



Civil Resolution Tribunal

Date Issued: February 28, 2022

File: SC-2021-005586

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cutter Industries Incorporated v. Driedger*, 2022 BCCRT 219

BETWEEN:

CUTTER INDUSTRIES INCORPORATED

APPLICANT

AND:

TERRY DRIEDGER (Doing Business as BLACKTHORN
CONTRACTORS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about payment of an outstanding debt and alleged deficiencies.
2. The respondent, Terry Driedger (Doing Business as Blackthorn Contractors), purchased lumber from the applicant, Cutter Industries Incorporated (Cutter). Mr.

Driedger undisputedly paid only \$3,000 toward the \$6,511.03 invoice. Cutter claims the remaining \$3,511.03 balance.

3. Mr. Driedger says the lumber he received was a lower grade than that he ordered and was mouldy. He also says the order took 2.5 times longer than agreed. I infer Mr. Driedger argues he should not have to pay the outstanding balance for the allegedly defective and late lumber.
4. Cutter is represented by an employee or principal. Mr. Driedger represents himself.

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. 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 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. As a preliminary matter, Cutter provided a document titled “Dates of Occurrences” which, I infer, sets out a chronological history of the parties’ interactions. However, I could not open the document and so have not relied on it in this decision. I find the document was likely submissions rather than evidence. Given my findings below based on the evidence before me and keeping the CRT’s mandate of efficiency and proportionality in mind, I decided not to ask Cutter to resubmit the document.
10. Mr. Driedger provided evidence after the deadline to do so had passed, but before either party provided submissions. As Cutter had the opportunity to view and respond to the late evidence, I find it was not prejudiced by it. Further, I find the photos and grading guidelines for lumber relevant to this dispute. Keeping in mind the CRT’s mandate, which includes flexibility, I accept the late evidence and have considered it below.

ISSUE

11. The issue in this dispute is whether Mr. Driedger must pay Cutter’s outstanding \$3,511.03 invoice balance.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one Cutter must prove its claim on a balance of probabilities because it is the applicant. I have read all the parties’ submissions and weighed the evidence, but only refer to that necessary to explain my decision.
13. Cutter submitted its April 12, 2021 invoice #2467 for \$6,511.30. The invoice details various lengths and widths of “#1 FOHC Douglas Fir”. It is undisputed, and Cutter’s May 25, 2021 receipt shows, that Mr. Driedger paid \$3,000 toward the invoice on May 25, 2021. So, I find \$3,511.30 remains owing on the invoice.

14. Mr. Driedger says Cutter took longer than agreed to deliver the lumber and that the lumber was not the same quality as what Mr. Driedger ordered. I infer he argues Cutter breached the parties' agreement about timing and quality.
15. Mr. Driedger says the order time increased by 2.5 times. He provided copies of January 2021 emails between the parties, but I find they do not apply to this dispute because they are about a different lumber order. Based on texts between the parties I find the January order was delivered to Mr. Driedger on March 15, 2021.
16. I find the lumber identified in Invoice #2467 was ordered by Mr. Driedger in a March 16, 2021 email to Cutter. This is because both the email and the invoice list the same pieces of lumber and other notes such as "Douglas Fir planed 1/4". There are no other documents outlining the parties' agreement for the March 16, 2021 order.
17. In his March 16, 2021 email Mr. Driedger said he needed "faster turnaround times". I infer he meant faster than the January 2021 order which I find was likely delivered on March 15, 2021. However, there is no indication Cutter agreed to "faster" turnaround times, or any other specific timeline for the March order. Even if Cutter did agree to a faster delivery time, I find it likely Cutter did deliver the March order faster than the January order. Although there is no evidence specifically showing when the March 16, 2021 order was delivered, I find it was likely around the April 12, 2021 invoice date. Given this is less than 1 month, I find Cutter provided a faster turnaround time than it did for the January 2021 order, which took nearly 2 months to deliver. On balance, I find Mr. Driedger has not shown Cutter breached any delivery time term for the March 16, 2021 order.
18. Mr. Driedger says he ordered #1 grade Douglas Fir timbers, which Cutter does not dispute. Given both parties' reference to #1 FOHC Douglas Fir in the documents, I find Mr. Driedger ordered #1 grade, free of heart center Douglas Fir. Mr. Driedger says the lumber provided is not #1 grade, because it has large knots and defects. Mr. Driedger submitted photos of the lumber which show knots approximately 2 to 3 inches wide. Despite the obvious knots, I do not find it obvious that the lumber is not #1 grade, as explained below.

