



# Civil Resolution Tribunal

Date Issued: May 20, 2021

File: SC-2020-008609

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sheirzad v. Dhillon*, 2021 BCCRT 547

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

PEGAH SHEIRZAD

**APPLICANT**

**A N D :**

RICKY DHILLON

**RESPONDENT**

**A N D :**

PEGAH SHEIRZAD

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

## **INTRODUCTION**

1. This dispute is about the release of a \$5,000 holdback held in trust by the applicant Pegah Sheirzad's notary, following a residential property sale by the respondent Ricky Dhillon to Ms. Sheirzad.
2. Ms. Sheirzad says that under the parties' contract, Mr. Dhillon was required to complete certain roof work at the property by April 30, 2018. She says that Mr. Dhillon did not complete the roof work and she is therefore entitled to the \$5,000 holdback.
3. Mr. Dhillon counterclaims against Ms. Sheirzad and says that he is entitled to the holdback funds because the roof work was completed on time.
4. Ms. Sheirzad and Mr. Dhillon each seek an order that the holdback funds be released to them, respectively. For the reasons set out below, I refuse to resolve these claims under section 11 of the *Civil Resolution Tribunal Act* (CRTA).
5. Both 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 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. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. In particular, the CRT may make such an order on its own initiative, on request by a party, or on recommendation by a CRT case manager (also known as a CRT facilitator).

8. 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.
9. 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.
10. 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.
11. Here, I find I have no jurisdiction to order the holdback funds be released. Section 118 of the CRTA only allows me to order a party to do something, also known as injunctive relief, in very limited circumstances that do not apply here. I cannot grant the parties' requested remedy for the notary to release the holdback funds. I address below my decision refusing to resolve the parties' claims.

## **ISSUE**

12. The issue is does the CRT have jurisdiction to order the release of the holdback funds? If not, should the CRT refuse to resolve this dispute?

## **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, the parties must prove their respective 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.

14. On November 29, 2017, the parties signed a contract of purchase and sale (contract). The contract included a term that Mr. Dhillon complete certain roof work for the property at his expense. In particular, Mr. Dhillon was required to have a licensed roofing company provide additional roof and soffit venting where required, fill any holes in the roof, inspect all flashings on the roof and caulk where necessary. The contract stated that Ms. Sheirzad's notary would hold back \$5,000 from the sale proceeds as security for the roof work. If the roof work was not done by the agreed upon date, Mr. Dhillon would forfeit the holdback to Ms. Sheirzad.
15. The contract noted Mr. Dhillon's agreement to do the roof work by January 15, 2018 with a grace period of up until March 30, 2018. The parties later undisputedly agreed to extend this date to April 30, 2018.
16. The contract did not explicitly state under which circumstances, if any, Mr. Dhillon might be entitled to the \$5,000 holdback funds.
17. The parties dispute whether the contract's term about the required roof work has been satisfied and which of them is entitled to the holdback funds. As mentioned above, Ms. Sheirzad says that Mr. Dhillon did not complete the roof work. She says that by failing to complete the roof work, Mr. Dhillon has forfeited the holdback funds to her. Ms. Sheirzad further says that as a result of Mr. Dhillon's failure to complete the roof work, her roof is failing, and she has now spent \$12,000 to repair the roof. Ms. Sheirzad does not seek damages against Mr. Dhillon but, as mentioned above, instead seeks an order that the holdback funds be released to her.
18. In contrast, Mr. Dhillon says that Ms. Sheirzad has failed to show why she is entitled to the holdback funds. Mr. Dhillon says the evidence shows that he satisfied the contract's terms relating to the roof work and the \$5,000 holdback should be released to him.
19. I find I do not need to address whether the roof work was completed in accordance with the contract's terms, or if the parties' claims are out of time under the *Limitation Act*. I say this because I exercise my discretion to refuse to resolve the parties' claims

under section 11 of the CRTA, on the basis a court is the more appropriate forum. My reasons follow.

20. First, as noted above, there is \$5,000 sitting in Ms. Sheirzad's notary's trust account. I do not have the relevant correspondence between the parties' respective notaries or lawyers before me, but I expect those holdback funds may be held on undertakings about their release. I say this given that such undertakings are common practice between lawyers and notaries where sale proceeds are concerned.
21. Second, even if I made a finding about whether or not the roof work was done in accordance with the contract's terms, any decision I issue would not necessarily cause the holdback funds to be released. I have no jurisdiction under CRTA section 118 to make any orders or declarations about who is entitled to the holdback funds held in trust. Nor can I order the notary, who is not a party to this dispute, to release the holdback funds.
22. I find it would be unfair to the parties to resolve their respective claims without being able to also address the \$5,000 held by the notary in trust, money that is undisputedly being held as security for the roof work which is at issue in this dispute. I find that the BC Supreme Court is the more appropriate forum, as it is empowered to grant injunctive and declaratory relief, including orders for the release of funds held by the notary should the court conclude that result is appropriate. Nothing in this decision addresses the merits of the parties' claims and I make no findings about them or what the court may do. Further, nothing in this decision prevents the parties from giving instructions to their respective notaries or lawyers in order to deal with the funds held in trust.
23. In the circumstances, I direct the CRT staff to refund the parties their paid CRT fees. I make no order for reimbursement of Mr. Dhillon's claimed dispute-related expenses given I have refused to resolve the merits of the parties' claims.

## **ORDER**

24. I refuse to resolve the parties' respective claims under section 11 of the CRTA.

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Nav Shukla, Tribunal Member