



Civil Resolution Tribunal

Date Issued: April 27, 2021

File: SC-2020-004656

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Samra v. Luxurious Builders Group Ltd.*, 2021 BCCRT 443

B E T W E E N :

LAVDEEP SAMRA

APPLICANT

A N D :

LUXURIOUS BUILDERS GROUP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a fence construction deposit. The applicant, Lavdeep Samra, hired the respondent, Luxurious Builders Group Ltd. (Luxurious), to replace his fence.

Mr. Samra cancelled the contract before construction started and he claims the return of his \$2,500 deposit.

2. Luxurious denies Mr. Samra's claim and says the deposit is non-refundable. Luxurious also says it purchased materials to perform the contract before Mr. Samra cancelled it.
3. Mr. Samra is self-represented. Luxurious is represented by its owner, Jaskarn Randhawa.

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. 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.
6. 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

7. The issues in this dispute are:
 - a. Is Mr. Samra entitled to a refund of his \$2,500 deposit?
 - b. Is Luxurious entitled to a set-off from the deposit for its expenses? If so, how much?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant, Mr. Samra must prove his claim on a balance of probabilities. However, Luxurious has the burden of proving any set-offs. 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. Luxurious did not provide any evidence, though it had the opportunity to do so.
9. It is undisputed that Luxurious sent Mr. Samra a quote on May 12, 2020 to replace his fence. The quote says that Luxurious will charge \$7,000 with a \$2,500 deposit. The quote did not say whether the deposit was non-refundable. It is undisputed that Mr. Samra accepted the quote and paid Luxurious the \$2,500 deposit. In doing so, I find that the quote became the parties' written contract.
10. Mr. Samra says Luxurious delayed starting the work multiple times. It is undisputed that Luxurious had not started working on the project by June 2, 2020. At that time, Mr. Samra says he spoke with Luxurious and it said that it was not sure when it could start because it was busy with other projects. It is undisputed that Mr. Samra requested a deposit refund during this conversation. By requesting a refund, I find that Mr. Samra ended the contract on June 2, 2020.
11. Luxurious does not say whether the project was delayed before June 2, 2020, but it says it was ready to start when Mr. Samra asked for the refund. Luxurious says that Mr. Samra ended the contract because he found a cheaper contractor. However, I

find it unnecessary to make a finding about this because nothing in my decision turns on Mr. Samra's reasons for ending the contract.

12. Luxurious says the deposit is non-refundable and still holds it. In the CRT decision in *Smythies v. Sprung*, 2021 BCCRT 158, a 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. So, this deposit was only non-refundable if Mr. Samra and Luxurious agreed that it was when the contract was formed.
13. The written contract does not say the deposit is non-refundable. However, Luxurious says that it verbally told Mr. Samra that it was non-refundable both when they entered the agreement and when Mr. Samra cancelled the contract. Mr. Samra denies this and says that he specifically confirmed that the deposit was refundable when he entered the contract. Further, Mr. Samra says Luxurious said it would return the deposit when he cancelled the contract.
14. Mr. Samra provided a copy of the parties' text messages. There are no text messages from Luxurious saying that the deposit was non-refundable. Further, after Mr. Samra cancelled the contract, Luxurious sent him text messages on June 3 and 8, 2020 saying that it would return the deposit. Luxurious does not explain why it told Mr. Samra that it would return the deposit if the parties had agreed that it was non-refundable. These text messages also conflict with Luxurious' submission that it told Mr. Samra that the deposit was non-refundable on June 2, 2020. Further, on June 3, 2020, Mr. Samra texted Luxurious his email address so it could return the deposit. I find that this text message shows that Mr. Samra expected a deposit refund on June 3, 2020 which is consistent with his submission that Luxurious agreed to return the deposit the previous day.
15. For these reasons, I find that Mr. Samra's version of events is more consistent with the text messages. So, I find his submissions about the deposit are more likely to be accurate than Luxurious' submissions. On that basis, I accept Mr. Samra's submission that Luxurious did not tell him that the deposit was non-refundable.

16. Based on the above finding, and the absence of a written contract term, I find that that the parties did not agree the deposit was non-refundable. So, I find that the deposit is refundable and Luxurious must return the deposit, subject to any set-off discussed below.
17. It is undisputed that Luxurious did not start replacing Mr. Samra's fence. However, Luxurious says it had already purchased materials for the project before Mr. Samra ended the contract. Luxurious may be entitled to a set-off for its expenses from the deposit if it can prove that it purchased materials to perform the contract (see *Wilson v Fotsch*, 2010 BCCA 226). However, Luxurious has not provided any description of the types or quantities of materials it allegedly purchased to perform the contract. Further, Luxurious has not provided any supporting invoices or receipts. I find that Luxurious has not proved that it purchased any materials for Mr. Samra's project. So, I find that Luxurious is not entitled to a set-off and it must refund the entire \$2,500 deposit to Mr. Samra.
18. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Samra is entitled to pre-judgment interest on the \$2,500 deposit refund from June 2, 2020, the date he cancelled the contract, to the date of this decision. This equals \$13.11.
19. 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. Samra was successful, I find that he is entitled to reimbursement of \$125 in CRT fees. Mr. Samra did not request reimbursement of dispute-related expenses.

ORDERS

20. Within 30 days of the date of this order, I order Luxurious to pay Mr. Samra a total of \$2,638.11, broken down as follows:
 - a. \$2,500 in debt as a deposit refund,
 - b. \$13.11 in pre-judgment COIA interest, and

c. \$125 in CRT fees.

21. Mr. Samra is 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.

Richard McAndrew, Tribunal Member