Civil Resolution Tribunal

Date of Original Decision: June 10, 2022

Date of Amended Decision: June 13, 2022

File: SC-2021-008458

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Towle v. Turner,* 2022 BCCRT 685

B E T W E E N :

MONICA TOWLE and CALVIN TOWLE

**APPLICANTS**

A N D :

PAUL TURNER

**RESPONDENT**

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**AMENDED [i] REASONS FOR DECISION**

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Tribunal Member: Leah Volkers

## INTRODUCTION

1. This dispute is about custom furniture. The applicants, Monica Towle and Calvin Towle, contracted with the respondent, Paul Turner, to custom build wood furniture for them. The Towles say the furniture was still unfinished two years later. The Towles

ask for orders that Mr. Turner return their $2,000 deposit, and reimburse them $3,000 for hardwood they supplied to Mr. Turner for the custom furniture.

2. Mr. Turner does not dispute that there were delays in completing the custom furniture. Mr. Turner says the Towles agreed to the delays, but then cancelled the parties' contract. Mr. Turner says the furniture was completed in December 2021, but the Towles refused to accept it.

3. The Towles are represented by Monica Towle. Mr. Turner is 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.

## ISSUE

8. The issue in this dispute is to what extent, if any, Mr. Turner must return the Towles's $2,000 deposit for custom-built wood furniture and pay them $3,000 for hardwood they provided.

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicants, the Towles must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

### *Background and chronology*

10. It is undisputed that the parties agreed Mr. Turner would build custom wood furniture for the Towles in exchange for payment. The parties also agreed the Towles would supply some hardwood for the furniture, and did so.

11. It is undisputed that Mr. Turner did not use all of the provided hardwood for the furniture, and I find emails in evidence show the parties agreed Mr. Turner would purchase different wood to build the furniture and keep the hardwood provided to him by the Towles.

12. It is also undisputed that there were several further delays in completing the furniture. I find the emails in evidence establish the following timeline:

    a. In September 2019, the parties discussed the custom furniture details, and Mr. Turner provide an estimate of $3,500 to $4,000 for six pieces of custom furniture.

b. On January 29, 2020, Mr. Turner advised he was “getting going on [the Towles’s] project” and requested a $2,000 deposit. Mr. Turner said he was hopeful he could finish everything by February 14, 2020 and deliver everything between February 18 and 21, 2020. The Towles undisputedly paid the $2,000 deposit the same day.

c. In February 2020, Mr. Turner said that he had all the parts for a bookshelf and table created and ready for assembly. He said he would finish “prepping the rest of the components next week”.

d. In May 2020, the Towles asked how the bookcases were coming along. They said they were not in a hurry to get them delivered due to the COVID-19 pandemic, but would like to have them to get their room organized. They asked Mr. Turner for an update. In response, Mr. Turner said he anticipated having everything completed for early July 2020.

e. In October 2020, the Towles asked how the work was coming and whether Mr. Turner saw a delivery date in the near future. In response, Mr. Turner advised that he had been delayed after getting COVID-19, and would touch base once he was feeling better.

f. On November 25, 2020, Mr. Turner said he was still feeling unwell. He said he would attempt some assembly next week before committing to a stringent schedule, and hoped to make some considerable headway shortly.

g. On March 1, 2021, Mr. Turner advised that he would set a deadline of March 30, 2021 “for motivational purposes”, but hoped he could get it wrapped up sooner. The Towles agreed to this timeline.

h. In April, 2021, Mr. Turner said the components were finished, and he just needed to glue everything together and put finish on. He said he would touch base to arrange for delivery.

i. On April 29, 2021, the Towles asked for a firm furniture completion date so they could arrange movers. Mr. Turner advised he could deliver the furniture the week of May 10, 2021. The parties then confirmed delivery on May 13, 2021.

j. On May 10, 2021, Mr. Turner asked for more time to finish assembly before booking another delivery date. On May 17, 2021, the Towles said they were "good to wait a bit to get it right".

k. On June 5, 2021, the Towles advised Mr. Turner that the room was ready for the furniture, and asked when they would receive it.

l. On June 10, 2021, Mr. Turner sent the Towles a long explanation for his delays. He gave the Towles the option of him either returning their lumber and hardware and have someone else complete the work, or giving him time to put the furniture together properly "Which might be a month or two, or possibly longer". He said he was not asking for an indefinite extension, but could not commit to a deadline.

m. On July 5, 2021, the Towles said the options were not great, and would force them to either wait for an indefinite time or attempt to find someone else to do the work. They said they had little choice other than asking Mr. Turner to complete the work "as expeditiously as possible". They asked Mr. Turner to send photos of his progress and keep them informed.

n. On August 1, 2021, the Towles again asked for an update and photos.

o. On August 4, 2021, Mr. Turner said he had set aside 8 days to work on the furniture, and was hopeful that he would be able to get the furniture completed at that time.

