



Civil Resolution Tribunal

Date Issued: February 1, 2022

File: SC-2021-006488

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cornell v. Dekteroff*, 2022 BCCRT 120

BETWEEN:

BRADLEY CORNELL

APPLICANT

AND:

JULIE DEKTEROFF

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a boat reupholstering contract.
2. The applicant, Bradley Cornell, hired the respondent, Julie Dekteroff, to reupholster the inside of his boat. He says she did not complete the work by June 30, 2021, as they had allegedly agreed. Mr. Cornell claims \$534.65 as the difference between what

he paid Ms. Dekteroff and what she refunded him. Mr. Cornell also claims \$885 in mileage costs for travelling to and from the boat to prepare it for Ms. Dekteroff's reupholstery work.

3. Ms. Dekteroff denies agreeing to complete the job by June 30, 2021. She acknowledges keeping \$534.65 from Mr. Cornell's deposit but says she was entitled to do so as he ended the parties' agreement after she had already ordered materials for the project. Ms. Dekteroff objects to Mr. Cornell's claimed mileage as he told her he would be travelling to the boat's location anyway.
4. Both parties are 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. Parts of this dispute amount to a "he said, she said" scenario and the parties question each other's credibility. In *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. Further, bearing in mind the CRT's mandate, which includes a speedy resolution of disputes, I find that I am properly able to assess and weigh the evidence before me without an oral hearing. On balance, I find that an oral hearing is not necessary in the interests of justice.

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. Both parties commented on Mr. Cornell's alleged slander against Ms. Dekteroff on social media because. I make no findings on this allegation as defamation and slander are specifically excluded from the CRT's small claims jurisdiction under CRTA section 119(c).

ISSUE

10. The issue in this dispute is whether Ms. Dekteroff breached the parties' agreement and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one Mr. Cornell must prove his claims on a balance of probabilities. I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.
12. It is undisputed that the parties met outside Ms. Dekteroff's house in the city where Mr. Cornell keeps his boat, on May 30, 2021. Mr. Cornell hired Ms. Dekteroff to reupholster the boat's interior at that time.
13. Mr. Cornell submitted a May 30, 2021 Sales Order form, with Ms. Dekteroff's name and address written at the top. The order is for 35 yards of fabric, at a cost of \$2,448.25, which formed the deposit. The order noted a \$1,200 outstanding balance for labour. The parties agree the remaining \$1,200 was to be paid upon the project's

completion. The order contains no other terms, and specifically no terms about the project's expected completion date.

14. The parties agree that they discussed project timing, but they fundamentally disagree about what was said. As noted, Mr. Cornell says Ms. Dekteroff agreed to complete the job by the beginning of the summer, or June 30, 2021. He also says Ms. Cornell told him the fabric would arrive overnight if it came from Vancouver and within a week if it came from Toronto. Ms. Dekteroff denies this. She says that she told Mr. Cornell that it would take at least 3 weeks for the fabric to arrive once she ordered it, due to the COVID-19 pandemic. She says Mr. Cornell never told her he needed the work done by any specific time. Mr. Cornell denies this and explains that he needed the boat reupholstered by the beginning of summer so he could maximize his limited vacation time with his family.
15. While verbal agreements are enforceable like written ones, they can be harder to prove.
16. Mr. Cornell says that his friend, MF, was present during the May 30, 2021 conversation. Although he provided MF's contact information in his submissions, he provided no statement from MF. It is not the CRT's role to gather evidence. Parties are told how important it is to provide all relevant evidence in the dispute, including witness statements, yet Mr. Cornell failed to do so.
17. Despite Mr. Cornell's assertion that his evidence should be preferred because his memory is accurate and specific, I give no greater weight to Mr. Cornell's recollection of the conversation than I do to Ms. Dekteroff's.
18. Ms. Dekteroff submitted an undated witness statement written by her family member JD. JD says she and another family member, KH, were sitting outside on the deck and both heard Ms. Dekteroff tell Mr. Cornell that it would take at least 3 weeks for the fabric to arrive, because of COVID. JD also said she heard Mr. Cornell say he came up to the city every weekend and would drop off his boat interior pieces to Ms. Dekteroff. JD and KH both signed the statement.

