



Civil Resolution Tribunal

Date Issued: June 8, 2021

File: SC-2020-008832

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brar v. Williams*, 2021 BCCRT 628

B E T W E E N :

BHAV BRAR and BALWANT BRAR

APPLICANTS

A N D :

MARINA WILLIAMS and DANIEL WILLIAMS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for fencing work. The applicants, Bhav Brar and Balwant Brar, say the respondents, Marina Williams and Daniel Williams, have

failed to pay them for the fence job the applicants did, contrary to the parties' agreement. The applicants say the respondents only paid \$2,600 and \$7,400 is outstanding. However, the applicants limit their claim to \$5,000, the monetary limit for the Civil Resolution Tribunal (CRT) in its small claims jurisdiction.

2. The respondents say they do not owe the applicants anything further because the applicants delivered the wrong type of cedar fencing, they did not properly build the ordered custom gates, the project was delayed, and most significantly the work was poorly done.
3. Given last names are shared in this dispute, without intending disrespect I will refer to the parties by their first names for clarity. Bhav represents the applicants and Daniel represents the respondents.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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 parties to a dispute that will likely continue after the dispute resolution 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.

6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are a) whether the applicants' fencing work was deficient or incomplete, and b) to what extent, if any, the applicants are entitled to the \$5,000 claimed.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicants have the burden of proving their claims, on a balance of probabilities. While I have reviewed the evidence and submissions before me, I have only referenced below what I find is necessary to give context to my decision.
10. The evidence shows the respondents hired the applicants in August 2020 and the respondents began installing the fence around September 28, 2020. The respondents say the applicants had agreed to complete the installation in 3 days but failed to do so. I find the evidence is unclear how long the applicants took and there is insufficient evidence that the parties agreed to a particular timeline. However, given my conclusion below, nothing turns on this.
11. The parties agree:
 - a. The respondents hired the applicants to install a 6-foot cedar fence and custom gates on their property.

- b. The respondents do not live on the property where the fence was installed.
 - c. Marina signed the applicants' "Estimate Quote" document (contract), which said the respondents would pay the applicants \$10,000 for the job, including materials that the applicants purchased.
 - d. This dispute is over whether the applicants installed the fence to a reasonable industry standard.
12. I note that on its face the respondents' contract is with "Wonderland Fencing & Landscaping" (Wonderland). The applicants say the contract was with them personally. As written, Wonderland is not a corporation and is just a business name. So, I accept the applicants have standing to bring this claim in their personal capacity against the respondents, which is not disputed.
13. I turn then to the parties' August 26, 2020 contract, which provides:
- a. A pressure treated "Grade 2" fence, 2 x 4 Frame, including all labour and supplies, for \$8,606.00. This price is for an "estimated total 331 feet" of fence, and the price could go up or down depending on the total amount of fencing installed. There is no evidence a different amount of fencing was installed.
 - b. Two custom gates on hinges and wheels, at \$550 each, for a total of \$1,100.
 - c. With GST, the total is \$10,191.30. However, there is a handwritten note on the contract submitted by the applicants that says the total cost including materials, labour and taxes is \$10,000, consistent with the parties' agreement referenced above.
14. I note the parties elsewhere refer to "Grade B" fencing, as being something lesser quality than Grade A fencing. The evidence before me is not entirely clear that Grade 2 and Grade B are the same standards, but I find the material point is that the contract provided for Grade 2 fencing, which is a second-tier quality rather than the best quality.

15. As largely shown in their photos discussed further below, the respondents say the fencing is defective because:

- a. The contract specified “Grade 2” fencing but a “much lower defective product” was provided.
- b. The fence panels were of a different colour and height, as shown in the photos and described above.
- c. All the fencing post caps were missing, but there are no photos in evidence showing this.
- d. The height in 2 fence panels is 3” shorter than the 72” required. A photo in evidence shows the height of one panel at 69” and another photo shows the cut-off portions of 3 posts.
- e. Small amounts of low-quality concrete were used and posts were cut too short, which the respondents say is the reason for the fence “not being able to stand”.
- f. The applicants used “wrong hardware” on at least 1 of the 2 gates.

16. I have reviewed the respondents’ submitted photos of the fence. In at least 3 photos, the tops of the fence panels do not line up level. In another, labelled “January pic”, some of the fence panels are clearly leaning into the yard’s interior and are not vertically straight. Two photos show visible large holes in the fence panels, showing light coming through. Two photos show the fence panels being cross-braced after the applicants’ work, presumably before repairs the respondents say were done by their tenant. In particular, one photo is labelled “January 16”, which I infer is 2021, after “some repairs, concrete was added at posts”, by their tenant. This photo shows the fence panels are level across the top.