13. The Towles say they did not receive any further updates from Mr. Turner about the furniture, and there are no further emails between the parties in evidence. It is undisputed that Mr. Turner never sent photographs of any progress to the Towles after July 5, 2021.

14. The Towles sent a letter to Mr. Turner dated October 13, 2021, terminating the parties' contract. The Towles asked for return of their $2,000 deposit, and payment of $3,405 plus tax and shipping for the cost of replacing the hardwood they had provided to Mr. Turner. Although this amount adds up to more that the CRT's $5,000 small claims monetary limit, the Towles only claim $5,000 in this dispute and have abandoned their claim above that.

### *Fundamental breach*

15. Although neither party specifically uses the term "fundamental breach", I find the Towles argue that Mr. Turner's failure to complete the custom furniture after almost two years was a fundamental breach of the parties' contract, and gave them the right to terminate the parties' contract.

16. Not every breach of a contract is a fundamental breach. Where a party fails to fulfill a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract, it is a fundamental breach. See *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC). Put another way, a fundamental breach is a breach that destroys the whole purpose of the contract and makes further performance of the contract impossible. See *Bhullar v. Dhanani*, 2008 BCSC 1202.

17. Whether a breach of contract is a fundamental breach matters because there are different remedies available to the wronged party. For most breaches of contract, the wronged party can claim against the other party for damages arising from the breach. For a fundamental breach, the wronged party can terminate the contract immediately. If the wronged party terminates the contract because of a fundamental breach, they do not have to perform any further terms of the contract. See *Poole v. Tomenson Saunders Whitehead Ltd.,* 1987 CanLII 2647 (BC CA).

18. If Mr. Turner fundamentally breached the contract, the Towles are relieved from any further performance of the contract. This means the Towles would be entitled to

terminate the contract, refuse the custom furniture if later completed, and claim damages. The Towles are also not obligated to pay any balance alleged to be owing.

19. The test for whether a breach of contract is a fundamental breach is an objective test. That means that I must assess the nature of the breach from the perspective of a reasonable person in the Towles's shoes. In this dispute, I find that a reasonable person would consider the contract to be completely undermined because Mr. Turner failed to complete the custom furniture over a period of almost 2 years. Ongoing delays can constitute a fundamental breach when the delays have the effect of creating a completely different situation from what the parties contemplated when they entered the contract. See *Bridgesoft Systems Corp. v. R*., 1998 CanLII 3950 (BC SC) (overturned on appeal on other grounds) at paragraph 114. I find that is the situation here.

20. I find that by October 13, 2021, the Towles could reasonably say that they had lost the entire benefit of the contract. I accept that some delay as a result of the COVID-19 pandemic was excusable, and I acknowledge Mr. Turner's submissions that the Towles agreed to the further delay in July 2021. However, the repeated delays were ongoing over a 2-year period, and there is no evidence of any progress after the cancelled May 2021 delivery date. Given this, and despite the Towles previous agreement to some further delays, I find that by October 13, 2021 it was no longer reasonably possible for the Towles to continue to wait for Mr. Turner to complete the furniture in the face of further indefinite delays. By that point, there was no reason to believe Mr. Turner would complete the furniture in a timely way, or at all. I find that Mr. Turner's repeated delays in completing the furniture fundamentally breached the parties' contract. In making this finding, I place significant weight on Mr. Turner's January 29, 2020 email where he told the Towles that that he hoped to complete the furniture and deliver it by February 21, 2020, and on Mr. Turner's own admission that he did not get to a point where there was any furniture assembled that he could document before the Towles cancelled the contract, almost two years later.

21. Given that I have found Mr. Turner fundamentally breached the parties' contract, I find that the Towles were entitled to terminate the contract when they did so on October 13, 2021.