19. Mr. Cornell says he did not see anyone at the house on May 30, 2021 but did not explain whether he could see the deck from where he was standing on the driveway or not. Ms. Dekteroff says the deck is above the carport, which Mr. Cornell does not dispute. So, I find it possible that JD and KH could have been on the deck, but not visible to Mr. Cornell on the driveway.
20. Mr. Cornell also says he and Ms. Dekteroff spoke at the end of the driveway, away from the deck, so JD and KH could not possibly have heard their conversation. Even if that were true, and I had evidence about exactly how far apart the deck and driveway were, that would not assist me in determining whether JD and KH could hear the parties' conversation.
21. In any event, even if I gave no weight at all to JD and KH's statement, I would still find an evidentiary tie. As the applicant, Mr. Cornell has the burden to prove the verbal agreement about a promised completion date, and I find he has not done so here.
22. While I acknowledge Mr. Cornell's submission that he required the boat to be completed before the summer began, so he could maximize his limited vacation time with his family, I find that does not prove Ms. Dekteroff agreed to complete the project in that time frame.
23. I also acknowledge Mr. Cornell's submissions about attempting to telephone and text Ms. Dekteroff to follow up on her progress within the expected completion date, which Ms. Dekteroff denies receiving. I infer Mr. Cornell argues that Ms. Dekteroff is being untruthful about receiving the follow up communication and so must also be untruthful about the parties' May 30, 2021 conversation. However, I accept Ms. Dekteroff's statement that Mr. Cornell was using the wrong phone number, as it does not match the one on Ms. Dekteroff's business card or order form. Although Mr. Cornell provided a phone history screen shot, it does not identify the number he called, so I find it does not prove he attempted to follow up with Ms. Dekteroff at the same phone number he initially called her on.

24. As I find that Mr. Cornell has failed to prove the parties' agreement contained a June 30, 2021 project completion date, I find he has also failed to prove that Ms. Dekteroff breached the parties' contract. Rather, I find Mr. Cornell indicated his intention not to be bound by the contract when he undisputedly arrived at Ms. Dekteroff's house on June 28, 2021 and demanded repayment of his \$2,448.25 deposit. This is called repudiation. I find Ms. Dekteroff accepted Mr. Cornell's repudiation and considered the agreement at an end. As the innocent party, Ms. Dekteroff is entitled to be compensated for Mr. Cornell's repudiation.
25. It is undisputed that the parties' agreement did not include terms for freight charges or restocking fees which Ms. Dekteroff says she deducted from Mr. Cornell's deposit. So, I find the principle of *quantum meruit* (payment for work done) applies here.
26. It is undisputed that Ms. Dekteroff ordered and received the reupholstering fabric. Based on her email with the supplier, which specifically refers to the fabric noted on the May 30, 2021 Sales Order, I accept that Ms. Dekteroff was charged a 15% restocking fee from the supplier, as well as \$27.86 freight charge to return the ordered fabric. I find it reasonable for Ms. Dekteroff to pass that cost on to Mr. Cornell and deduct it from his deposit, as it would have been included in the \$1,200 the parties agreed upon for Ms. Dekteroff's labour had the contract completed. For the same reason, I also find it reasonable for Ms. Dekteroff to deduct a further amount from the deposit for her time spent consulting with Mr. Cornell on May 30, 2021 and ordering and returning the fabric. So, I find it reasonable for Ms. Dekteroff to charge Mr. Cornell a total of \$534.65 for the costs she incurred and the work she did on the project.
27. On balance, I find Mr. Cornell is not entitled to any damages and dismiss his claims.
28. 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. As Mr. Cornell was unsuccessful, I find he is not entitled to reimbursement of any CRT fees. As the successful respondent, Ms. Dekteroff paid no fees. Neither party claimed any dispute-related expenses.

ORDERS

29. I dismiss Mr. Cornell's claims and this dispute.

Sherelle Goodwin, Tribunal Member