



# Civil Resolution Tribunal

Date Issued: May 3, 2021

File: SC-2020-008567

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McPhee v. Whynot*, 2021 BCCRT 466

**B E T W E E N :**

ISAAC MCPHEE

**APPLICANT**

**A N D :**

RICHARD WHYNOT

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Roy Ho

## **INTRODUCTION**

1. This dispute is about an unpaid invoice for cedar wood.

2. The applicant, Isaac McPhee, says the respondent, Richard Whynot, has not paid for the cedar wood provided.
3. Mr. McPhee claims payment of the \$3,769.50 invoice (\$3,590.00 plus \$179.50 GST).
4. Mr. Whynot says he paid Mr. McPhee in full for the cedar wood, in cash, and seeks to have the dispute dismissed.
5. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. Section 39 of the CRTA says the CRT has the discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. The evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 and I am properly able to assess and weigh the documentary evidence and submissions before me. I also note that in *Yas v Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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.
9. 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.

## **PRELIMINARY ISSUES**

10. Mr. Whynot raises various issues related to the CRT's process. I have grouped them into 2 issues which I will address before turning to the dispute's merits.
11. First, Mr. Whynot submits that Mr. McPhee's dispute is made under false pretences because it is in retaliation for another dispute between himself and Mr. McPhee's son. So, Mr. Whynot says Mr. McPhee is abusing the CRT process. Under CRTA section 11(1)(b), the CRT may refuse to resolve a dispute within its jurisdiction including if it considers it discloses no reasonable claim or is an abuse of process. However, I find Mr. McPhee's dispute on its face discloses a reasonable claim and has some merit (discussed below). I also find that it is not an abuse of process because Mr. Whynot's retaliation allegation is speculative and unproven. So, I will resolve this dispute.
12. Second, Mr. Whynot alleges that Mr. McPhee's dispute is "quasi-criminal" because the invoice is criminal mail fraud. However, the CRT is a civil tribunal and criminal matters fall outside its jurisdiction. He also asks that the CRT refer the matter to the police. This request seeks injunctive relief from the CRT, which is also outside the CRT's jurisdiction, so I decline to refer the matter to the police.

## **ISSUE**

13. The issue in this dispute is whether Mr. Whynot paid in full for the cedar wood, and if not, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, the applicant must prove their claims 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.
15. It is clear from the evidence and submissions that the parties have many conflicting dates, such as the order date, the pick up order date, and the date Mr. McPhee received money. However, I find nothing substantive turns on these dates. The only question that matters is whether Mr. McPhee was paid in full for the cedar wood. I find that he was paid only in part for the reasons to follow.

### ***The Invoice***

16. The parties agree Mr. Whynot ordered 70 feet of cedar wood from Mr. McPhee and Mr. McPhee quoted \$3,590 through text message. It is also undisputed that Mr. Whynot received the cedar wood order at some point.
17. On October 1, 2020, Mr. Whynot received a September 29, 2020 "Final" invoice from Mr. McPhee for \$3,769.50. The invoice included \$179.50 in GST.
18. The text message quote was silent on GST. Mr. Whynot says that cedar wood quote included GST because there was a "cash-discount". Mr. McPhee says he told Mr. Whynot that the quote excluded GST and it remained payable. Mr. Whynot did not provide evidence of a "cash discount", such as a text message. It is undisputed that the parties have been dealing with each other for years. Mr. McPhee submitted in evidence a statement listing the "customary procedure" for Mr. Whynot's orders, which was developed over the years. The list does not include or describe a "cash-discount" on orders. Mr. Whynot did not challenge the "customary procedure". In such a circumstance, I find it appropriate to prefer Mr. McPhee's evidence. Mr. Whynot has not demonstrated an agreement or a practice for a discount. So, I find that on balance Mr. McPhee did not agree to a "cash discount" and I find that GST remains payable on the invoice.

19. I now turn to the parties' positions on the invoice. The invoice showed a wrong order pick up date, which Mr. McPhee acknowledges. Mr. Whynot says that because the invoice is about 4 months old with a wrong pick up date the invoice was fabricated. Mr. McPhee denies this. He says that it is customary for there to be a 4 - 5 weeks delay to invoice Mr. Whynot and for him to receive payment. He also did not see the need to harass Mr. Whynot for payment. I accept this because these are reasonable explanations for the delayed invoice. Moreover, I am unable to conclude that Mr. McPhee's billing practices or a mistake means that the invoice was fake. Similarly, contrary to Mr. Whynot's assertion, I am also unable to conclude that the invoice is fake merely because it says "Final". Mr. Whynot says it cannot be "Final" when he did not receive a previous notice or invoice. As I have accepted that Mr. McPhee did not want to harass Mr. Whynot, I find there would be no reason to provide previous notice or invoice, so I reject this argument. I find that the invoice was not fabricated. The question is whether there is balance owing on the invoice. I address this next.

### ***Payment***

20. So, did Mr. Whynot pay in full for the cedar wood?

21. Mr. Whynot submitted a statement from his friend, JS, who says that he saw Mr. Whynot pay Mr. McPhee for the order and watched Mr. McPhee count the cash.

