreed to remove a vehicle and trailer from Mr. Holzner's property, but failed to do so. Mr. Holzner says his storage of these items is worth \$20 per day, totalling \$4,320, and says he has several other disagreements with Mr. Loeffeler. Mr. Holzner says he would pay the \$3,250 owed if Mr. Loeffeler first pays him \$4,320 and removes the vehicle and trailer. However, Mr. Holzner has not filed any counterclaim with the Civil Resolution Tribunal (CRT), despite being advised that he may do so.
3. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. Although the parties' submissions each call into question the credibility of the other party in some respects, the credibility of interested witnesses cannot be determined solely by whose personal demeanour in a proceeding appears to be the most truthful. The most likely account depends on its harmony with the rest of the evidence. Further, in the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I

can fairly hear this dispute through written submissions, and 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.
8. Mr. Holzner says that Mr. Loeffeler owes him for vehicle and trailer storage, and that Mr. Loeffeler should remove those things from his property, among other disagreements. However, as noted, Mr. Holzner has not filed any counterclaim. The CRT counterclaim process provides the necessary opportunities for parties to submit evidence and to make and respond to arguments about a counterclaim. This means it would not be in the interests of fairness and justice to order Mr. Loeffeler to pay Mr. Holzner anything for storage, or to do something allowed under CRTA section 118. However, as discussed below, I will consider whether Mr. Loeffeler is entitled to subtract vehicle and trailer storage fees from the amount claimed by Mr. Loeffeler.

ISSUE

9. The issue in this dispute is whether Mr. Holzner owes Mr. Loeffeler \$3,250, or another amount, for the money Mr. Holzner received on Mr. Loeffeler's behalf.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Loeffeler, as the applicant, must prove his claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

11. The undisputed evidence is that Mr. Loeffeler sold land to Mr. Holzner in December 2019. Mr. Loeffeler agreed to sell or remove all moveable items from the property in the spring of 2020. He sold 4 bundles of pipes for \$3,250, which the purchaser gave to Mr. Holzner with directions to forward it to Mr. Loeffeler. Mr. Holzner agrees that he received these funds, and that he has not provided them to Mr. Loeffeler.
12. On the evidence before me, I find that Mr. Holzner holds the \$3,250 in trust for Mr. Loeffeler, because the parties agree it is money from the sale of Mr. Loeffeler's goods. I find Mr. Holzner owes Mr. Loeffeler \$3,250.
13. Mr. Holzner says he is not willing to release the money to Mr. Loeffeler because he has other disagreements with him. Among other things, Mr. Holzner says Mr. Loeffeler left a vehicle and trailer on the property, so he says Mr. Loeffeler owes him \$20 per day in storage and should remove the vehicle and trailer. Mr. Loeffeler says he transferred ownership of these vehicles to Mr. Holzner, although he is willing to discuss removing them if Mr. Holzner wishes.
14. As noted, Mr. Holzner filed no counterclaim for storage fees. However, I consider below whether the \$3,250 Mr. Holzner owes should be reduced by some or all of the alleged \$4,320 in storage fees, potentially leaving Mr. Holzner owing nothing. This is known in law as a "set-off". I find that because Mr. Holzner is claiming the set-off, he bears the burden of proving it on a balance of probabilities.
15. I note that some of the text message correspondence in evidence, and Mr. Holzner's written statement, are not in the English language. The submitted translations of those documents are automatic computer translations whose accuracy has not been independently verified. However, neither of the parties objected to the translations.
16. In a signed statement, in English, Mr. Loeffeler's spouse, SK, said that she and Mr. Loeffeler were unable to fit any more items into their transport vehicles when vacating the land sold to Mr. Loeffeler. SK said that Mr. Holzner agreed to take ownership of the remaining items on the land, in a May 2020 conversation with SK and Mr. Loeffeler. These items included the vehicle and trailer, among others.

