Civil Resolution Tribunal

Date Issued: June 9, 2022

File: SC-2021-009006

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rennecke v. Kasiri*, 2022 BCCRT 680

B E T W E E N :

WILFRED RENNECKE and BONNIE RENNECKE

APPLICANTS

A N D :

SHAWN KASIRI and EMPIRE ALUMINUM WORKS LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This dispute is about an alleged breach of a settlement agreement.

2. The respondents, Shawn Kasiri and Empire Aluminum Works Ltd. (Empire), built custom metal railings for the applicants, Wilfred Rennecke and Bonnie Rennecke. Mr. Kasiri is Empire's director or officer.

3. In a previous Civil Resolution Tribunal (CRT) dispute, the Renneckes claimed the respondents fabricated the railings with the wrong dimensions and refused to correct them. Mr. Rennecke and Mr. Kasiri settled the previous CRT claim on behalf of the parties. In exchange for Mr. Rennecke withdrawing the full CRT claim, Mr. Kasiri agreed to pay the Renneckes $250 and redo some of the railing work under direction of a specified contractor. More on this below.

4. In this dispute, the Renneckes say that Mr. Kasiri failed to pay the $250 or repair the alleged "faulty railings". Mr. Rennecke says they had to retrofit several railings themselves. They seek an order that the respondents pay the $250 as agreed under the settlement agreement, plus $250 for additional work to fix the railings. They request an additional $500 for the same things: payment of $250 under the settlement agreement and $250 for additional work.

5. The respondents agree that Mr. Kasiri agreed to pay $250 to settle the previous dispute. However, they say Mr. Kasiri redid an extra railing section that was not part of the settlement agreement and so, they reduced the $250 owing under the settlement to pay for the material costs of the extra railing. They say the respondents owe nothing more.

6. The Renneckes are represented by Mr. Rennecke. The respondents are represented by Mr. Kasiri.

JURISDICTION AND PROCEDURE

7. 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.

8. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

9. 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.

10. 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.

11. As a preliminary matter, the Renneckes stated in the Dispute Notice that the CRT ordered Mr. Kasiri to pay $250 in the previous dispute. However, the CRT made no order in that dispute. Instead, the CRT records show that the parties came to a settlement agreement by email on March 2, 2021 and the Renneckes withdrew the dispute. I provided the parties with a copy of the March 2, 2021 settlement agreement

and they agree that the prior dispute was settled under that agreement. I discuss the specifics of the settlement agreement below.

12. Under CRT rule 6.1, if a party withdraws a claim they can only pursue the claim against the same respondents at the tribunal with the tribunal's permission. If all claims are withdrawn as is the case here, the CRT will treat the dispute as resolved and close the file. The applicant may only continue any withdrawn claim if the CRT permits the party to do so. In considering a request to pursue a withdrawn claim, the CRT may consider the reason for the withdrawal, any prejudice to the parties, whether the limitation period has expired, the CRT's mandate, whether it is in the interests of justice and fairness, and any other factors.

13. Here the Renneckes did not make a request to the CRT to pursue a withdrawn claim. The CRT records indicate that the case manager confirmed with the parties that this dispute is only over the settlement agreement. So, I find the issue before me is whether the respondents breached the settlement agreement and not whether they breached the original railings contract.

14. However, the Renneckes submissions suggest they are also seeking damages for alleged deficiencies under the original railing contract. I find they cannot rely on the settlement agreement to claim payment for the $250 settlement debt and, at the same time, essentially ignore the settlement agreement to bring a new claim for breach of contract for alleged deficiencies under the original contract. The settlement agreement states it was a "full and final" agreement and they withdrew their claim on that basis. I find it would be inconsistent with the interests of justice and fairness, including the principle of finality, to consider a claim for a breach of the original railing contract and I decline to consider it here.

ISSUES

15. The issues in this dispute are:

    a. Did the respondents breach the settlement agreement?

b. Do the respondents owe the Renneckes anything under the settlement agreement?

c. To what extent, if any, are the Renneckes entitled to damages for the alleged railing deficiencies?

EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' argument and evidence but refer only to what I find relevant to provide context for my decision. I note the respondents chose not to submit any evidence in this dispute even though they had a reasonable opportunity to do so.

17. The parties agree that the respondents fabricated metal railings for the Renneckes' deck in about 2019. There is no written contract in evidence or invoice for that work.

