



Civil Resolution Tribunal

Date Issued: January 21, 2022

File: SC-2021-004489

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Whitson v. Woods*, 2022 BCCRT 82

BETWEEN:

GREGG WHITSON and RONDA PREWETT

APPLICANTS

AND:

BRUCE WOODS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. The applicants, Gregg Whitson and Ronda Prewett, made an agreement with the respondent, Bruce Woods, for Mr. Woods to supply, build, and deliver 2 cedar sheds. The applicants say they each paid Mr. Woods a \$1,200 deposit, but Mr. Woods failed to produce the sheds. The applicants claim a refund of the \$2,400 total they paid Mr. Woods for the 2 sheds.

2. In the Dispute Response filed at the outset of this proceeding, Mr. Woods said he encountered unanticipated delays, so he was unable to complete the sheds within the agreed time frame. He said he used the applicants' deposits to buy materials, which he still has. I infer it is Mr. Woods' position that because the money was spent, he does not have to refund the applicants.
3. As discussed below, Mr. Woods did not provide any evidence or submissions, despite having the opportunity to do so.
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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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. 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 in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, 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 decided to hear this dispute through written submissions.

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.
9. I note that Mr. Woods initially filed an application to make a counterclaim, but he did not pay the required fee, so the CRT did not issue a counterclaim Dispute Notice. Therefore, I have not made any decision about a counterclaim, as I find there is no counterclaim properly before me. I have also not reflected any counterclaim in the style of cause above.

ISSUE

10. The issue in this dispute is to what extent, if any, are the applicants entitled to a refund of the \$2,400 total paid deposits?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). As noted, Mr. Woods did not provide any evidence or submissions, despite CRT staff providing him with an extension of time and subsequent reminders. I have read all the evidence and submissions before me, but I refer only to what I find is necessary to explain my decision.
12. It is undisputed that Mr. Woods posted an advertisement on Facebook Marketplace offering construction of cedar sheds, planters, storage, and pergolas. The evidence

shows Mr. Whitson responded to Mr. Woods' ad on May 2, 2021. The parties' agreement consists of text messages sent through Facebook Marketplace.

13. The parties' text messages show Mr. Whitson asked Mr. Woods how much it would cost for a 4x8 cedar shed. Mr. Woods quoted \$2,395.90, which included all labour, materials, delivery, assembly, and taxes. Mr. Woods stated the quoted price was based on current lumber prices, and given the market, he could not guarantee the price if the order was not placed that day. The evidence shows that Mr. Whitson ordered one shed for himself and one shed for his neighbour, "Judi Prewett".
14. Mr. Whitson provided an e-transfer statement showing he made a \$1,200 payment to Mr. Woods on May 2, 2021. Mr. Woods also emailed Mr. Whitson a May 2, 2021 invoice totalling \$2,395.90. The invoice showed Mr. Whitson's \$1,200 payment and \$1,195.90 balance due. The invoice stated that the current lead time was 14 to 21 days from the confirmed order date. Based on the invoice and the parties' text messages, I find the agreed delivery date for Mr. Whitson's shed was May 23, 2021, at the latest.
15. As for the second shed, I infer that Ronda Prewett is Judi Prewett's legal name. I say that because all the evidence before me shows it was Judi Prewett that contracted and paid Mr. Woods for the second cedar shed, and I find there is no other explanation for naming Ronda Prewett as an applicant to this dispute. So, I find that all references to Judi Prewett in the evidence, are references to the applicant, Ronda Prewett.
16. The parties' text messages show Mr. Woods emailed an invoice directly to Mrs. Prewett on May 2, 2021. The applicants did not provide a copy of that invoice, but I find the evidence shows Mr. Woods charged the same amount for both sheds. The applicants provided an e-transfer statement showing a second \$1,200 payment to Mr. Woods on May 2, 2021. I find Mrs. Prewett paid Mr. Woods a \$1,200 deposit for a cedar shed, on the same terms as Mr. Whitson's invoice.