### *Remedy*

22. Having found that Mr. Turner fundamentally breached the parties' contract, I must now consider the Towles's remedy. Whether the parties' contract was repudiated or fundamentally breached, the remedy is the same. The innocent party is entitled to damages. See *Mantar Holdings Ltd. v. 0858360 B.C. Ltd.,* 2014 BCCA 361. Damages for breach of contract are generally intended to put the innocent party in the position they would have been in if the contract had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General),* 2015 BCCA 319. However, in the case of a repudiatory or fundamental breach, the innocent party may claim damages based on their out-of-pocket losses, particularly where the innocent party received no substantial benefit under the contract and the breach is substantial. See *Bhullar* at paragraphs 41 to 45 and *Karimi v. Gu,* 2016 BCSC 1060 at paragraphs 206 to 211.

23. The Towles claim reimbursement of the $2,000 deposit they undisputedly paid Mr. Turner on January 29, 2020. The Towles also claim $3,000 towards the cost of the hardwood they say they provided to Mr. Turner for the custom furniture.

24. Mr. Turner says he still has the hardwood, and it can be returned to the Towles. Mr. Turner says he continued to perform the terms of the contract after October 13, 2021. He says the furniture was completed in December 2021, but the Towles refused to pick it up. He says if the Towles picked up the completed furniture and the hardwood, they would not suffer any damages. The Towles question whether the furniture was completed in December 2021 as Mr. Turner alleges. The only available documentary evidence of the furniture are photographs dated March 22, 2022. The Towles say this was the first time they saw any photographs of the furniture. The Towles say they had no obligation to continue waiting or give Mr. Turner more chances to complete the furniture after they terminated the contract on October 13, 2021. I agree. As noted above, I have found the Towles were entitled to terminate the parties' contract. Once

terminated, the Towles were relieved of any further obligations under the contract, including any obligation to accept furniture from Mr. Turner that I find was not assembled until several months later.

25. Mr. Turner says the $2,000 deposit was not negotiated to be refundable, and says he used the deposit to cover out of pocket expenses, including hardware and additional material. I would agree with Mr. Turner if he had completed the furniture within a reasonable time frame. However, he did not. I have already found that Mr. Turner fundamentally breached the contract when he failed to do so. I find the Towles are entitled to have their $2,000 deposit returned.

26. I turn now to the Towles's $3,000 claim for the hardwood's value. The Towles submitted a spreadsheet that calculates the value of the hardwood based on the alleged hardwood prices at three different suppliers in October 2021, ranging from $3,362.99 to $3,441.35 in total. However, the Towles did not provide documentary evidence from any of the three different suppliers to support the amounts listed in the spreadsheet. Despite this, Mr. Turner does not dispute the Towles's calculations of the hardwood's value, and I find it is appropriate to award the Towles some amount of damages for the hardwood. The difficulty is that in the absence of documentary evidence from any hardwood suppliers about hardwood prices, it is difficult to determine the hardwood's value with certainty. In the absence of this evidence, and bearing in mind the CRT's mandate for proportionality and the fact that Mr. Turner does not dispute the hardwood's value, on a judgment basis, I award the Towles $3,000 for the hardwood they provided to Mr. Turner.

27. In total, I award the Towles $5,000 in damages ($2,000 for the paid deposit plus $3,000 for the hardwood).

### *Interest, CRT fees and expenses*

28. The *Court Order Interest Act* (COIA) applies to the CRT. I note the CRT's small claims $5,000 monetary limit is exclusive of COIA interest and CRT fees. The Towles entitled to pre-judgment interest on the $5,000 damages award reasonably calculated from

October 21, 2021, the date the Towles's letter terminating the contract was delivered to the date of this decision. This equals $14.82.

29. 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. I find the Towles are entitled to reimbursement of $175 in CRT fees. The Towles did not claim any dispute-related expenses.

## ORDERS

30. Within 30 days of the date of this order, I order Mr. Turner to pay the Towles a total of $5,189.82, broken down as follows:

    a. $5,000 in damages,

    b. $14.82 in pre-judgment interest under the COIA, and

    c. $175 in CRT fees.

31. The Towles are entitled to post-judgment interest, as applicable.

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.

Leah Volkers, Tribunal Member

[i] Amendment Notes: Amended under CRTA section 64 to correct an inadvertent error in a party's name in paragraph 11.