



# Civil Resolution Tribunal

Date Issued: May 9, 2022

File: SC-2021-004535

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Balfour v. Miller*, 2022 BCCRT 549

B E T W E E N :

DELL BALFOUR

**APPLICANT**

A N D :

CRAIG MILLER and MILLER TIME INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

### INTRODUCTION

1. This dispute is about an alleged breach of a settlement agreement. The applicant, Dell Balfour, and the respondents, Craig Miller and Miller Time Inc., were opposing parties in a BC Supreme Court trial in July 2019. Mr. Miller is the sole director of Miller Time.

2. The court made a decision in December 2019. The parties were each partially successful. The parties eventually reached a settlement agreement about court costs and other outstanding matters. According to that agreement, Mr. Balfour paid the respondents \$4,250. Mr. Balfour alleges that the respondents later breached the agreement by opposing a court application they had agreed not to oppose. Mr. Balfour claims a return of the \$4,250. He also claims \$250 for the cost of an appointment to settle the terms of the order the court made at that application.
3. The respondents deny breaching the parties' agreement. They say that if they did breach the agreement, Mr. Balfour's damages are only \$250.
4. The parties are each 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. 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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.

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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

## **ISSUES**

10. The issues in this dispute are:
  - a. Does the CRT have jurisdiction over Mr. Balfour's claims?
  - b. Did the respondents breach the parties' agreement?
  - c. If so, what are Mr. Balfour's damages?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, Mr. Balfour as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. As mentioned above, the parties were involved in 3 court actions that went to trial together in July 2019. Mr. Balfour was a party in all 3 actions. The respondents were parties in 2. There were other parties in those actions who are not parties to this CRT dispute.
13. The court made its decision on all 3 actions on December 24, 2019. The details are not relevant to this dispute, but the parties had divided success: *Balfour v. Tarasenko*, 2019 BCSC 2212. As a result, the court awarded the respondents costs against Mr. Balfour in one action and awarded Mr. Balfour costs against the

respondents in another action. The court also ordered that \$47,000 be paid into court for the benefit of the creditors of 2 other parties, one of whom was in bankruptcy proceedings. Mr. Balfour was one of the creditors, so he had an interest in the money that was paid into court.

14. After some negotiation, on January 13, 2021, the parties reached an agreement about court costs and other outstanding matters. The terms are undisputed. Relevant to this dispute, Mr. Balfour agreed to pay the respondents \$4,250 in court costs. The respondents agreed that they would not “make a claim against the funds currently held in court” or “oppose an application by [Mr. Balfour] for those funds”.
15. On February 13, 2021, Mr. Miller confirmed receipt of the agreed \$4,250 in costs.
16. Mr. Balfour’s application for the funds held in court was on May 10, 2021. He had reached an agreement with the Canada Revenue Agency (CRA) that the CRA would receive \$4,000 and Mr. Balfour would receive the rest. The CRA was the other creditor with an interest in the funds. Mr. Miller appeared to oppose the proposed distribution. According to the transcript in evidence, Mr. Miller said he was “sort of” acting on his father’s behalf, and his submissions focused on his allegation that his father’s corporation, HVTP, had an interest in the funds. Mr. Miller was unsuccessful. The court ordered that the funds be distributed as agreed between Mr. Balfour and the CRA. Mr. Miller later refused to sign the order, and Mr. Balfour had to take out a court appointment to have its terms settled.

### **Does the CRT have jurisdiction over Mr. Balfour’s claims?**

17. I note that in their Dispute Response, the respondents said that Mr. Balfour’s claims should be resolved by the BC Supreme Court because they relate to court costs. During the facilitation process, the respondents applied to the BC Supreme Court for an order that anything related to the BC Supreme Court case is not in the CRT’s jurisdiction. On February 7, 2022, the court dismissed the application. The court’s reasons are not in evidence, and neither party referred to the application in their submissions.