17. I turn to the applicable law.

18. When a party alleges defective work, they must prove that the work was defective (see *Lund v. Appleford Building Company Ltd.*, 2017 BCPC 91 at paragraph 124). Here, this means that the respondents must prove that the applicants' work fell below the standard of a reasonably competent fencing installer.
19. Generally, when an issue is outside the knowledge of an ordinary person, expert evidence is required (see *Bergen v. Guliker*, 2015 BCCA 283). The respondents did not provide expert evidence, such as from another fencing installer. However, I find it is within ordinary knowledge that a cedar fence should be installed level and stable so that its panels do not lean obviously into the yard.
20. The applicants submitted evidence about how fence panels sold by Home Depot are referred to as 6' posts but are in fact 67.5" high. Their Home Depot screenshot says this "allows for adequate ground clearance while maintaining a 6 ft. finished installed height". I find this does not assist the applicants, since the photos show the fence panels they installed do not have a consistent finished height.
21. The applicants also submitted a copy of the original quote they gave the respondents, for \$20,380.50, which included Grade "A" cedar and a retaining wall that would have added height. The respondents undisputedly opted for the lower \$10,000 quote. I accept that Daniel told the applicants he wanted to get a "lower grade fence rather than first grade" since it was at their farm and "doesn't have to be that perfect". I find this likely refers to the quality of the wood used, not whether the fence was built level and vertically straight. I find the Grade 2 quality wood, without a retaining wall, did not mean the applicants reasonably could build an unstable fence that was not level.
22. The respondents submitted a text exchange containing a photo of their completed fence installation, as proof that the fence panels had a colour difference between them. Contrary to the applicants' assertion, I find there is insufficient evidence before me the respondents ever agreed to differently coloured fence panels. I find the parties' contract provided for fence panels that generally matched in colour, and the panels the applicants installed did not.

23. I accept the applicants' argument that by agreeing to Grade 2 wood the respondents accepted there would be some knots in the wood. However, the applicants argue they have the receipts to show they supplied Grade B wood, contrary to the respondents' arguments that even lesser quality wood was supplied. Yet, the applicants did not submit those receipts. I draw an adverse inference against the applicants for failing to produce those receipts which they said were available to them. This means I find it more likely than not that the applicants used lesser grade wood than the contracted Grade 2 wood.
24. Next, the applicants say the fence posts were cut short to "have the fence line up". Yet, I find the photos in evidence show the fence is clearly not lined up. The applicants allege that 2 or 3 days into the job Daniel requested that instead of having the posts 2 feet into the ground to only have 1 foot to make the fence taller. The applicants say they advised against this as it would not be a steady frame for the fence, and said Daniel should opt for the retaining wall quote if he wanted height. The applicants say Daniel said that was too expensive and insisted the applicants "cookie cut it" by having only 1 foot of post in the ground, and so the applicants "listened to his wish" (quotes reproduced as written).
25. In contrast, the respondents say having posts cut shorter was never agreed on and is unacceptable as the fence's stability was lost.
26. On balance, I find it unlikely that Daniel would have instructed the applicants, part way through the job, to start cutting posts down to only 1 foot in order to add fence height. Further, I do not understand how cutting the posts shorter would add to the fence's finished height. There is no documentary evidence in support of the applicants' assertion, such as texts or emails. Ultimately, I find that the photos show the applicants built a fence that was not stable and was leaning into the yard, and was also not level. I find that if the respondents had proceeded on Daniel's instructions and contrary to their advice, they likely would have documented it with Daniel's acknowledgement.

27. The applicants also inconsistently say the fencing work was 95% completed and also that it was fully completed. The applicants submitted no evidence in support of the materials they bought for the job or what they did and how they did it, other than their submissions that I have set out above.
28. In summary, I find the applicants failed to reasonably complete the fence installation and supplied substandard wood contrary to the parties' agreement.
29. It is undisputed that for the 50% deposit Daniel paid the applicants \$2,600 in cash on September 28, 2020, and also gave them a \$2,600 cheque that the respondents later cancelled. This left \$7,400 owing on the contract. As noted above, the applicants reduce their claim to \$5,000 to fit within the CRT's monetary limit.
30. I find the applicants have not provided reasonable goods and services beyond the \$2,600 that the respondents paid. I say this because I find the applicants have not proven they reasonably fulfilled the contract and based on the photos I find it likely much, if not all, of the fence needs to be replaced, due to substandard wood used, the cut posts, and the leaning panels. On balance, I find the applicants have not proved they are entitled to any further payment and so I dismiss their claim.
31. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. I see no reason to deviate from that practice here. The applicants were unsuccessful, and the respondents did not pay fees or claim expenses, so I make no order for fees and expenses.

ORDER

32. I order the applicants' claim and this dispute dismissed.

Shelley Lopez, Vice Chair