18. As mentioned, the Renneckes brought a previous CRT dispute against Mr. Kasiri and Empire over alleged deficiencies with the metal railings. The parties reached a settlement by email on March 2, 2021. I find that Mr. Rennecke and Mr. Kasiri, agreed on behalf of the parties, to a "full and final settlement" of the previous dispute. The relevant settlement agreement terms include that:

    a. Mr. Rennecke would withdraw the CRT claim.

    b. The parties would engage "Huey Westie" (Westie) to inspect the 2 lower deck railings and provide his recommendations and directions for repair or replacement of the 2 lower deck railings.

    c. The parties would abide by Westie's recommendations, follow his direction for the 2 railings, and undertake such work as Westie directs by May 31, 2021.

    d. Mr. Kasiri would provide 4 stair rail support legs for the lower deck handrails by May 31, 2021 and pay for the delivery.

e. Mr. Kasiri would pay Mr. Rennecke $250 by May 31, 2021.

19. Following the settlement agreement, Mr. Rennecke withdrew all the claims in the previous CRT dispute. Mr. Kasiri has not paid Mr. Rennecke the $250 as agreed. These facts are not disputed.

20. Mr. Kasiri argues that the respondents should not have to pay the $250 because the Renneckes allegedly owe them $500 in material costs for fixing an extra railing. The Renneckes deny owing Mr. Kasiri anything. They say all the railings were part of the "original railing package" and the respondents did not remake an extra railing as alleged.

21. Since the respondents did not bring a counterclaim, I find they are seeking to "set off" the amounts they owe under the settlement agreement. If the respondents can prove the Renneckes owe them money that is reasonably connected to the settlement debt, they can deduct it from the amount owed: see *Dhothar v. Atwal,* 2009 BCSC 1203. I find they have not met that burden here. My reasons follow.

22. I have reviewed all the submitted photographs of the railings that the respondents fabricated for the Renneckes' home. They show sets of matching railings around a raised deck and going down sets of stairs at the back of the Renneckes' home. There is no evidence apart from Mr. Kasiri's own submissions that establish the respondents made or remade an extra railing outside the original contract's work scope. There is also no evidence they incurred extra material costs. I find it more likely than not that the railing the respondents fixed fell within the scope of the original contract and was therefore, covered by the settlement agreement. I find the respondents have not established that the Renneckes owe the respondents payment for the railing and I find no basis to award a set off.

23. I find the respondents must pay the Renneckes $250 for the settlement debt.

24. As noted, the Renneckes seek payment of an additional $250 under the settlement agreement. However, I find Mr. Kasiri, on the respondents' behalf, only agreed to pay

$250. I find the Renneckes are not entitled to extra payment and I dismiss their additional $250 debt claim.

25. The Renneckes say the railings are still not correct and they will have to hire someone to retrofit them and perform extra work to the railings and "ball finials", which the respondents dispute. They seek either $250 or $500 in damages. I find the value of their claim is not entirely clear in the Dispute Notice and there is no quote or estimate in evidence.

26. As discussed, a term of the parties' settlement agreement was that a contractor, Westie, would inspect and provide recommendations about the railings. Another terms was that the parties would undertake work as directed by Westie. There is no inspection report or opinion in evidence from Westie. Without a report or statement from Westie, I find the Renneckes have not established that the respondents failed to fix or remake the railings to Westie's recommended standard. I acknowledge the Renneckes submitted an opinion about the railings from another contractor, but I find the respondents were not required to meet another contractor's standards or perform work recommended by that other contractor. I find the Renneckes have not established that the respondents breached the settlement agreement by failing to adequately fix the railings or ball finials and I dismiss the Renneckes' damages claims.

27. The *Court Order Interest Act* applies to the CRT. The Renneckes are entitled to pre-judgment interest on the $250 settlement debt from the May 31, 2021 payment due date to the date of this decision. The interest equals $1.16.

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. Since the Renneckes were partially successful in their claims, I find they are entitled to reimbursement of half their paid CRT fees. I find the respondents must reimburse the Renneckes for a total of $62.50. The respondents did not pay CRT fees and neither party claimed dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order the respondents to pay the Renneckes a total of $313.66, broken down as follows:

    a. $250 for the settlement debt,

    b. $1.16 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $62.50 in CRT fees.

30. The Renneckes are entitled to post-judgment interest, as applicable.

31. I dismiss the Renneckes remaining claims.

32. 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.

33. 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.

Trisha Apland, Tribunal Member