



Civil Resolution Tribunal

Date Issued: February 1, 2021

File: SC-2020-007719

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garbish v. Lake Life Storage & Boatworx Ltd.*, 2021 BCCRT 120

B E T W E E N :

KENNETH GARBISH

APPLICANT

A N D :

LAKE LIFE STORAGE & BOATWORX LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a cancelled boat storage contract. The applicant, Kenneth Garbish, says he paid \$2,910.60 for one year of boat storage to the respondent, Lake Life Storage & Boatworx Ltd. (Lake Life). After paying, but before the storage term started, Mr. Garbish says he told Lake Life that he would not be storing his boat, and he requested a refund. Mr. Garbish says Lake Life only refunded 75% of the amount

he paid, keeping 25% as a non-refundable deposit. Mr. Garbish claims \$727.65 for the 25% deposit amount, which he says Lake Life is not entitled to keep because he did not agree to a new storage contract.

2. Lake Life says that its storage agreement required a 25% non-refundable deposit to reserve a storage space before the beginning of the storage term. Lake Life says the storage agreement applies to Mr. Garbish's payment, and that 25% of that payment was a deposit that reserved a storage space for him. Lake Life says it is not required to refund the 25% deposit, so it owes nothing.
3. Mr. Garbish is self-represented in this dispute. Lake Life is represented by its director.

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. Here, I find that I am properly 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.
8. Mr. Garbish submitted what appears to be a draft BC Provincial Court Notice Of Claim document. It is not stamped by the court and there is no file number. Mr. Garbish says that the document was “sent to Lake Life via CRT.” The claim description in the document is identical to Mr. Garbish’s claim description in this CRT dispute. On the evidence before me, I find the document was submitted to the CRT, and that Mr. Garbish has not filed a parallel proceeding in BC Provincial Court. So, I find I have jurisdiction to hear this dispute.

ISSUE

9. This issue in this dispute is whether Mr. Garbish is entitled to a refund of the remaining \$727.65 it paid to Lake Life for boat storage.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Garbish must prove his claims on a balance of probabilities. I have read and weighed 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. Garbish contracted with the former owner of Lake Life’s storage facility, known as Mara Lake Boat Storage (Mara), for one year of boat storage from June 1, 2019 to June 1, 2020. A written contract signed by Mr. Garbish said that the 1 year storage fee was payable to Mara in advance, on or before the first day Mr. Garbish’s boat was put into storage. The contract did not contain any option for renewal, and expired on June 1, 2020. The contract also said nothing about fee refunds.

12. The parties agree that on May 10, 2020, Mara told Mr. Garbish that it had sold its storage business to Lake Life, and that its storage contracts had been assigned to Lake Life.
13. On May 20, 2020, Lake Life sent Mr. Garbish an email with two attachments: a \$2,910.60 boat storage invoice for the period from June 1, 2020 to May 1, 2021, and a draft boat storage contract between Lake Life and Mr. Garbish for that period. The new contract required a 25% non-refundable deposit to hold a storage spot. Mr. Garbish agrees that he received both attached documents. He paid the full invoice amount in 2 separate payments on May 20 and 21, 2020, although he did not return a signed copy of the draft contract to Lake Life.
14. Several days later, on May 27, 2020, Mr. Garbish told Lake Life that he “decided not to continue storage” at Lake Life, and he requested a refund of his payment because the new storage term had not begun. As noted, Lake Life returned 75% of the invoice amount, and retained \$727.65 as a non-refundable deposit.
15. Lake Life says that by paying its full invoice, which was accompanied by the draft contract, Mr. Garbish accepted the contract’s terms. I find section 1 of the contract said that the full storage fee was payable in advance on or before the first day that the customer’s boat was put into storage. Section 2 was highlighted in yellow, and said, “A 25% non Refundable deposit is required to hold a storage spot until commencement of this storage contract” (reproduced as written). Lake Life says, and Mr. Garbish does not directly dispute, that the non-refundable deposit reflected the fact that Lake Life turns away prospective customers from storage spots reserved by the deposit.
16. Further, section 13 of the contract said that Lake Life had “no obligation to refund or adjust any prepaid storage fees should the customer decide to remove its Boat before the duration of the storage contract has expired.” That section also said that a customer could terminate the contract upon paying all amounts owing to Lake Life, but that Lake Life had “no obligation to refund storage payment for terminated customer’s contracts.”

