



# Civil Resolution Tribunal

Date Issued: May 11, 2022

File: SC-2021-004504

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sharp v. Origlio*, 2022 BCCRT 564

BETWEEN:

BARBARA SHARP

**APPLICANT**

AND:

MARIO ORIGLIO and DANNETTE ORIGLIO

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about payment for a replacement fence between neighbouring properties. The applicant, Barbara Sharp, says the respondents, Mario Origlio and Dannette Origlio, agreed to replace the shared fence between their properties. Though the Dispute Notice identifies the respondents as the Origlios, I refer to the

respondents as the Orologios in my decision based on the respondents' use of that name in the Dispute Response. Barbara Sharp replaced the fence and claims \$1,653.75 for 1/2 the fence replacement costs.

2. The Orologios deny Barbara Sharp's claim. They say they are not responsible for Barbara Sharp's fence replacement expenses because they did not agree to it. The Orologios say that they offered to perform the fence repairs and they offered to pay \$1,000 towards the fence repair. However, the Orologios say that Barbara Sharp rejected both offers so there was no agreement.
3. All parties are self-represented.

## **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. 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.
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. Did the Orologios agree to share the fence repair expenses? If so, how much do they owe?
  - b. Were the Orologios unjustly enriched by Barbara Sharp's fence repairs?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Barbara Sharp, as the applicant, must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***Did the Orologios agree to share the fence replacement costs?***

10. The following facts are not disputed:
  - The parties had a shared wood fence along the boundary between their neighbouring properties.
  - The fence had rot, was in poor condition and needed to be repaired or replaced.
  - Barbara Sharp replaced the shared fence in June 2021.
  - The Orologios did not pay any portion of the fence replacement costs.

11. Since the shared fence straddled both parties' adjoining property lines, I find that both parties had an ownership interest in the original fence (see the non-binding but persuasive decision in *Ellis v. Dangerfield*, 2021 BCCRT 95, at paragraph 19).
12. Barbara Sharp says the Orogios agreed to share the fence replacement costs. In contrast, the Orogios say that they discussed replacing the fence but the parties never reached an agreement.
13. For a valid contract to exist, the parties must have a "meeting of the minds". This means that the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms. There must also be an offer by one party that is accepted by the other, plus valuable "consideration". "Consideration" means payment of money or something else of value. (See discussion on contract formation in *Redfern Resources Ltd. (Re)*, 2012 BCCA 189 and *Fairchild Developments Ltd. v. 575476 B.C. Ltd.*, 2020 BCCA 123.)
14. In applying these principles to this case, I find that the evidence before me does not establish a contractual intention or a 'meeting of the minds' between the parties. I reach that conclusion for the reasons discussed below.
15. The parties exchanged multiple text messages between January 2021 and June 2021 discussing potential fence repairs. Barbara Sharp initially considered making an insurance claim to replace the fence. The Orogios sent Barbara Sharp a January 20, 2021 text message asking about Barbara Sharp's potential insurance claim. The Orogios wrote that "I thought we were splitting the cost?" Barbara Sharp sent a reply text message saying they were waiting to hear from the insurance adjuster.
16. Barbara Sharp argues that the Orogios' January 20, 2021 text message shows that the Orogios agreed to split the fence replacement costs. However, I find that there was no meeting of the minds between the parties at that time. I reach this conclusion because I find that Barbara Sharp's text message indicates that Barbara Sharp did not agree to share the fence replacement expenses with the Orogios at that time.

Rather, I find that Barbara Sharp's January 20, 2021 text message shows that they were pursuing an insurance claim instead. So, I find that the parties had not agreed to share the fence replacement costs at that time. Barbara Sharp later decided not to submit an insurance claim because it would not be cost-effective.

17. On an unspecified date, the Orogios offered to repair the damaged portions of the fence themselves if Barbara Sharp agreed to buy the fence panel materials. In their Dispute Response, the Orogios say these materials would have cost approximately \$665 plus tax. The Orogios also provided online price listings showing material costs ranging from \$914.70 to \$1,780. The Orogios did not explain why their provided price listings were so much higher than their cost estimate in the Dispute Response. However, I find that nothing turns on this discrepancy since Barbara Sharp sent the Orogios an April 16, 2021 text message declining the Orogios' offer.
18. Barbara Sharp's April 16, 2021 text message also said that they wanted to completely replace the fence instead of only repairing part of it. Further, Barbara Sharp wrote that they wanted the work to be performed by professional contractors rather than the Orogios. Based on Barbara Sharp's April 16, 2021 text message, I find that Barbara Sharp rejected the Orogios' fence repair offer. By doing so, I find that the parties had not yet entered a fence repair agreement.
19. Barbara Sharp sent the Orogios an April 19, 2021 quote for \$2,961 from Kozak Fencing to replace the fence. On May 3, 2021, the Orogios sent Barbara Sharp a text message offering to pay \$1,000 towards the fence replacement. Barbara Sharp sent the Orogios a reply text message on May 4, 2021 saying that this proposal was unfair. Barbara Sharp wrote that, "I suggest we move forward with the lesser cost between us for \$1300 each." In doing so, I find that Barbara Sharp rejected the Orogios' offer to contribute \$1,000 and Barbara Sharp made a counter-offer.
20. There is no evidence or submission showing that the Orogios responded to Barbara Sharp's May 4, 2021 counter-offer. Based on this, I find that Barbara Sharp has not proved that the Orogios accepted their May 4, 2021 counter-offer. So, I find that the parties had still not yet entered a fence repair agreement at that time.

