



# Civil Resolution Tribunal

Date Issued: December 20, 2021

File: SC-2021-004558

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hunter v. Cumyn*, 2021 BCCRT 1328

B E T W E E N :

KENNETH HUNTER

**APPLICANT**

A N D :

ESTELLA CUMYN and GLENN CUMYN

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicant, Kenneth Hunter, supplied the respondents, Estella Cumyn and Glenn Cumyn, with a preliminary sketch and finished drawings for a 1300-square-foot deck. Mr. Hunter seeks \$2,850 for those drawings.

2. The Cumyns say Mr. Hunter quoted them a price of \$300-350 for the drawings and never advised of a price increase. They say they offered to pay \$300 plus printing costs, but Mr. Hunter refused and they have not spoken since.
3. Mr. Hunter represents himself. The Cumyns are represented by Mrs. Cumyn. For the reasons that follow, I allow Mr. Hunter's claim in part.

## **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. 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 some respects, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did the parties agree on price, and if not, did they nonetheless have a binding contract?
  - b. What is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil dispute, Mr. Hunter must prove his claim on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
10. I infer from the parties' submissions that Mr. Hunter is in the business of design and construction. Mr. Cumyn emailed Mr. Hunter in November 2020, asking for design and possibly construction of a deck. He needed the design to apply for a building permit. Mr. Hunter expressed interest and the Cumyns began supplying the information he needed. I return to the terms of their contract below.
11. On January 2, 2021, Mr. Hunter emailed the Cumyns a preliminary sketch. The parties met to review the sketch on January 21, 2021. The Cumyns requested some changes and provided more measurements at Mr. Hunter's request. On February 19, 2021, Mr. Hunter gave the Cumyns 3 large copies of the finished drawings and a digital file. The final drawing includes views from different perspectives and elevations, roof framing detail and railing detail.
12. Mr. Hunter invoiced when the work was complete, rather than as he went. On February 28, 2021, Mr. Hunter invoiced the Cumyns \$3,386.25. The invoice was not

itemized but said it included the preliminary drawing and design meeting. As noted, the Cumyns did not pay the invoice. They claim the agreed price was \$300-\$350.

13. It is undisputed that this was a “handshake agreement” with no written contract. Oral agreements are enforceable like written ones, but their terms can be more difficult to prove. An enforceable construction contract generally requires agreement about the nature of the work, the timeline for completion, and the price: *Hodder Construction (1993) Ltd. v Topolnisky*, 2021 BCSC 666 at paragraph 118. I find the same principles apply to construction drawing contracts.
14. It is undisputed, and I find, that Mr. Hunter and the Cumyns agreed Mr. Hunter would provide scaled drawings for the Cumyns to use in their application to a local building authority for construction approval. The drawings were of a 1,300-square-foot deck that was to wrap partially around the Cumyns’ existing mobile home. There is no evidence that the parties discussed the drawings’ technical requirements in detail, but it is undisputed that the drawings had to be suitable for submission to the relevant building authority. It is also undisputed that the drawings were so suited.
15. As for the timeline, the parties took a flexible approach. Based on the email correspondence, I find the parties agreed on a rough completion date of early 2021, which I find Mr. Hunter met.
16. The final element of an enforceable contract is the price. The Cumyns say Mr. Hunter quoted over the phone a price of \$300-\$350. Mr. Hunter says \$350 was the price he quoted to Mrs. Cumyn for the preliminary sketch only. He says in the same phone conversation he quoted a minimum cost of \$2,500 for the final drawings. The evidence before me does not allow me to conclusively accept one party’s evidence on price over the other’s. I accept that Mr. Hunter said the minimum cost was \$2,500, but I also accept that Mrs. Cumyn did not affirm that price and operated on the mistaken assumption that \$300-\$350 was the price for the final drawings.
17. Based on the evidence, I find the parties did not have a “meeting of the minds” about the price for Mr. Hunter’s final drawings. A binding contract may still exist without any

express remuneration terms. In such cases, the principle of contractual *quantum meruit* applies: see *Hodder*. This means Mr. Hunter is entitled to be paid a reasonable amount for the services he provided.

18. The evidence of the cost of Mr. Hunter's services is not entirely satisfactory. Mr. Hunter largely relies on his estimate of the cost to build the deck being \$30,000, but he provided no evidence of the relationship between construction costs and design costs. He did not provide time records or even an estimate of how long he spent on the drawings. However, I accept based on the final scaled drawings that they could not have been produced in a matter of a few hours. There was also time to prepare the preliminary sketch, an in-person meeting, travel time to and from that meeting, and revisions to the drawings. As noted, the February 28, 2021 invoice was for \$3,386.25, but Mr. Hunter claims \$2,850 in this dispute. I note the Cumyns provided no evidence that similar drawings could be produced at a lower cost. On a judgment basis given the lack of evidence, I find \$2,500 is a fair price for the work, and I order the Cumyns to pay this amount.
19. I acknowledge that when the price dispute arose the Cumyns attempted to retract their permit application and told the building authority they would be supplying new drawings. It may be that the Cumyns received little benefit from Mr. Hunter's drawings. However, it was their decision not to use the drawings, which they did not dispute were suitable for their purposes. Where contractual *quantum meruit* applies, the appropriate monetary award is determined by reference to the cost of the services, not the benefit (or lack of benefit) to the recipient: see *Infinity Steel Inc. v. B & C Steel Erectors Inc.*, 2011 BCCA 215 at paragraph 13.
20. The *Court Order Interest Act* applies to the CRT. Mr. Hunter is entitled to pre-judgment interest on the \$2,500 from February 28, 2021, the date of the invoice, to the date of this decision. This equals \$9.12.
21. 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. Mr. Hunter was successful, so I find he is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

## ORDERS

22. Within 14 days of the date of this order, I order the Cumyns to pay Mr. Hunter a total of \$2,634.12, broken down as follows:
  - a. \$2,500.00 in debt,
  - b. \$9.12 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125.00 in CRT fees.
23. Mr. Hunter is entitled to post-judgment interest, as applicable.
24. 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.
25. 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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Micah Carmody, Tribunal Member