



Civil Resolution Tribunal

Date Issued: March 17, 2021

File: SC-2020-004440

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pali v. Big Island Industries Ltd.*, 2021 BCCRT 294

B E T W E E N :

DENES PALI

APPLICANT

A N D :

BIG ISLAND INDUSTRIES LTD. and CHRIS STRONG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about the purchase of a used dump truck. The applicant, Denes Pali, purchased a 1992 Ford Louisville dump truck (truck) from the respondents, Chris Strong and Big Island Industries Ltd. (Big Island). Mr. Strong is Big Island's owner and director.

2. Mr. Pali sent a \$3,000 deposit to Mr. Strong to purchase the truck and install a hitch. Mr. Pali says he cancelled the purchase when he discovered that Mr. Strong allegedly misrepresented the condition of the truck. Mr. Pali requests the return of his \$3,000 deposit.
3. Mr. Strong says that he did not misrepresent the truck's condition. Although the truck had a broken rear axle, Mr. Strong says he was going to repair the truck before it was delivered. Mr. Strong also says that it is entitled to keep the deposit because it had already incurred expenses and labour repairing the truck before Mr. Pali cancelled the contract.
4. Mr. Pali and Mr. Strong are self-represented. Mr. Strong also represented Big Island as its director.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

7. 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.
8. 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.
9. I note that Mr. Pali submitted evidence late and Big Island submitted evidence in response. I find that neither party was prejudiced by the late evidence because both parties had an opportunity to respond. So, I have allowed the late evidence and I have considered that evidence in my decision.

ISSUES

10. The issues in this dispute are:
 - a. Is Mr. Pali entitled to a refund of his \$3,000 deposit?
 - b. Is Big Island entitled to a set-off from the deposit for its repairs and expenses?
If so, how much?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant, Mr. Pali, must prove his claim 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.

12. The following facts are not disputed:

- Mr. Pali is located in Central British Columbia and Big Island is located on Vancouver Island.
- The truck was advertised for sale on an online classified site.
- Mr. Pali contacted Mr. Strong on May 24, 2020 and agreed to purchase the truck for \$18,500.
- The parties only communicated by telephone and electronically. Mr. Pali did not view the truck in person.
- Mr. Strong requested a \$2,500 deposit to hold the truck until Mr. Pali could travel to pick up the truck.
- Mr. Pali asked Mr. Strong to weld a hitch onto the back of the truck. The parties agreed that this would cost an additional \$1,500.
- Mr. Strong asked for an additional \$500 deposit toward the cost of welding the hitch.
- Mr. Pali sent Mr. Strong an electronic transfer of \$2,000 on May 25, 2020 and a second electronic transfer of \$1,000 on May 26, 2020.
- Mr. Pali cancelled the transaction on May 29, 2020.
- Mr. Strong has not returned the deposit.

13. None of the parties provided any evidence or submissions about whether Mr. Strong or Big Island owned the truck. I find that that Big Island received Mr. Pali's deposits since the electronic transfer receipts show that Mr. Pali's deposits were sent to Big Island's email address. Since, the payment was made to Big Island, I find that Mr. Strong was acting as Big Island's agent and Mr. Strong agreed to sell the truck on Big Island's behalf. So, Big Island is bound by Mr. Strong's conduct and I find that Mr.

Pali entered a contract with Big Island to buy the dump truck and that he hired Big Island to install the hitch when he sent the \$3,000 deposit.

14. I find that Mr. Pali has not provided sufficient evidence to prove that he had a contract with Mr. Strong in his personal capacity rather than as Big Island's agent. So, I dismiss Mr. Pali's claim against Mr. Strong.
15. Mr. Pali says he discovered that the truck's rear axle was broken on May 29, 2020. Mr. Strong had agreed to hire Big Island to install the hitch but he says he was not aware that the truck needed repairs. He says Big Island misrepresented the condition of the truck and he asks for a refund of the deposit. Although Big Island admits the truck's rear axle was broken and the truck was non-operable, Big Island says that it was going to repair the truck's rear axle before Mr. Pali picked it up.
16. I find that it is not necessary to determine whether Big Island misrepresented the condition of the truck because, for the reasons provided below, I find that the deposit was refundable when the contract ended.
17. In making this finding, I rely on the reasoning in *Smythies v. Sprung*, 2021 BCCRT 158. In *Smythies*, the tribunal member held that a deposit is only non-refundable if the parties so agree when the contract is formed. While non-binding, I find the reasoning in *Smythies* persuasive and apply it here.
18. I note the parties' text messages do not discuss whether the deposit was refundable until after the contract was cancelled. Further, neither party provided any evidence or submissions that they agreed that the deposit would be non-refundable when the contract was formed. In the absence of such evidence, I find that the parties did not agree that the deposit was non-refundable. So, I find that Mr. Pali's deposit is refundable when the contract ended.
19. Big Island argues that it lost potential truck sales when it stopped marketing the truck after entering the contract with Mr. Pali. Big Island may be entitled to a setoff from the deposit refund if it can prove it suffered losses from Mr. Pali's cancellation of the contract. However, Big Island has the burden of proving these losses and it has not