21. On May 31, 2021, Barbara Sharp sent the Orologios a new fence replacement quote for \$3,307.50 from Kozak Fencing. Barbara Sharp says the quote was higher because lumber prices were increasing. Barbara Sharp says that, though the Orologios did not respond to this new quote, Barbara Sharp hired Kozak Fencing to replace the shared fence.
22. Barbara Sharp texted the Orologios on June 2, 2021 telling them that Kozak Fencing was going to replace the fence the next day. The Orologios sent Barbara Sharp a reply text the same day, writing that, "I DIDN'T AGREE TO ANYTHING" (capitals in the original). The Orologios also wrote that both parties must agree on the work in advance.
23. As discussed above, it is undisputed that Kozak Fencing replaced the shared fence. Based on both Barbara Sharp's undisputed submission that they paid the entire fence replacement cost and Kozak Fencing's May 31, 2021 quote, I am satisfied that Barbara Sharp paid \$3,307.50 to replace the shared fence.
24. Based on the above text messages, Barbara Sharp's submission that the Orologios did not respond to the May 31, 2021 quote and the Orologios' June 2, 2021 text message denying an agreement, I find that the Orologios had not agreed to hire Kozak Fencing or share the fence replacement costs. In the absence of an agreement, I find that the Orologios are not contractually responsible to share the fence replacement costs.

### ***Unjust enrichment***

25. Barbara Sharp also argues that the Orologios have been unjustly enriched by the fence replacement. The doctrine of unjust enrichment is based on the idea of restoring a benefit which justice does not permit one to retain (see *Kerr v. Baranow*, 2011 SCC 10 at paragraph 31). The legal test for unjust enrichment requires Barbara Sharp to show that that the Orologios were enriched, that Barbara Sharp suffered a corresponding deprivation or loss, and the absence of a juristic reason for the enrichment (see *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at paragraph 30). A

juristic reason means a reason or justification based on law for the enrichment of one party at the detriment of another. Here, I find that unjust enrichment has not been proven for the following reasons.

26. I find that the Orogios have received the benefit of a new shared fence without contributing to the fence's replacement cost. Further, I find that Barbara Sharp has suffered a corresponding loss by paying the entire fence replacement costs. However, as discussed below, I find that there was a valid basis for the enrichment.
27. In the previous CRT decision in *B.C. Ltd. v. RKI Properties Ltd.*, 2021 BCCRT 572, another tribunal member consider the existence of a "juristic reason" for enrichment in similar circumstances. In 572927, an applicant performed unpaid flooring work which the respondent had not authorized. The tribunal member found that the respondent's non-authorization of the flooring work was a valid basis or "juristic reason" for the respondent's enrichment. The tribunal member found that the respondent's flooring work enrichment was not unjust, given that the respondent did not authorize the work and did not have a contract for the work. Though the decision in 572927 is not binding on me, I find the reasoning persuasive and apply it here. Similarly, as discussed above, I find that the Orogios did not agree to Barbara Sharp's fence replacement. I find no legitimate reason to charge the Orogios for a fence replacement they did not agree to.
28. Further, though the shared fence was jointly owned by the parties, I find that Barbara Sharp unilaterally replaced it. The Orogios say that the replacement fence is lower quality than the fencing they proposed and the fence panels were not pressure treated or stained. Further, the Orogios' say the replacement fence was poorly installed with misaligned fence panels pulling away from the fence posts. The Orogios also say that their trees were trimmed and their solar lights were taken without their permission when the fence was replaced. Since the Orogios have not made a counterclaim, I make no findings relating to these alleged defects. However, I find that by unilaterally replacing the shared fence, Barbara Sharp deprived the Orogios of their opportunity to jointly determine the replacement fence materials

and manner of construction. In these circumstances, I find that the Orologios' enrichment was not unjust.

29. For the above reasons, I find that the Orologios were not unjustly enriched and I dismiss this claim.

***CRT fees and dispute-related expenses***

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. I see no reason in this case not to follow that general rule. Since Barbara Sharp was not successful, I dismiss their claim for CRT fees. The Orologios are not claiming reimbursement of dispute-related expenses.

**ORDER**

31. I dismiss Barbara Sharp's claims and this dispute.

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Richard McAndrew, Tribunal Member