



# Civil Resolution Tribunal

Date Issued: April 13, 2021

File: SC-2020-009103

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Peterson v. Fox*, 2021 BCCRT 382

B E T W E E N :

TERITA PETERSON

**APPLICANT**

A N D :

BRIAN J FOX

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about an unpaid refund for purchased items. The applicant, Terita Peterson, paid the respondent, Brian J Fox, \$2,000 for gold items that he agreed to ship to her. Ms. Peterson says she never received the gold, and Mr. Fox agreed to

refund her money but only gave her \$500. Ms. Peterson claims \$1,500 for a refund of the remaining amount she paid for the undelivered gold.

2. Mr. Fox says that Ms. Peterson “broke” their contract by asking for a refund, and owes him a consulting fee for his time. So, Mr. Fox says he owes her nothing further.
3. The parties are each self-represented in this dispute.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal, which 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, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. 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.
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 Mr. Fox is responsible for refunding the remaining \$1,500 paid by Ms. Peterson for the undelivered gold items.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Ms. Peterson must prove her claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the relevant evidence as needed to provide context for my decision.
10. Ms. Peterson and Mr. Fox lived in different cities. The parties' undisputed text messages show that around August 2020 they discussed Ms. Peterson purchasing gold items as an investment. Mr. Fox indicated that he could buy small gold items from an unidentified pawn broker in the city where he lived, and send them to Ms. Peterson. In text messages, I find the parties agreed that Ms. Peterson would send Mr. Fox \$2,000, which Mr. Fox would use to purchase gold and deliver it to Ms. Peterson. It is undisputed that Ms. Peterson had no relationship with any other alleged gold seller, and on balance I find only Mr. Fox agreed to sell her gold.
11. Mr. Fox texted that he would obtain the gold "basically at cost", and he did not seek any additional compensation for himself, other than saying "if you do really good with it cut me in later." The parties confirmed in August 16, 2020 emails that Mr. Fox would send the gold to Ms. Peterson's address by priority shipping as soon as he obtained it. The parties acknowledge that this agreement was a binding contract.

12. The parties agree that Ms. Peterson transferred \$2,000 to Mr. Fox on, or shortly after, August 16, 2020. On August 19, 2020, Mr. Fox texted Ms. Peterson that he would mail the gold the next day. Mr. Fox does not deny sending the gold soon after that, although I find the evidence does not show exactly when he allegedly sent it.
13. It is undisputed that Ms. Peterson did not receive the alleged gold shipment. I find that in the weeks following August 19, 2020, the parties remained in regular contact via text messages. Ms. Peterson kept inquiring about the undelivered gold, and Mr. Fox responded that the shipment had not been returned to him and he knew of no problems with it. Ms. Peterson requested the shipment's tracking number numerous times, but Mr. Fox did not provide it, saying it was on a paper slip elsewhere. On September 9, 2020, Mr. Fox texted Ms. Peterson that if the package was not delivered by September 26, 2020, he would refund her \$2,000 "from my paycheque", and make an insurance claim himself with the shipping company. I find Mr. Fox repeated and clearly confirmed this arrangement several times in other text messages, and that Ms. Peterson accepted the full refund offer.
14. On September 26, 2020, Mr. Fox transferred \$500 to Ms. Peterson. The evidence is unclear on why Mr. Fox did not provide the full \$2,000 refund the parties had agreed to. I find text messages suggest that Mr. Fox said he lacked the money to pay, was waiting for an unrelated payment, and was waiting for his shipping company insurance claim to be processed. In late October 2020, Ms. Peterson asked for the insurance claim number, but Mr. Fox said that he did not have it because he sent the shipping company insurance claim by fax, and he said the withheld tracking number was no longer valid. There are no tracking numbers, insurance claim numbers, or any shipment-related documents in evidence.
15. On November 8, 2020, Mr. Fox texted Ms. Peterson that she would get the rest of the refund when the shipping company paid his alleged insurance claim. I find the parties' agreement about the gold purchase and shipping, and their later agreement to refund Ms. Peterson \$2,000 if the gold had not arrived by September 26, 2020, did not depend on Mr. Fox receiving an insurance payout or having enough funds to pay. I

find Mr. Fox's text messages became heated on November 8, 2020, and he expressed frustration at the near-daily frequency of Ms. Peterson's refund inquiries. A few days later, Ms. Peterson demanded payment of the remaining \$1,500 by December 4, 2020.