provided any evidence that it lost sales as a result of the contract with Mr. Pali. So, I find that Big Island is not entitled to a setoff for lost sales.

20. Big Island also argues that it is entitled to keep the deposit because it already spent money and time repairing the truck before Mr. Pali cancelled the contract. Generally, when a business performs agreed work without an agreed price, it is entitled to reasonable payment for the work. This is known in law as '*quantum meruit*', or value for work done. So, Big Island may be entitled to a setoff from the deposit refund for its repair service's value if it proves that it performed the services with Mr. Pali's agreement. Mr. Pali says that he only agreed to pay for the hitch installation, which he says was not performed. Mr. Pali says he did not agree to pay for any truck repairs or tire purchases. Big Island has the burden of proving its entitlement to a setoff.
21. Big Island says it purchased supplies on May 26, 2020 and began repairing the truck on May 27. Big Island provided a May 26, 2020 receipt from a towing business for \$2,420 for the purchase of a 5-ton rear end and wheels and tires. Big Island provided a May 26, 2020 invoice from its own business for \$866.25 to pick up the rear end and tires. Big Island also provided a May 27, 2020 invoice from his own business for \$779.63 to pick up a steel plate.
22. Mr. Pali argues that he is not responsible for the truck repairs and the replacement tires because he did not ask for these products or services. It is undisputed that Mr. Pali did not ask Big Island to repair the rear axle so I find that Mr. Pali is not responsible for these repair costs.
23. I find that Mr. Pali is responsible for the tire costs since Mr. Pali sent a text message asking for spare tires. Based on the May 26, 2020 towing business receipt, I am satisfied that Big Island purchased tires for Mr. Pali for the truck. So, I find that Big Island is entitled to a setoff of \$320 for the tire costs in the May 26, 2020 receipt.
24. The only invoice Big Island provided relating to the hitch installation was Big Island's May 27, 2020 invoice for \$779.63 to pick up a steel plate. However, I do not find this evidence credible since Big Island does not explain why it is charging Mr. Strong, Big

Island's owner and director, for repairs to Big Island's truck. Further, Big Island does not explain why it cost so much to pick up the steel plate rather than use a delivery service. For these reasons, I am not satisfied that Big Island reasonably incurred the \$779.63 expenses in the May 27, 2020 invoice. In the absence of further evidence, I find that Big Island has not sufficiently proved that it incurred any expenses installing the hitch.

25. For the above reasons, I find that Big Island has not proved that it is entitled to a \$320 setoff from the deposit refund. So, I find that Big Island must refund \$2,680 to Mr. Pali.
26. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Pali is entitled to pre-judgment interest on the \$2,680 deposit refunds from May 29, 2020, the date he cancelled the contract to the date of this decision. This equals \$13.28.
27. 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. Since Mr. Pali was generally successful, I find Mr. Pali is entitled to reimbursement of \$125 in CRT fees. Mr. Strong did not request reimbursement of CRT fees and there is no request for reimbursement of dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order Big Island to pay Mr. Pali a total of \$3,138.28, broken down as follows:
 - a. \$3,000 as a deposit refund,
 - b. \$13.28 in pre-judgment COIA interest, and
 - c. \$125 in CRT fees.
29. Mr. Pali is entitled to post-judgment interest from Big Island, as applicable.

30. Mr. Pali's claim against Mr. Strong is dismissed.
31. 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.
32. 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.

Richard McAndrew, Tribunal Member