17. The evidence shows that Mr. Woods emailed Mrs. Prewett on May 13, 2021, stating he would have the 2 sheds delivered the following weekend. Mr. Whitson then texted Mr. Woods on May 21, 2021 to follow up, and Mr. Woods advised Mr. Whitson that he hoped to deliver the sheds within a couple of days.
18. When Mr. Whitson followed up on May 23, 2021, Mr. Woods advised he was having personal issues with a roommate that had caused delay in completing the sheds. Mr. Woods agreed to provide daily photographs to document his building progress. There is no evidence that Mr. Woods sent any photographs, despite Mr. Whitson following up on May 25 and 26, 2021.
19. On May 26, Mr. Woods texted Mr. Whitson that he was juggling everything himself and was doing what he could. Mr. Whitson responded that Mr. Woods should refund his money if he could not handle the work. Mr. Woods replied that he had experienced a shortage of supplies and employees and thought they had discussed “by months end at latest”. He asked if Mr. Whitson wanted the product he ordered or to cancel it, to which Mr. Whitson advised if the sheds were not delivered by May 31, 2021, he would “be there” to get the \$2,400 back.
20. On May 31, 2021, Mr. Woods advised the sheds were still incomplete as his car had broken down in another town. Mr. Whitson advised he wanted his money back, and Mr. Woods replied that the deposit had been used for the shed materials. Mr. Whitson responded by filing this dispute.
21. The evidence shows that upon receipt of the Dispute Notice, Mr. Woods emailed Mr. Whitson to apologize for being unable to deliver the sheds on time, for which Mr. Woods acknowledged that he was “at fault”.
22. As noted, Mr. Woods did not provide any evidence or submissions in this dispute. In the Dispute Response, Mr. Woods admits he did not “hold up his end of the deal” by delivering the products as agreed. Notably, Mr. Woods does not say that the parties agreed the deposits were non-refundable. I also find Mr. Woods’ invoice does not say the paid deposit was non-refundable.

23. The general legal principle is that parties are not bound by contractual terms they did not explicitly agree to. Here, I find there is no evidence before me that the parties discussed or came to any agreement about whether the deposits were non-refundable if Mr. Woods did not deliver the sheds. I find Mr. Woods cannot unilaterally impose such a term, even if he used the deposits to purchase materials. In any event, there is also no evidence before me that Mr. Woods bought any materials, as he did not provide any receipts, invoices, or photographs of the alleged materials.
24. I find Mr. Woods breached his agreement with the applicants to provide the ordered cedar sheds by May 23, 2021. While Mr. Whitson later agreed to accept a May 31, 2021 delivery date, Mr. Woods still did not produce the sheds by the new date. I find Mr. Woods' failure to deliver the sheds constituted a fundamental breach of the parties' agreement.
25. Given the applicants did not agree the deposit was non-refundable, and Mr. Woods breached the parties' agreement by failing to deliver the sheds as agreed, I find Mr. Woods must refund each of the applicants their \$1,200 deposits.
26. The *Court Order Interest Act* applies to the CRT. Each applicant is entitled to pre-judgment interest on their \$1,200 from May 31, 2021, the date they requested their money back, to the date of this decision. This equals \$3.48.
27. 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. Whitson is the primary applicant, so, I find he is entitled to reimbursement of \$125 in paid CRT fees. The applicants did not claim any dispute-related expenses.

ORDERS

28. Within 30 days of the date of this decision, I order Mr. Woods to pay Mr. Whitson a total of \$1,328.48, broken down as follows:
 - a. \$1,200 in debt as reimbursement of the deposit,

- b. \$3.48 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
29. Within 30 days of the date of this decision, I order Mr. Woods to pay Mrs. Prewett a total of \$1,203.48, broken down as follows:
- a. \$1,200 in debt as reimbursement of the deposit, and
 - b. \$3.48 in pre-judgment interest under the *Court Order Interest Act*.
30. The applicants are each entitled to post-judgment interest, as applicable.
31. 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.
32. 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.

Kristin Gardner, Tribunal Member