



Civil Resolution Tribunal

Date Issued: April 7, 2022

File: SC-2021-004843

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sekhon v. McNaughton (dba Ninety1st)*, 2022 BCCRT 395

BETWEEN:

GURJIT SEKHON

APPLICANT

AND:

KEATON MCNAUGHTON (Doing Business As NINETY1ST)

RESPONDENT

AND:

GURJIT SEKHON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about an alleged breach of a settlement agreement.
2. The respondent, Keaton McNaughton (doing business as Ninety1st), built a custom wooden bench and table for the applicant, Gurjit Sekhon. In a previous Civil Resolution Tribunal (CRT) dispute, Ms. Sekhon claimed the bench was unstable and too low for the table, and the table legs had gaps. Mr. McNaughton agreed to give Ms. Sekhon 2 kits to fix the alleged deficiencies, as well as 2 additional planter boxes in return for Ms. Sekhon withdrawing the prior dispute.
3. In this dispute, Ms. Sekhon says the kits provided did not remedy the deficiencies and Mr. McNaughton failed to take further steps to fix the problems, contrary to the parties' agreement. She claims \$1,005 as reimbursement for the furniture costs plus CRT fees for her previous dispute, as well as \$200 for the future cost to return the furniture to Mr. McNaughton.
4. Mr. McNaughton says he met the agreement terms by creating further repair kits, but Ms. Sekhon refused to take them or the planters. He counterclaims \$623.90, for the materials and his time used to create the repair kits and the planter boxes.
5. Both parties are self-represented.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. 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.

7. 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.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. Did either party break the terms of their settlement agreement and, if so, who?
 - b. Must Mr. McNaughton reimburse Ms. Sekhon for the cost of the furniture, the prior CRT dispute, and future delivery fees?
 - c. Must Ms. Sekhon reimburse Mr. McNaughton for his labour and materials spent in attempting to meet the settlement terms?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one Ms. Sekhon as the applicant must prove her claims on a balance of probabilities (meaning "more likely than not"). Mr. McNaughton has the same burden in proving his counterclaim. I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.

12. The parties agree that Ms. Sekhon paid Mr. McNaughton to build a custom wooden dining table and bench for her in July 2020. Based on a July 7, 2020 invoice from Ninety 1st Supply & Design, Ms. Sekhon paid \$955 for both pieces of furniture. The invoice shows Ms. Sekhon picked up the furniture.
13. Based on Ms. Sekhon's photos, I find the long wooden bench was built with 2 large block legs. Each leg was attached approximately 11.5 inches from the ends of the bench. Ms. Sekhon's photos show the dining table was built with similar block legs at each end, consisting of 2 pillars with a decorative middle block and further angled braces on the outside of the pillars.
14. The parties' Facebook messages show that Ms. Sekhon said the bench was unsteady and unsafe because the legs were not at the very ends of the bench. Ms. Sekhon also said the table was broken, because it had gaps. Ms. Sekhon's photos show a very slight gap between the middle block and pillars that create the table legs.
15. The parties agree that they reached a settlement by email in the prior CRT dispute. Ms. Sekhon undisputedly withdrew her claim and the parties agreed to the following:
 - a. By June 15, 2021, Mr. McNaughton would give Ms. Sekhon:
 - i. a repair kit to stabilize the bench and increase its height by 1.5 inches,
 - ii. A repair kit to fix the table's "breakage", but not unreasonably detract from the table's "aesthetics", and
 - iii. 2 stained planters, with Ms. Sekhon providing the stain.
 - b. Within 10 business days of receiving the repair kits Ms. Sekhon would install them.
 - c. Ms. Sekhon would notify Mr. McNaughton within 30 days, by email, if the installed kits did not reasonably satisfy the above terms.