17. I find that if Mr. Garbish agreed to the contract, under section 2 he is not entitled to a refund of the remaining 25% of the boat storage fee, because it would be considered a non-refundable deposit.
18. Mr. Garbish says he never agreed to the contract, as he did not sign it. He says that he did not review the contract in any detail until after he paid the invoice in full. Mr. Garbish says that when he later considered all of the contract's terms, he then decided that he did not agree with them, and did not want to store his boat with Lake Life after the present storage term expired on June 1, 2020.
19. I note that while a signature is persuasive evidence that a party agreed to a contract, contracts may be formed without signatures. In *Crosse Estate (Re)*, 2012 BCSC 26 at paragraph 31, the British Columbia Supreme Court said unsigned agreements can be binding, and acceptance can be implied by the parties' conduct.
20. So, did Mr. Garbish's conduct indicate that he agreed to the Lake Life contract, despite not signing it? I find Mr. Garbish knew boat storage at Lake Life would likely require a contract, given that he had previously agreed to a boat storage contract with Mara that contained terms affecting the parties' legal rights. I find he likely knew the Lake Life storage contract he received would apply to the June 1, 2020 to May 1, 2021 boat storage term, and could contain terms that affected his legal rights. Despite this, Mr. Garbish says he chose not to review the contract before paying for the then-upcoming storage term in full. On the evidence before me, I find nothing Mr. Garbish said or did around the time he paid the invoice indicated that he disagreed with the terms expressed in the Lake Life contract.
21. In particular, other than saying he made the invoice payment in "good faith," Mr. Garbish does not explain why he paid the full invoiced amount before he reviewed or agreed to the contract. Mr. Garbish says that the invoice did not indicate whether any amount was non-refundable, although I find that the invoice also failed to say whether any amount was refundable. In any event, the parties agree that the contract was delivered to Mr. Garbish together with the invoice. So, I find that Mr. Garbish likely

knew, or should have known, that the contract applied to the boat storage Mr. Garbish paid for, including its deposit and refund terms.

22. Having weighed the evidence, I find that on May 21, 2020, by paying Lake Life in full after receiving its invoice and contract, Mr. Garbish accepted the Lake Life contract's terms. I find Mr. Garbish changed his mind 6 days later, after he says he reviewed the contract in more detail. However, I find Mr. Garbish's alleged failure to review the contract in sufficient detail did not void the contract's terms.
23. Given that Mr. Garbish was bound by the contract, I find that under section 2, Lake Life was entitled to retain 25% of the invoice payment as a non-refundable deposit for reserving a storage spot. So, I find Lake Life does not have to refund the \$727.65 deposit it kept. I deny Mr. Garbish's claim.

CRT FEES AND EXPENSES

24. 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. Lake Life was successful here but paid no CRT fees, so I make no order for fee reimbursement.
25. Mr. Garbish claims \$1,000 in legal fees, which his lawyer's statement of account shows were for work that pre-dates this CRT dispute. Lake Life claims \$800 in legal fees, but provided no proof of those fees or specifically what they were for. Under CRT rule 9.5(3)(b), generally the CRT will not order reimbursement of legal fees unless there are extraordinary circumstances that make it appropriate to do so. I find the circumstances of this case involve a simple contractual dispute about the return of a deposit, and are not extraordinary. Further, I find the evidence fails to show that any of the claimed legal fees were for work related to the CRT process. I deny each party's request for legal fee reimbursement, and I would have dismissed Mr. Garbish's reimbursement claim in any event as he was unsuccessful in this dispute. The parties claim no other CRT dispute-related expenses.

ORDER

26. I dismiss Mr. Garbish's claims, Lake Life's expenses claim, and this dispute.

Chad McCarthy, Tribunal Member