



Civil Resolution Tribunal

Date Issued: December 24, 2021

File: SC-2021-003608

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Christie v. Ng*, 2021 BCCRT 1340

B E T W E E N :

RYAN CHRISTIE

APPLICANT

A N D :

SILIANNE NG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The parties are neighbours and this dispute is over payment for a replacement fence. The applicant, Ryan Christie, says he demolished and replaced the old fence on the shared property line with the respondent, Silianne Ng. He says Miss Ng should pay for the required materials.

2. The parties agree Mr. Christie replaced the fence on the parties' shared property line in the spring of 2021. At issue is whether Miss Ng agreed to pay for all the materials to do so, in exchange for Mr. Christie doing the work.
3. Mr. Christie says after he completed the fence, Miss Ng refused to pay for all the materials, and instead offered to pay Mr. Christie \$1,040. Mr. Christie claims \$3,705.25 for the fence replacement costs. Miss Ng says they agreed she would pay \$1,040 for the fence before it was replaced. Miss Ng says she has already paid Mr. Christie, and owes nothing.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. Some of the evidence in this dispute amounts to a "he said, she 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. 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. 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.

7. 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.
8. 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.

ISSUE

9. The issue in this dispute is what amount, if any, Miss Ng must pay for the fence.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Christie must prove his 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.
11. Mr. Christie says after he completed the fence, Miss Ng refused to pay for all the materials, and instead offered to pay Mr. Christie \$1,040 based on half of a third party fencing company's 2017 fencing quote. Mr. Christie says the 2017 quote was outdated. He says he obtained an updated quote from the third party fencing company for \$3,705.25. He says the updated third party quote reflects the actual cost of replacing for the entire fence, and now claims payment of this amount.
12. As noted, Miss Ng says they agreed she would pay \$1,040 for the fence. She says despite this, Mr. Christie demanded \$2,142.79 for materials when he completed the work, and now asks for \$3,701.23, which is the full cost of a new fence as quoted by a third party, including labour and materials, despite the fact that Mr. Christie completed the work himself. Miss Ng says she owes nothing.

13. It is undisputed that there was no written contract about the fence's replacement or Miss Ng paying the entire cost of the fence materials. A verbal contract is enforceable like a written contract, but it can be harder to prove. Mr. Christie says that the new fence was built on the shared property line "therefore making it 50/50". He says it was his belief was that the actual and documented final costs to create the fence were to be shared. For the following reasons, I disagree.
14. For a valid contract to exist, the parties must have a "meeting of the minds". This means that the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms. There must also be an offer by one party that is accepted by the other, plus valuable "consideration". "Consideration" means payment or money or something else of value. (See discussion on contract formation in *Redfern Resources Ltd. (Re)*, 2012 BCCA 189 and *Fairchild Developments Ltd. v. 575476 B.C. Ltd.*, 2020 BCCA 123.)
15. I find text messages between the parties show the fence replacement was discussed in March 2020, when Mr. Christie proposed replacing the fence he shared with Miss Ng, as well as the fences he shared with his other neighbours. He said his other neighbours were going to pay for materials and he would "take care of everything else". Mr. Christie said he would be approaching Miss Ng with the same offer. The parties discussed the fence further, and Mr. Christie estimated that it would cost \$1,549.66 to buy the materials. Miss Ng said she had a third party quote for \$1,680, which would mean they would each pay \$840. Mr. Christie did not respond.
16. Miss Ng says she wanted to pay a third party to replace the fence on the shared property line with Mr. Christie's property because it was cheaper, but Mr. Christie refused. Mr. Christie does not dispute this.
17. On March 23, 2020, Miss Ng told Mr. Christie that she wanted to leave the fence alone and maybe replace it in a couple years. On April 27, 2020, Mr. Christie told Miss Ng that his other neighbours had agreed to pay for materials. Most importantly, Mr. Christie also said "rather than have no support for you and bare the full cost of

the new fence, perhaps we can compromise in terms of what financial support you can provide rather than nothing at all” (reproduced as written). In response, Miss Ng maintained that Mr. Christie’s quoted price was too high.