- d. Within 14 days of receiving any objection from Ms. Sekhon, Mr. McNaughton would “make best efforts to alter or replace the repair kits” to reasonably meet the agreement’s terms.
16. The parties’ Facebook messages show Mr. McNaughton created repair kits with written instructions and that Ms. Sekhon picked them up on May 13, 2021. Based on Ms. Sekhon’s photos and the parties’ messages, I find the bench repair kit included a set of new block legs with instructions to attach 1 leg to either end of the bench. The table repair kit included 2 sets of 4 metal L-shaped brackets with instructions to install the brackets to the middle block and pillars of the table leg while applying pressure to the pillars to pull the gap closed. I find Mr. McNaughton complied with term a(i) and a(ii) of the settlement agreement by providing the repair kits.
17. The parties’ Facebook messages show Ms. Sekhon told Mr. McNaughton on May 17, 2021 that the repair kits did not fix the problems. First, the original bench legs did not touch the ground once the new ones were installed, which I find is accurate based on Ms. Sekhon’s photos. Second, Ms. Sekhon said she and her husband were unable to force the table leg pillars and block closer together in order to close the gap before applying the L-shaped brackets. So, she says the brackets did not fix the table gap. However, Ms. Sekhon did not provide any photos or other evidence supporting the brackets could not be installed or, if they could be installed would not pull the gap closed.
18. In any event, I find Ms. Sekhon notified Mr. McNaughton of the repair kit problems within 10 business days of receiving the kits, as required by the parties’ agreement. For the below reasons, I find Mr. McNaughton complied with the agreement’s terms by making his best efforts to replace the repair kits to fix the identified issues.
19. The parties’ messages show Ms. Sekhon returned the L-shaped brackets to Mr. McNaughton on May 24, 2021. On May 25, 2021 Mr. McNaughton advised Ms. Sekhon that he was finishing up new brackets to fix the table and asked when she could pick them up. Contrary to Ms. Sekhon’s arguments, I find Mr. McNaughton did not message her 1 hour after she left to tell her he had created the second solution.

Rather, the messages show Mr. McNaughton replied to Ms. Sekhon the day after she dropped off the brackets.

20. It is undisputed Ms. Sekhon refused to return to pick up the second set of brackets. She says Mr. McNaughton's proposed resolution could not have worked because he created it in less than an hour and because he refused to send photos to Ms. Sekhon. Mr. McNaughton's evidence shows his camera phone was broken and he did not replace it until January 2022. Further, Mr. McNaughton explained in a June 10, 2021 message that he was unable to provide photos at the time. So, I find he did not unreasonably refuse to provide photos to Ms. Sekhon, nor do I find he was required to do so under the settlement agreement. I do not accept Ms. Sekhon's argument that Mr. McNaughton created the second solution within 1 hour. So, I find no reasonable basis for Ms. Sekhon to believe the second proposed solution would not have worked.
21. Ms. Sekhon also says she did not feel comfortable returning to Mr. McNaughton's premises to pick up the new brackets because Mr. McNaughton was confrontational when she dropped off the first set of brackets. In contrast, Mr. McNaughton says it was Ms. Sekhon and her husband who became confrontational with him when they dropped off the brackets. Mr. McNaughton provided a January 22, 2022 statement from an employee, TS, who says she watched the conversation through a window. TS said she heard Ms. Sekhon and her husband raising their voices and moving toward Mr. McNaughton while he stood with his arms crossed, leaning against a pillar.
22. By contrast, Ms. Sekhon provided no details about how Mr. McNaughton became confrontational such as posture, voice level, or threatening words. Further, Ms. Sekhon provided no statement from her husband who was present during the conversation, or any explanation why she failed to do so. On balance, I accept and prefer Mr. McNaughton's version of events because they are supported by TS' statement. I do not find Mr. McNaughton became confrontational with Ms. Sekhon. In any event, I do not accept that Ms. Sekhon felt unsafe around Mr. McNaughton as she alleges, because she offered to give him her address if he would deliver the second repair kits to her.

