



Civil Resolution Tribunal

Date Issued: February 4, 2022

File: SC-2021-004539

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garrod v. Riptide Marine Sales Ltd.*, 2022 BCCRT 139

BETWEEN:

LEIGH GARROD and SYLVIE GILBERT

APPLICANTS

AND:

RIPTIDE MARINE SALES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a boat purchase. The applicants, Leigh Garrod and Sylvie Gilbert, agreed to buy a Saratoga 2686 boat (boat) from the respondent, Riptide Marine Sales Ltd. (Riptide). After sending Riptide a \$5,000 deposit, the applicants cancelled the transaction. The applicants said that they decided that it was not a good time to buy a boat because of the pandemic and uncertainty about their income.

Riptide refunded the applicants \$3,000. The applicants claim a refund of the remaining \$2,000 deposit balance.

2. Riptide says the deposit was non-refundable. It also says it is entitled to keep the deposit balance because it incurred expenses customizing the boat before the applicants cancelled the transaction.
3. The applicants are self-represented. Riptide is represented by its owner, Tony Ethier.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly 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. Are the applicants entitled to a \$2,000 deposit refund?
 - b. Is Riptide entitled to a set-off from the deposit for its expenses? If so, how much?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claim 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.

Claim for deposit refund

10. Ms. Garrod sent Riptide a March 4, 2021 email saying they would like to buy the boat but they would need time to arrange financing. Ms. Gilbert sent Riptide a March 5, 2021 email saying that they would provide a \$5,000 refundable deposit to secure the boat. After sending the deposit, the applicants sent Riptide further emails on March 19, 22 and 26, 2021 requesting different boat specifications. In response, Riptide sent multiple quotes with different purchase prices.
11. On April 6, 2020, Ms. Garrod sent Riptide an email cancelling the transaction and requesting a deposit refund. Riptide sent the applicants an April 15, 2021 email saying that it would refund the applicants \$3,000 if they cancelled the transaction.
12. It is undisputed that Riptide refunded the applicants \$3,000 and Riptide still has the remaining \$2,000 deposit balance.

13. The applicants argue that they never formed a contract with Riptide. For a contract to exist, there must be an offer and an acceptance of the offer. One party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter, which requires an unqualified acceptance of the offer (*Babich v. Babich*, 2015 BCPC 175 at paragraph 16). Based on the email messages exchanged between the parties and Riptide's multiple price quotes, I find that the parties never agreed on a purchase price. Rather, I find that Riptide offered multiple price quotes but the applicants did not accept any. Based on the parties' emails, I find that they were still only negotiating a potential contract when the applicants cancelled the transaction. So, I find that the parties did not enter into a contract.
14. Riptide argues the deposit was non-refundable because there was no agreement that the deposit was refundable when the applicants paid the deposit. However, as discussed above, Ms. Garrod's March 5, 2021 email specifically says that they were providing a refundable deposit and there is no evidence showing that Riptide disagreed. Based on Ms. Garrod's email, I find that the parties agreed that the deposit would be refundable.
15. For the above reasons, I find that the applicants' deposit was refundable. So, based on my above finding that the parties never formed a contract, I find that Riptide must refund the balance of the deposit, subject to its set-off claim discussed below.

Setoff

16. Riptide argues that it is entitled to keep the \$2,000 deposit balance to cover its labour and material costs customizing the boat before the applicants cancelled their purchase. Generally, when a business performs agreed work without an agreed price, it is entitled to reasonable payment for the work. This is known in law as '*quantum meruit*', or value for work done. So, Riptide may be entitled to a setoff from the deposit refund for customization work it performed with the applicants' agreement. Riptide has the burden of proving its entitlement to a setoff.

17. The applicants emailed Riptide on March 5, 19, 22 and 26, 2020 requesting different boat customizations. However, the applicants say that Riptide should not have performed any customization work for the applicants because they never finalized the boat purchased contract. As discussed above, I find that the parties did not enter into a contract and I find that Riptide has not proved that the applicants agreed to pay for the boat customizations.
18. Further, I find that Riptide has not proved that it performed any requested customization work. Riptide provided an April 13, 2020 invoice that charged \$3,000 for 24.574 hours of boat customization work. I note that this equals 24 hours and 34.44 minutes. In the absence of an explanation, I find it unlikely that Riptide measured its labour in thousandths of hours as stated on its invoice. Also, the applicants say that Riptide said that it started the customization work the same day the applicants cancelled the contract. Since Riptide does not dispute this, I accept this as accurate. However, Riptide does not explain how it performed more than 24 hours of customization work in a single day.
19. Riptide also provided a transaction record saying it invoiced the applicants \$1,785.64 and \$214.36 on April 13, 2021, which totals \$2,000. However, this is inconsistent with Riptide's April 13, 2021 invoice for \$3,000. Riptide does not explain this discrepancy. Since Riptide's invoice and transaction records are inconsistent, I am not satisfied that its invoice is accurate. Further, Riptide did not provide any time logs, employee statements, photographs of its alleged work or receipts for alleged materials bought supporting its claimed work.
20. For the above reasons, I find that Riptide's invoice is not reliable and I place little weight on it. Without further supporting evidence, I find that Riptide has not proved that it performed agreed customization work for the applicants.
21. I find that Riptide is not entitled to a setoff from the deposit refund and it must refund the remaining \$2,000 deposit balance.

Interest, CRT fees and dispute-related expenses

22. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the \$2,000 deposit refunds from April 6, 2021, the date they cancelled the contract to the date of this decision. This equals \$7.50.
23. 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. I see no reason in this case not to follow that general rule. Since the applicants were successful, I find they are entitled to reimbursement of \$125 in CRT fees. The applicants did not request reimbursement of dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order Riptide to pay the applicants a total of \$2,132.50, broken down as follows:
 - a. \$2,000 in debt as a deposit refund,
 - b. \$7.50 in pre-judgment COIA interest, and
 - c. \$125 in CRT fees.
25. The applicants are entitled to post-judgment interest from Riptide, as applicable.
26. 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.

27. 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.

Richard McAndrew, Tribunal Member