18. October 2020 text messages between the parties in evidence discuss the fence replacement timing and materials arriving. I find these text messages indicate that at some point after April 27, 2020, Miss Ng agreed to allow Mr. Christie to replace the fence on the shared property line. However, I find there is no evidence that the parties agreed that Miss Ng would pay for all the fence materials in exchange. In a January 15, 2021 text message from Mr. Christie to Miss Ng, he said he was almost done the fencing. Again, importantly, Mr. Christie also said “I am hoping we can still work something out in terms of costs”.
19. A February 11, 2021 text message from Miss Ng to Mr. Christie thanked him from finishing the fence. Miss Ng also said she would write Mr. Christie a cheque “plus the extra \$200 we agreed on”. In response, Mr. Christie asked Miss Ng to “refresh [his] memory what [they] discussed or agreed on”, and said all the other neighbours had paid for all materials and delivery. In response, Miss Ng said they had agreed that Miss Ng would pay half of a third party’s quote for the fence replacement (\$840), plus \$200 extra, for a total of \$1,040. Mr. Christie said “that was definitely a major problem then and will not work for me at all”. He also said that “regardless of what we discussed previously”, he could not change the materials cost, and asked that Miss Ng be reasonable with him on the fence materials costs.
20. I find the parties’ text messages show that Miss Ng did not agree to pay for all the fence materials or the full fence replacement costs at any point in time. So, I find Mr. Christie has not proven Miss Ng agreed to pay for all the fence materials, or the full fence replacement costs.
21. As noted, Miss Ng says that she agreed to pay \$1,040 for the fence. Mr. Christie denies any such agreement in his submissions. However, I find his text messages to Miss Ng show that he did not recall whether an agreement was reached or not, so I place no weight on his submission that the parties had no agreement. The parties

agree that Miss Ng gave Mr. Christie a cheque for \$1,040, but he did not deposit it. So, despite the fact that Mr. Christie says there was no agreement, I find that Miss Ng agreed to pay \$1,040 for the fence, and tried to pay Mr. Christie \$1,040 by cheque in March 2021. However, I also find the cheque is now likely “stale dated”. This means the cheque is old and Mr. Christie’s financial institution may not honour it. Therefore, I find that Miss Ng must pay Mr. Christie \$1,040 for the fence.

22. I acknowledge Mr. Christie’s arguments that the fence needed replacement, and required more work than the third party quote Miss Ng relied on. He says the third party quote was too low and did not accurately reflect the work he completed. Mr. Christie claims \$3,701.25 this dispute, which is higher than the amount Mr. Christie originally sought from Miss Ng after the fence was built (\$2,276.90). Mr. Christie says since Miss Ng wants to rely on the third party quote, she should have to pay the full amount (\$3,701.25) re-quoted by the third party after the fence was completed to reflect to scope of work completed by Mr. Christie. I find there is no basis for such a claim.
23. The *Court Order Interest Act* normally applies to the CRT. However, here I find Mr. Christie is not is entitled to pre-judgment interest on the \$1,040 award. I say this because I find Miss Ng gave him a cheque for \$1,040 in March 2021, and he did not deposit it. I am only ordering Miss Ng to pay Mr. Christie \$1,040 because I find the cheque Miss Ng already provided to him is likely stale dated, as discussed above.
24. 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. However, as Mr. Christie was not awarded any amount in excess of the amount previously provided to him by Miss Ng, I find he is the unsuccessful party, and I dismiss his fee claim. Miss Ng did not pay any CRT fees or claim any dispute-related expenses.

ORDERS

25. Within 30 days of the date of this decision, I order Miss Ng to pay Mr. Christie \$1,040 for the fence.
26. Mr. Christie is entitled to post-judgment interest, as applicable.
27. 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.
28. 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.

Leah Volkers, Tribunal Member