19. Mr. Driedger submitted excerpts from the National Lumber Grade Authority's Standard Grading Rules for Canadian Lumber. The rules set out guidelines for skips, splits, wane and warp, which terms are not defined or explained. They also set out guidelines for acceptable knots or defects, but refer to edges, centerlines and "nom. width" without explaining what those terms mean. Overall, I find applying the Standard Grading Rules to photos of lumber is beyond common knowledge. I find lumber grading is a technical and skilled matter and so requires expert evidence (see *Bergen v. Gulliker*, 2015 BCCA 283). Here there is no such expert evidence. So, I find Mr. Driedger has not proven the lumber delivered is a lower quality than what he ordered.
20. Mr. Driedger also says the lumber is mouldy. Based on the photos he submitted, I find there is either black mould or dirt on 1 piece of lumber. There is no indication when Mr. Driedger took the photos. Cutter says the wood was not mouldy when it was delivered which, as noted above, I find was around April 12, 2021.
21. Based on the parties' text messages and emails I find Mr. Driedger did not raise any concerns about mould, knots, or substandard lumber quality until June 14, 2021, when he responded to Cutter's request for payment. In this dispute, Mr. Driedger says he called Cutter several times to complain about the lumber quality, which Cutter denies. Mr. Driedger provided no supporting evidence such as phone records or witness statements. Further, in the parties' text messages between May April 26 and June 1, 2021 Mr. Driedger raised no concerns about the lumber itself. Rather, he explained he could not work due to injury, asked for time to pay the invoice, and made promises about payment. I find the texts inconsistent with Mr. Driedger's later allegations that the lumber was mouldy or of inferior quality as I expect Mr. Driedger would have raised that issue shortly after receiving the goods. On balance, I find Mr. Driedger has not proven the lumber was mouldy when it was delivered.
22. On balance, I find Mr. Driedger has not shown that Cutter breached the parties' agreement by delivering a lesser quality or mouldy lumber, or by delivering it late. However, that does not end the analysis.

23. The *Sale of Goods Act* (SGA) applies here as Cutter is a supplier of goods. SGA section 18(a) implies a warranty that the good is fit to be used for its intended purpose, section 18(b) implies a warranty that the good sold by description will be of merchantable quality and section 18(c) implies a warranty that the goods sold will be durable for a reasonable period of time under normal use. I find that Cutter has not breached any of the implied warranties in SGA section 18, for the same reasons noted above. Specifically, I find Mr. Driedger has not shows the lumber was unfit for its intended purpose to build a gazebo, that it was not the #1 grade quality ordered, or that it was not durable. So, I find Cutter has not breached SGA section 18 or the parties' agreement, as alleged by Mr. Driedger.
24. Overall, I find Mr. Driedger must pay the \$3,511.03 outstanding on invoice #2467 as he has not proven that what he received was deficient or that Cutter breached the parties' agreement.
25. The *Court Order Interest Act* applies to the CRT. Cutter is entitled to pre-judgment interest on the \$3,511.03 outstanding balance from the April 12, 2021 invoice to the date of this decision. This equals \$13.98.
26. 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 Cutter was successful in this dispute, it is entitled to reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

27. Within 30 days of the date of this order, I order Mr. Driedger to pay Cutter a total of \$3,700.01, broken down as follows:
 - a. \$3,511.03 in debt,
 - b. \$13.98 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.

28. Cutter is entitled to post-judgment interest, as applicable.
29. 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.
30. 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.

Sherelle Goodwin, Tribunal Member