17. On the other hand, Mr. Holzner's spouse, MP, said in a signed statement that Mr. Holzner specifically rejected the vehicle and horse trailer gifts, and that Mr. Loeffeler agreed to remove them from the property. I find that each party's submissions on this topic are consistent with his spouse's statement.
18. A June 10, 2020 English-language letter from Mr. Loeffeler to Mr. Holzner contains a utility trailer registration document signed by Mr. Loeffeler as the trailer's seller. However, Mr. Holzner was not identified in the registration document, and no trailer Transfer/Tax Form was included with the letter. The letter said that the vehicle's registration documents were likely in the vehicle or in a cabinet in Mr. Holzner's house, and that Mr. Loeffeler could get copies from ICBC if they could not be found. I find the letter supports Mr. Loeffeler giving ownership of the vehicle and trailer to Mr. Holzner. Still, Mr. Holzner and MP say they never received this letter, and that it is unclear why it was written in English, because Mr. Holzner has limited English language skills and always corresponds in a different language, including with Mr. Loeffeler.
19. On the evidence before me, I find it likely that Mr. Loeffeler reasonably believed Mr. Holzner accepted ownership of the vehicle and trailer. However, it is not necessary for me to determine who actually owns the vehicle and trailer, because even if Mr. Loeffeler still owns them, I find there is an insufficient basis for charging Mr. Loeffeler for their storage. I find the evidence fails to show that Mr. Loeffeler agreed to be charged storage fees if he did not remove the vehicles. The evidence also fails to show that Mr. Holzner informed Mr. Loeffeler that he would be charged for storage after a certain date. Further, I note the evidence does not prove that it cost Mr. Holzner anything to store the vehicle and trailer on his land, which I infer from the evidence is a large rural property. I find Mr. Loeffeler does not owe any storage fees.
20. As a result, I find Mr. Holzner has not met his burden of proving that his debt to Mr. Loeffeler is offset by storage fees. I also find that Mr. Holzner's other issues with the purchased land, involving insurance fees, heating, and other matters, are unproven and unrelated to payment of the \$3,250 debt. In his written statement, Mr. Holzner

said that withholding the payment to Mr. Loeffeler was the only way to have the other grievances taken care of. I find Mr. Holzner was not entitled to delay payment because of other, ongoing disagreements that are not before me in this dispute.

21. I allow Mr. Loeffeler's claim for \$3,250. I decline to require Mr. Holzner to pay this debt by Western Union money order, as Mr. Loeffeler initially requested of him.

CRT FEES, EXPENSES, AND INTEREST

22. 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 find Mr. Loeffeler was successful in his claims, so he is entitled to reimbursement of the \$175 in CRT fees he paid. Mr. Holzner paid no CRT fees, and neither party claimed CRT dispute-related expenses, so I make no order about expenses.

23. Under the *Court Order Interest Act*, Mr. Loeffeler is entitled to pre-judgement interest on the \$3,250 owing. The pipe purchaser's September 9, 2020 letter shows that he gave \$3,250 to Mr. Holzner on July 7, 2020. I find it reasonable and likely that the payment to Mr. Loeffeler would be due 2 weeks later, on July 21, 2020. So, I find pre-judgement interest is calculated from July 21, 2020 until the date of this decision. This equals \$6.89.

ORDERS

24. Within 30 days of the date of this order, I order Mr. Holzner to pay Mr. Loeffeler a total of \$3,431.89, broken down as follows:

- a. \$3,250 in debt,
- b. \$6.89 in pre-judgement interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

25. Mr. Loeffeler is entitled to post-judgment interest, as applicable.
26. 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.
27. 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

Amendment Notes

Under section 64 of the CRTA, the CRT may amend a decision or order to correct a clerical or typographical error, an accidental or inadvertent error, omission, or other similar mistake, or an arithmetical error made in a computation.

Paragraph 24 was amended to correct an inadvertent typographical error in the applicant's name. The corresponding Order is correct and was not amended.