18. In submissions, the respondents did not pursue their argument that the CRT does not have jurisdiction over this dispute. I infer from this that the respondents have abandoned that argument. Still, I must determine whether the CRT has jurisdiction. I find that Mr. Balfour's \$4,250 claim is for damages for breach of contract, which is within the CRT's small claims jurisdiction. I find that it makes no difference that the subject matter of the contract is the settlement of the amount of court costs owing after the trial.
19. The \$250 claim for the costs of the appointment is somewhat more complicated. It does not appear to have been at issue in the court application about the CRT's jurisdiction. It also does not appear that Mr. Balfour asked the court for an award of costs for settling the terms of the order.
20. Several previous court decisions have confirmed that legal fees are not recoverable as damages for breach of contract cases: see *The Law Firm of Owen Bird v. Nanaimo Shipyards Ltd.*, 1996 CanLII 1981 (BC SC). Even though Mr. Balfour does not claim legal fees, I find that the same principle applies. I find that the out-of-pocket expenses Mr. Balfour claims should have been brought as part of the court process. I find that how much Mr. Balfour is entitled to for unnecessarily attending the appointment was for the BC Supreme Court to decide. I therefore find that the \$250 claim is not in the CRT's jurisdiction, and I refuse to resolve it under section 10 of the CRTA.
21. I note that even if I am wrong about jurisdiction, I would have refused to resolve this claim as *res judicata*, which is a legal principle that prevents people from bringing multiple legal claims about the same issue. I find that Mr. Balfour, with reasonable diligence, could have brought his claim for out-of-pocket expenses as part of the appointment process.

***Did the respondents breach the contract, and if so, what are Mr. Balfour's damages?***

22. Mr. Balfour says that by opposing his application, Mr. Miller breached the parties' contract. Mr. Miller says that this is a "simple misunderstanding" because he was opposing the application on HVTP's behalf, not on his own or Miller Time's behalf. I note that neither Mr. Miller's father nor HVTP were parties to any of the court actions. They also were not listed as creditors in the related bankruptcy proceedings.
23. I find that Mr. Miller breached the parties' agreement by opposing Mr. Balfour's application. I find that Mr. Miller was representing himself and Miller Time because neither his father nor HVTP had standing to oppose the distribution of the funds. I find that Mr. Miller was essentially attempting to relitigate issues from the trial, which the court had already decided.
24. If I am wrong on that point, I find that the most reasonable interpretation of the parties' agreement that the respondents "would not oppose" Mr. Balfour's application is that they would not do so on anyone's behalf. In other words, I find that the agreement precluded Mr. Miller from representing his father or HVTP to oppose the distribution of the funds.
25. I turn then to damages. When a party breaches a contract, the innocent party is entitled to the amount of money necessary to put the innocent party in the position they would be in if the contract had been performed.
26. Mr. Balfour relies on the law of special costs to claim reimbursement of the \$4,250 he paid the respondents. The court awards special costs when a party in a court action engages in reprehensible behaviour. Special costs are intended to full indemnify the innocent party for their legal fees and other costs. I find that these legal principles have no application to how damages are measured for a breach of contract.

27. I agree with the respondents that a breach of a contract only entitles the innocent party to damages. It does not render the contract or any of its terms void, which is essentially what Mr. Balfour is asking for by asking for a refund. I find that if the contract had been performed according to its terms, Mr. Balfour would still have paid the \$4,250 to the respondents as agreed. I find there is no legal basis for Mr. Balfour to receive the settlement funds back simply because the respondents breached a different term of the contract. I find that Mr. Balfour suffered no compensable loss from the breach, so is not entitled to damages. I dismiss this claim.
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. Mr. Balfour was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses.

## **ORDERS**

29. I refuse to resolve Mr. Balfour's \$250 claim for court costs under section 10 of the CRTA.
30. I dismiss Mr. Balfour's remaining claims.

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Eric Regehr, Tribunal Member