23. Mr. McNaughton acknowledges he refused to deliver the repair kits. He says Ms. Sekhon knew Mr. McNaughton did not “do delivery”. I accept the parties agreed Ms. Sekhon would pick up the original furniture because Mr. McNaughton did not offer delivery, as reflected in the parties’ messages at the time of purchase. However, the settlement agreement is silent about pick up or delivery. As noted, Ms. Sekhon has the burden of proving Mr. McNaughton was required to deliver the repair kits and I find, on balance, she has failed to do so.
24. Based on photos and videos provided by Mr. McNaughton, I find the second set of repair kits included wooden blocks to attach to the hanging original bench legs, to make them the same height as the repair legs. I also find Mr. McNaughton messaged Ms. Sekhon that she could alternatively remove the hanging legs from the bench. The second repair kit also included wooden pieces, or brackets, to insert around the wooden center block in the table leg to fill the gap, in line with the table’s design. Based on Mr. McNaughton’s photos and animated video clip, I find the second repair kits would likely have raised the bench and stabilized it, as well as filled the table leg gaps or “breakage”, while still meeting the aesthetics of the furniture design. So, I find Mr. McNaughton made best efforts to replace the repair kits and meet the settlement agreement objectives, as required. Further, I find he did so within 14 days of Ms. Sekhon’s May 17, 2021 message, because he invited Ms. Sekhon to arrange a pickup time and date in his May 25, 2021 message to her.
25. Next, Mr. McNaughton’s photos show he built the 2 planter boxes. Based on the parties’ messages, I find Ms. Sekhon refused to provide the stain on June 10, 2021 when she refused to pick up the second repair kits from Mr. McNaughton. Although Mr. McNaughton did not provide the stained planter boxes as agreed, I find it was Ms. Sekhon who breached the parties’ agreement by failing to provide the stain. I note she could have provided the stain on May 24, 2021 when she dropped off the first set of table leg brackets.
26. As noted, Ms. Sekhon has the burden of proving Mr. McNaughton breached the parties’ agreement. I find she has failed to do so here. Rather, I find Mr. McNaughton

made his best efforts to provide a second set of repair kits and planter boxes. I find he was not required to deliver them to Ms. Sekhon under the agreement. I further find Ms. Sekhon breached the agreement by refusing to provide stain to Mr. McNaughton.

27. As I find Mr. McNaughton did not breach the parties' agreement, I find Ms. Sekhon is not entitled to damages. I dismiss Ms. Sekhon's claims. For the below reasons, I also dismiss Mr. McNaughton's counterclaim.
28. Mr. McNaughton claims reimbursement of \$623.90 for the material costs and 8.7 hours of labour spent to create the 2 sets of repair kits and the planter boxes. I find the settlement agreement does not call for Ms. Sekhon to pay for the repair kits and planter boxes. Rather the agreement required Ms. Sekhon to withdraw her prior CRT dispute, which she has done. Further, Mr. McNaughton was required to do the work under the parties' settlement agreement. If he had not done so, he would have breached the agreement and been responsible to pay Ms. Sekhon to remedy that breach. So, I find Mr. McNaughton is not entitled to payment under the parties' agreement.
29. I also find Mr. McNaughton is not entitled to payment on a "quantum meruit" basis, which means value for work done. This is because Mr. McNaughton's work provided no value to Ms. Sekhon. Although the first bench repair kit did raise the bench height and stabilize it, I agree with Ms. Sekhon that it looks awkward to have the other set of legs still hanging off the bench. As noted, Ms. Sekhon received no value for the second repair kits or planter boxes, as she never picked them up. So, on balance, I find Mr. McNaughton is not entitled to any payment for his time and materials.
30. 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. In this case both parties were unsuccessful in their respective claims, so I find neither party is entitled to reimbursement of any CRT fees or dispute-related expenses.

ORDERS

31. I dismiss Ms. Sekhon's claims, Mr. McNaughton's counterclaim, and this dispute.

Sherelle Goodwin, Tribunal Member