



Civil Resolution Tribunal

Date Issued: March 21, 2022

File: SC-2021-006386

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Diell v. Buildologist Construction Group Ltd.*, 2022 BCCRT 307

B E T W E E N :

KEVIN DIELL

APPLICANT

A N D :

BUILDLOGIST CONSTRUCTION GROUP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a construction holdback.
2. The applicant, Kevin Diell, says the respondent, Buildologist Construction Group Ltd. (Buildologist), held back money under the parties' agreement for alleged deficiencies.

Mr. Diell says he has fixed the deficiencies and seeks payment of \$3,832.37 for the alleged holdback amount.

3. Buildologist says the deficiencies have not been fixed and so the holdback does not have to be released.
4. Mr. Diell is self-represented. Buildologist is represented by a principal or employee.

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.

ISSUES

9. The issues in this dispute are:
 - a. Did the parties have an agreement?
 - b. If so, to what extent, if any, must Buildologist release the claimed \$3,832.37 holdback amount to Mr. Diell under the agreement's terms?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Diell must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' evidence and submissions but refer only to what I find is necessary to provide context for my decision.
11. For the following reasons, I find Mr. Diell has not proved that the parties had a contract, or that Buildologist breached that agreement, and I dismiss Mr. Diell's claims.
12. Mr. Diell referred me to a previous CRT dispute, *Capilano Stucco Ltd. v. Buildologist Construction Group Ltd.*, 2021 BCCRT 609. He says that dispute was his previous claim, which the CRT found was premature. Although Mr. Diell is noted as the principal for Capilano Stucco Ltd. (Capilano) in that dispute, he was not named as a party to the dispute in his personal capacity.
13. In this current dispute, Mr. Diell is the applicant. Mr. Diell submitted an August 5, 2020 contract addendum in evidence. He relies on this agreement in support of his claim for return of the holdback amount. However, the agreement is between Capilano and Buildologist. Capilano is not a party to this dispute. I infer that Mr. Diell is Capilano's principal. However, I find Mr. Diell was not a party to the agreement in his personal capacity.
14. The legal doctrine known as "privity of contract" is relevant here. Privity of contract means that a contract cannot give rights or impose obligations on anyone who is not

a party to a contract. In other words, a person must first agree to a contract in order to be bound by it.

15. As noted, above, as the applicant Mr. Diell bears the burden of proving his claims. Here, I find Mr. Diell has not proven he had an agreement with Buildologist in his personal capacity. Given that Mr. Diell was not a party to the agreement, I find that he does not have any enforceable rights under that agreement. So, I find Mr. Diell has not proven his claim against Buildologist. I make no findings on the rights and obligations of any party to the agreement.
16. 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. As Mr. Diell was unsuccessful in his claim, I dismiss his CRT fee claim. Buildologist has not paid any CRT fees or claimed any dispute-related expenses, and so I award none.

ORDER

17. I dismiss Mr. Diell's claims and this dispute.

Leah Volkers, Tribunal Member