



Civil Resolution Tribunal

Date Issued: May 16, 2022

File: SC-2021-008002

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Campbell v. Feng*, 2022 BCCRT 578

BETWEEN:

PAMELA CAMPBELL and ROBERT CAMPBELL

APPLICANTS

AND:

QIFENG FENG and MIN XIE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The parties are neighbours and this dispute is over payment for a replacement fence. The applicants, Pamela Campbell and Robert Campbell, say the respondents, Qifeng Feng and Min Xie, verbally agreed to pay their proportionate share of labour and

materials for the replacement fence. The Campbells say Mr. Feng and Mrs. Xie later refused to pay. The Campbells claim \$2,467, which they say is Mr. Feng and Mrs. Xie's portion of the fence's cost.

2. Mr. Feng and Mrs. Xie said they only ever agreed to pay for materials, not labour. They say they asked for an invoice with materials only, but it was never supplied.
3. The parties are each 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

ISSUE

8. The issue in this dispute is what amount, if any, Mr. Feng and Mrs. Xie must pay for the fence.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. It is undisputed the Campbells arranged to have the fence surrounding their property replaced. They arranged with 4 separate neighbours who bordered their property, including Mr. Feng and Mrs. Xie. One of the 4 neighbours, MM, agreed to construct the fence, with Mr. Campbell’s assistance.
11. It is also undisputed the Campbells paid the entire amount for the fence, and later sought reimbursement from the participating neighbours. They say only Mr. Feng and Mrs. Xie have failed to pay.
12. The parties have no written contract. A verbal contract is enforceable like a written contract, but it can be harder to prove.
13. For a valid contract to exist, the parties must have a “meeting of the minds”. This means that both 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)*, 2021 BCCA 189 and *Fairchild Developments Ltd. v. 575476 BC Ltd.*, 2020 BCCA 123).

14. The Campbells say Mr. Feng and Mrs. Xie agreed to pay for their portion of the shared fence. Mr. Campbell says he explicitly told Mr. Feng on July 17, 2021 that the costs would include “building materials, machinery rentals, any money received for recycling the old chain link fence and labour for [MM]”. Mr. Campbell says he told Mr. Feng he (Mr. Campbell) would assist in building the fence, but would not be charging for his labour. Mr. Campbell says Mr. Feng agreed to split the cost of the new fence.
15. In contrast, Mr. Feng says he and Mrs. Xie agreed to pay for materials, but never agreed to pay for labour. Mr. Feng says Mr. Campbell told him he (Mr. Campbell) would build the fence himself because a commercial company was too expensive. Mr. Feng denies Mr. Campbell ever said anything about charging for anyone’s labour.
16. I am left here with an evidentiary tie, with Mr. Campbell saying Mr. Feng agreed to pay for labour, and Mr. Feng explicitly denying that. I note the Campbells have the burden of proving their claim on a balance of probabilities. In the circumstances, I find there is insufficient evidence to prove Mr. Feng and Mrs. Xie ever agreed to pay for labour for the fence’s replacement. However, I find they did agree to pay for materials, which they admit, and have not done so.
17. I have also considered whether Mr. Feng and Mrs. Xie have been “unjustly enriched” by not paying for labour. The legal test of unjust enrichment is that the Campbells must show (1) that Mr. Feng and Mrs. Xie were enriched, (2) the Campbells suffered a corresponding deprivation or loss, and (3) there is no valid basis for the enrichment (see: *Kosaka v. Chan*, 2009 BCCA 467).
18. First, I find Mr. Feng and Mrs. Xie have been enriched by the fence’s replacement. Second, I find the Campbells paid for the fence’s construction labour, causing them

a loss. However, for the test's third part, I find there was a valid basis for the enrichment. As above, I find Mr. Feng and Mrs. Xie agreed to pay for the replacement fence's materials, but there was no agreement on any payment for labour, as Mr. Feng understood Mr. Campbell would be doing it himself. I find no valid reason to charge Mr. Feng and Mrs. Xie for labour that they did not agree to.

19. According to the invoice in evidence, materials for Mr. Feng and Mrs. Xie's portion of the fence total \$1,691. Mr. Feng and Mrs. Xie do not dispute this is the amount owed. Therefore, I find Mr. Feng and Mrs. Xie must pay the Campbells \$1,691 as reimbursement for fence materials.
20. The *Court Order Interest Act* applies to the CRT. The Campbells are entitled to pre-judgment interest on the \$1,691 from September 26, 2021, the date of the invoice to the date of this decision. This equals \$4.84.
21. 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 not to follow that general rule. Although the Campbells were not fully successful, I find they had to bring this action as Mr. Feng and Mrs. Xie had not paid for materials as agreed. Therefore, I find the Campbells are entitled to full reimbursement of their CRT fees, for a total of \$125. No dispute-related expenses were claimed.

ORDERS

22. Within 30 days of the date of this decision, I order the respondents, Qifeng Feng and Min Xie, to pay the applicants, Pamela Campbell and Robert Campbell, a total of \$1,820.84, broken down as follows:
 - a. \$1,691 in debt,
 - b. \$4.84 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.

23. The Campbells are also entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

Andrea Ritchie, Vice Chair