16. In a December 3, 2020 email, Mr. Fox told Ms. Peterson he would refund the rest of her money on January 16, 2021. Mr. Fox also said he was "tempted to just bill you for my time", and that if he received one more email or third party message from Ms. Peterson he would send her "an invoice for 15 hrs at 100 bucks an hour for my time" (quote reproduced as written). Mr. Fox also claimed that he owed the alleged gold seller \$500 for "wasting his time", but it is unclear what time was wasted, given that Mr. Fox says he actually purchased gold from the seller that was later lost in shipping. In any event, I find the evidence does not show that Mr. Fox owed anything to a third party because of his gold selling agreement with Ms. Peterson.
17. It is undisputed that Mr. Fox did not refund the remaining \$1,500 to Ms. Peterson as agreed. I find that in early 2021, Mr. Fox issued an invoice dated August 31, 2020 from "H&B Fabrication" to Ms. Peterson, for 15 hours of "Consultant Procurement" fees totalling \$1,605 including tax. The invoice said the fees were "due to contractual breach of procurement" by Ms. Peterson for the time "H and B Fabrication" spent on the contract. Mr. Fox says that H and B Fabrication is his business, but I find there is no evidence that this business was involved in the parties' gold contract. In any event, Mr. Fox says that Ms. Peterson broke their agreement by requesting a cancellation and refund in late August 2020 or early September 2020, and that as a result she should pay for his time. I disagree, for the reasons that follow.
18. Ms. Peterson admits that she requested a cancellation of the gold purchase because Mr. Fox moved and was no longer located close to the gold supplier. She says, and Mr. Fox does not deny, that she asked him to send whatever gold he had purchased to her, which as noted never arrived. I find that Mr. Fox agreed to refund Ms. Peterson \$2,000 by September 26, 2020, and later agreed to pay the remaining \$1,500 by January 16, 2021, but he has only paid \$500 to date. I find that by agreeing to a

refund, the parties amended their original agreement. Overall, I find Ms. Peterson did everything that was required of her under the original gold purchase agreement and the refund agreement, and did not break either one.

19. However, I find Mr. Fox broke the parties' original agreement by failing to deliver the promised gold. I find he also broke the amended agreement by failing to provide the entire \$2,000 refund when he said he would. Further, other than Mr. Fox's unsupported statements, I find there is no evidence before me showing that he purchased any gold, from whom he purchased it, that he sent anything to Ms. Peterson, or that he made an insurance claim against a shipping company. I also find the parties never agreed that Ms. Peterson would compensate Mr. Fox or H and B Fabrication for Mr. Fox's time spent on this gold purchase. Further, I find that Mr. Fox has failed to prove he spent any additional or unexpected time on the gold purchase agreement. I also find Mr. Fox has failed to prove what he did during the invoiced consultant procurement time, other than exchanging text messages with Ms. Peterson and issuing a \$500 partial refund. On the evidence before me, I find that the \$1,605 amount claimed in the invoice is not a valid set-off against the refund Mr. Fox owes Ms. Peterson.

20. I find that Mr. Fox owes Ms. Peterson the remaining \$1,500 of the promised refund.

## **CRT FEES, EXPENSES, AND INTEREST**

21. Under the *Court Order Interest Act*, Ms. Peterson is entitled to pre-judgment interest on the \$1,500 owing. I find pre-judgment interest is calculated from January 16, 2021, the date Ms. Peterson says it was due, to the date of this decision. This equals \$1.63.

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. Ms. Peterson was successful in her claims, so I find she is entitled to reimbursement of the \$125 she paid in CRT fees. Ms. Peterson claimed no CRT dispute-related expenses.

## ORDERS

23. Within 15 days of the date of this order, I order Mr. Fox to pay Ms. Peterson a total of \$1,626.63, broken down as follows:
- a. \$1,500 in debt for an unpaid purchase refund,
  - b. \$1.63 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
24. Ms. Peterson is entitled to post-judgment interest, as applicable.
25. 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.

26. 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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Chad McCarthy, Tribunal Member