



# Civil Resolution Tribunal

Date Issued: September 22, 2022

File: SC-2021-005395

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Baker v. Measor*, 2022 BCCRT 1044

B E T W E E N :

NICHOLA BAKER and PAUL BAKER

**APPLICANTS**

A N D :

CHRISTOPHER MEASOR and CSM CONTRACTING

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about the supply and installation of new perimeter drains. The applicants, Nichola Baker and Paul Baker, say they paid the respondents, Christopher Measor and CSM Contracting (CSM), \$6,500 to date. The Bakers allege that the respondents' work was substandard and worth \$2,000 at most. The Bakers claim a \$4,500 refund.

2. Christopher Measor did not file a Dispute Response and is in default. CSM is a partnership consisting of Christopher Measor and a family member, Shawn Measor. Shawn Measor filed a Dispute Response for CSM. He says he has no knowledge of the facts in this dispute. Shawn Measor is not a party to this dispute.
3. Nichola Baker represents the Bakers. Shawn Measor represents CSM.
4. For the reasons that follow, I find the Bakers have proven their claims against Christopher Measor only. I dismiss the Bakers' remaining claims against CSM.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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.
9. I note that the Bakers obtained a default decision and order against CSM on January 16, 2022. The CRT decided to cancel the decision on April 5, 2022, at Shawn Measor's request. So, my decision below addresses both Christopher Measor's and CSM's liability.

## **ISSUES**

10. The issues in this dispute are as follows:
  - a. Did the respondents breach any contract with the Bakers?
  - b. Are any remedies appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the Bakers as the applicants must prove their claims on a balance of probabilities. This means more likely than not. 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. The applicants chose not to file reply submissions although they were given the opportunity to do so.
12. As noted above, Christopher Measor is in default. CSM's representative, Shawn Measor, says he has no knowledge about the facts in this dispute. So, I have largely relied on the Bakers' evidence and version of events in establishing the facts.
13. The Bakers say they hired CSM and Christopher Measor in December 2020 to construct new perimeter drains. The Bakers agreed to pay a \$5,000 deposit before work began. Financial documents show the Bakers paid the deposit by transferring \$3,500 on December 25, 2020 to an unnamed recipient, and \$1,500 on January 19, 2021 to Christopher Measor. The Bakers say the respondents quoted a total price of

“around \$9,000”. There is no indication that the parties documented their agreement or this estimate. However, as no evidence contradicts the Bakers, and as Christopher Measor is in default, I find it was likely a fixed price contract for \$9,000.

14. Further, as Christopher Measor received at least some of the funds and is also in default, I find it proven that the Bakers contracted with him. However, there is no evidence that shows the Bakers contracted with CSM. There are no invoices, emails, contracts, or other documents to support such a contract. CSM is also not in default. As such, I find it unproven that the Bakers contracted with CSM. For that reason, I dismiss the Bakers’ claims against CSM.
15. The Bakers say that the respondents began work in May 2021. They say Christopher Measor requested another \$1,500 for materials on May 28, 2021. A financial document shows the Bakers transferred another \$1,500 to Christopher Measor on May 28, 2021. So, I find they paid a total of \$6,500 to Christopher Measor.
16. Christopher Measor subsequently told the Bakers someone stole this money. So, the Bakers purchased materials amounting to \$1,008.48 for the work to continue. These purchases shown on receipts and a credit card statement occurring on June 1 and 2, 2021, totaling \$1,008.48.
17. The Bakers say that the respondents’ work was substandard. Liability is generally assumed in default decision, so I find this was likely the case. Some evidence also supports this finding. I find that on June 15, 2021, a North Cowichan district inspector attended the worksite and issued an order for work to stop on the property, due to unacceptable safety and liability concerns. The Bakers provided a photograph of the order notice. It says it was issued by the municipal authority and work had to stop at the Bakers’ property. The June 15, 2021 notice also said it could only be removed by a building inspector.
18. After this, the Bakers told the respondents to immediately stop work and remove their equipment from our property. The Bakers says they paid another contractor, Vortech Plumbing & Drainage Inc. (Vortech), to remediate and complete the work.

19. As noted above, the Bakers claim \$4,500. They say the respondents are only entitled to payment equal to the value of the work done. The Bakers say that Vortech estimated that the respondents' work was worth about "\$2,000 at the absolute most". Given this, they submit that the respondents should refund them \$4,500 from the \$6,500 paid.
20. Vortech's June 14 estimate and June 21, 2021 invoice say that the Bakers had concerns over the quality and duration of the home perimeter drainage project. Vortech did not comment on the value of Christopher Measor's work. However, it completed the drainage project for \$8,563.04, as outlined in its June 21, 2021 invoice. I have found that Christopher Measor agreed to complete the drainage project for \$9,000. As Vortech charged nearly the same price to complete the work, on balance, I find that the work done was worth \$2,000 at most.
21. For those reasons, I find it appropriate to order Christopher Measor to pay the Bakers \$4,500.
22. The *Court Order Interest Act* applies to the CRT. The Bakers are entitled to pre-judgment interest on the \$4,500 damages award from June 21, 2021, the date of Vortech's invoice, to the date of this decision. This equals \$38.41.
23. 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 Bakers are entitled to reimbursement of \$200 in CRT fees from Christopher Measor. CSM claimed \$50 as reimbursement in CRT fees. As CSM was successful, I order the Bakers to pay this amount to CSM. The parties did not claim reimbursement for any specific dispute-related expenses.

## **ORDERS**

24. Within 30 days of the date of this order, I order Christopher Measor to pay the Bakers a total of \$4,738.41, broken down as follows:

- a. \$4,500 as damages for breach of contract,
- b. \$38.41 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$200 in CRT fees.

25. I dismiss the Bakers' claims against CSM.

26. Within 30 days of the date of this order, I order the Bakers to pay CSM \$50 in CRT fees.

27. The Bakers are entitled to post-judgment interest, as applicable.

28. CSM is entitled to post-judgment interest, as applicable.

29. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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David Jiang, Tribunal Member