22. Mr. McPhee does not dispute that Mr. Whynot gave him cash and that JS saw it, but he says that JS did not know what the cash payment was for. I accept this because I find it unlikely that the context of the cash payment would have been discussed. Mr. McPhee says that the cash payment was for a previous order. As mentioned, the parties have been dealing with each other for years and have a "customary procedure" developed for orders, which includes invoicing. However, Mr. McPhee did not provide an invoice detailing the previous order. Mr. McPhee did not explain the absence of this evidence. Mr. McPhee also says that Mr. Whynot "frequently" sends orders to him by text message with the size and quantity of wood, but he also did not provide text message records for this previous order. In this circumstance, I find it appropriate to draw an adverse inference against Mr. McPhee for his failure to provide

evidence that the cash payment was for a previous order. So, I find that the undisputed cash payment was not for a previous order but for this order.

23. Mr. McPhee further says that JS did not see him count the cash because he did not count it at all for cultural reasons. He says unless he is asked to count the money, he will count it when he gets home. I accept this evidence because Mr. McPhee is making an admission against his own interest. It is against his interest because it does not assist him in refuting what Mr. Whynot says he gave him in cash at the time.
24. Mr. McPhee also submitted an affidavit from his son, AM. AM says that Mr. Whynot admitted owing Mr. McPhee money for “several hundred feet of fencing”. I infer the object of this evidence is to show that Mr. McPhee was not paid. However, I reject this evidence because the undisputed evidence is that the cedar wood ordered does not add up to “several hundred feet”. So, I find that this statement if made, was not about this order.

### ***The Cash Amount***

25. So, how much cash did Mr. McPhee receive?
26. Mr. Whynot submitted into evidence a statement from MB. MB says that Mr. McPhee told MB the cash amount was \$1,000. In Mr. McPhee’s reply submissions, he adopts MB’s evidence. However, I am not persuaded that Mr. McPhee received this amount because I am unable to reconcile the fact that Mr. McPhee did not provide evidence of the previous transaction which he alleges the cash payment was for, such as a \$1,000 invoice. I also note that MB’s statement was not submitted as a part of Mr. McPhee’s own evidence. So, I am also not persuaded that Mr. McPhee was paid a \$1,000 because Mr. McPhee did not in his own evidence and submissions provide an alternate amount received from Mr. Whynot but instead relies after the fact and indirectly on MB’s evidence.
27. Again, I find it appropriate here to draw an adverse inference against Mr. McPhee for his failure to provide evidence of the cash amount he received from Mr. Whynot. I find this because it is undisputed that Mr. McPhee received cash from Mr. Whynot at some

point, which he did not count. Yet, Mr. McPhee did not provide in his own evidence a contrary cash amount received. I find that if Mr. McPhee had received something less than \$3,600 from Mr. Whynot, he would have said what that amount was at the CRT's evidence submission stage, argument submission stage, or in the reply submission stage but he did not. So, I find on a balance that Mr. Whynot paid Mr. McPhee \$3,600 in cash and that payment was for the cedar wood.

***Did Mr. Whynot pay the order in full?***

28. However, I find that Mr. McPhee was not paid in full. There is no evidence of a “cash-discount” for the order. The undisputed evidence is that Mr. McPhee quoted Mr. Whynot \$3,590 for the order. There is no evidence that this quote was \$179.50 GST inclusive, and as mentioned I have found that GST remains payable for the cedar wood in accordance to Mr. McPhee's business practices. So, I find that Mr. Whynot paid \$3,600 for the order but still owes to Mr. McPhee \$169.50 in GST.

**CRT FEES, EXPENSES, AND INTEREST**

29. Mr. McPhee claims non-contractual interest under the *Court Order Interest Act* (COIA). As I have found that Mr. McPhee was partially successful in proving a part of his claim, I find that he is entitled to pre-judgement interest under the COIA on the \$169.50. There is no evidence on when Mr. McPhee remitted the GST, so I find it is reasonable in the circumstances to calculate interest from the start of this dispute November 17, 2020 to the date of this decision. This equals \$0.35.

30. Under section 49 of the CRTA and CRT rules, the CRT will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. McPhee was partially successful, so I find that he is entitled to half of the \$175 tribunal fees paid, equating to \$87.50. Mr. McPhee gave 2 receipts to the CRT but did not request for reimbursement for dispute-related expenses, so I make no order for reimbursement. Mr. Whynot did not pay fees or claim related expenses.

## ORDERS

31. Within 30 days of the date of this order, I order Mr. Whynot to pay Mr. McPhee a total of \$257.35 broken down as follows:
  - a. \$169.50 in debt for GST,
  - b. \$0.35 in pre-judgment COIA interest, and
  - c. \$87.50 in CRT fees.
32. Mr. McPhee is entitled to post-judgement interest, as applicable.
33. I dismiss the balance of Mr. McPhee's claims.
34. 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.



35. 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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Roy Ho, Tribunal Member