



Civil Resolution Tribunal

Date Issued: May 19, 2022

File: SC-2021-008629

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McGrath v. Fisher*, 2022 BCCRT 595

BETWEEN:

JASON MCGRATH

APPLICANT

AND:

MARK FISHER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for custom metal flashing. The applicant, Jason McGrath, says the respondent, Mark Fisher, hired him in April 2021 to make the

custom metal flashing for Mr. Fisher's home. Mr. McGrath says he fabricated the flashing after the parties agreed on a \$1,960 price (including tax), but then Mr. Fisher sought to negotiate a lower price and ultimately refused to take the flashings or pay for them. Mr. McGrath claims \$1,960.

2. Mr. Fisher says he ordered the flashings but never received a quote, estimate or invoice. He says Mr. McGrath is not a legitimate business and later advised he made the flashings and wanted to be paid cash, which Mr. Fisher says he agreed to do. Mr. Fisher says he later became suspicious and concerned about the legality of the transaction and ceased communication with Mr. McGrath. Mr. Fisher says there was no contract, deceptive business practices were used, and that he owes nothing.
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). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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 whether the parties had an enforceable contract for custom flashings, and if so, whether Mr. Fisher owes Mr. McGrath the claimed \$1,960.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. McGrath must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. On April 14, 2021, Mr. Fisher texted his drawings for his desired custom flashings to Mr. McGrath. The next day, Mr. Fisher texted “just checking you received my flashing order yesterday”. While not entirely clear, it appears Mr. Fisher found Mr. McGrath’s business, Costal Welding & Metal Fabrication, through Facebook.
11. On April 28, 2021, Mr. Fisher texted saying he was wondering if his flashings were ready. Mr. McGrath responded, “Sorry I never did anything with these I’ve been dealing with” a personal matter. In a subsequent text that day, Mr. McGrath said that he could have the flashings ready by “the end of May”.
12. Later, on May 14, 2021, Mr. McGrath texted Mr. Fisher, “The price will be 1750 plus tax” and Mr. Fisher responded “Wonderful”. On May 27, Mr. McGrath asked Mr.

Fisher when he would pick up the flashings, and Mr. Fisher responded he would be out of province until June 15, 2021.

13. On June 16, 2021, Mr. McGrath texted Mr. Fisher, “We have closed our shop but I have the flashings for you, cash”. On an unspecified date, the parties texted about Mr. McGrath’s personal matter again and Mr. Fisher agreed to let Mr. McGrath know what date would work for picking up the flashings. Mr. McGrath texted again on June 22 about a pick-up date, and Mr. Fisher said, “give me a few days and will get them”.
14. On June 24, 2021, Mr. Fisher texted, saying he could pick the flashings up the next morning and “what is the cash price now going to be?” Mr. McGrath responded it was \$1,750. Mr. Fisher asked for cheaper “if I have to keep it off the books.” Mr. McGrath offered to add the tax and he could provide a handwritten receipt.
15. Later on June 24, 2021, Mr. Fisher texted that he would be unable to pick up the flashings on June 25 as planned, due to a personal matter, and apologized.
16. On July 13, 2021, Mr. McGrath texted Mr. Fisher asking, “when can we arrange to get these flashings??”. Mr. Fisher responded that he could obtain the flashings at half the price from Home Hardware. He offered Mr. McGrath \$1,200 cash for the flashings, which Mr. McGrath declined citing the parties’ earlier agreed price.
17. I do not accept Mr. Fisher’s argument that he became suspicious of the legality of the flashing transaction or Mr. McGrath’s business. I find that argument entirely inconsistent with the tenor of the text exchanges quoted above. Rather, I find Mr. Fisher clearly agreed to pay \$1,750 for the flashings (plus tax if he wanted a receipt) and that he ultimately decided to buy them elsewhere for cheaper after Mr. McGrath had completed the custom work. I find the fact that Mr. McGrath’s business closed, something Mr. Fisher clearly was aware of as set out in the texts above, is not determinative of his obligation to pay Mr. McGrath as agreed.
18. The difficulty for Mr. McGrath is that he has not complied with the *Business Practices Consumer Protection Act* (BPCPA), which I note Mr. Fisher expressly

raised in his submissions. While the CRT has no jurisdiction to award remedies for a failure to comply with the BPCPA, I do have jurisdiction to apply the BPCPA in considering whether a contract is cancelled or enforceable.

19. The BPCPA applies to the parties' transaction because the goods and services sold (the flashings) were primarily for household purposes. Mr. McGrath was a supplier and Mr. Fisher was the consumer.
20. The parties had no formal written contract. As noted above, their agreement was formed through a back and forth in text messages. I find the parties' text exchanges comprise their contract, up until the May 14 text where Mr. Fisher said the \$1,750 price was "wonderful". I find by that point, the parties had made a contract that Mr. McGrath would provide the requested flashing for \$1,750 plus tax, at a date yet to be determined.
21. Because Mr. Fisher undisputedly had not paid for the flashings at the time he ordered them, and because the flashings were not delivered at the time of the order, the contract falls within the definition of a "future performance contract" under the BPCPA. It also was a distance sales contract because it was made online rather than in person.
22. Sections 19 and 23 of the BPCPA require future performance contracts to contain certain information. The parties' contract, comprised of those texts up to and including May 14, is missing some of the required information: a) the supplier's name and, if different, the name under which the supplier carries on business, b) the supplier's business address, c) the date on which the contract is entered into, d) a detailed description of the goods and services to be supplied, e) other costs payable, including taxes, f) a detailed statement of the terms of payment, g) the total price, and h) the supply date. Even if I included all of the parties' texts summarized above, some of the required information is missing.
23. Significantly, BPCPA section 23(5) says a consumer (here, Mr. Fisher) may cancel a future performance contract by giving notice of cancellation if the contract is

missing the required information in section 19, if notice is given within 1 year of consumer receiving a copy of the contract. Here, Mr. Fisher told Mr. McGrath he was cancelling the contract well under a year after it was made. Under the BPCPA, I find Mr. Fisher was entitled to cancel the contract and did so, given the missing information.

24. I acknowledge Mr. McGrath is left with custom flashings he may have no use for. However, the BPCPA provisions discussed above are mandatory. Given this, I find the contract is cancelled and Mr. Fisher has no further obligations under it. It follows that Mr. McGrath's claim is dismissed.

25. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. McGrath was unsuccessful, so I dismiss his claim for reimbursement of CRT fees. Mr. Fisher did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

26. I order Mr. McGrath's claims and this dispute dismissed.

Shelley Lopez, Vice Chair