



Civil Resolution Tribunal

Date Issued: October 18, 2022

File: SC-2022-001712

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dessau v. MacArthur*, 2022 BCCRT 1132

B E T W E E N :

GERD DESSAU

APPLICANT

A N D :

JESSIE-ANN MACARTHUR

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for hay. The applicant, Gerd Dessau, says he supplied hay to the respondent, Jessie-Ann MacArthur, on September 25, 2021. Mr.

Dessau says Ms. MacArthur made one payment on October 16, 2021 but then failed to pay anything further despite requests to do so. Mr. Dessau claims \$3,360 as the balance owing.

2. Ms. MacArthur admits to receiving the 30 bales of hay ordered, but says they only weighted an average of 594 pounds, not the 900 to 1,000 pound bales agreed upon. Ms. MacArthur says the hay was neither the quality nor the weight she agreed to buy. She says she will pay for the weight and bales she did receive. She says this amounts to her owing \$1,875 to Mr. Dessau (\$2,295 less her \$420 payment).
3. Mr. Dessau is represented by a family member. Ms. MacArthur 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). 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. 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.
8. Mr. Dessau objects to Ms. MacArthur being permitted to provide late evidence. Bearing in mind the CRT's flexible mandate, I find there was no prejudice to Mr. Dessau since he had the opportunity to respond to it and did so. I have allowed the late evidence and considered it in my analysis below.

ISSUES

9. The issues in this dispute are a) whether Mr. Dessau delivered hay in the quality and weight the parties agreed on, and b) to what extent Mr. Dessau is entitled to the claimed \$3,360.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Dessau must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. The parties both say they had a verbal agreement. Apart from Mr. Dessau's internal records discussed below, there is no formal written documentation of their arrangement for this September 2021 sale nor for their prior agreements. Ms. MacArthur ordered 30 bales of hay which she received on September 25, 2021. Ms. MacArthur paid Mr. Dessau \$420 on October 16, 2021. None of this is disputed. I find it is also undisputed that Ms. MacArthur agreed to pay \$120 per bale.

12. As discussed below is whether the parties' agreement included a term each bale would weigh close to 900 to 1,000 pounds, as Ms. MacArthur alleges, rather than around 600 pounds per bale, which is what she says she received.
13. Mr. Dessau issued a September 25, 2021 invoice for \$3,180, for 30 bales of hay at \$120 per bale, for a total of \$3,600 less a \$420 cash payment. In this dispute, as noted Ms. MacArthur says she only owes \$1,875 based on the weight of hay she says she received. She does not explain why she has not paid anything beyond the \$420.
14. As noted, Ms. MacArthur says the September 2021 hay purchase was not the weight or quality she expected. In particular, she says the parties' verbal agreement for the September 2021 delivery was that she would buy 30 bales of the same quality and weight as the prior 3 years. Ms. MacArthur says the hay she received in September 2021 was on average 594 pounds per bale, not the 900 to 1,000 pounds per bale she says she had received in prior years. In contrast, Mr. Dessau says he never agreed or supplied bales of that weight and that his machine could not handle that weight in any event. Mr. Dessau says his hay weighs between 700 and 750 pounds per bale, depending on the amount of grass/alfalfa ratio, and adds there can be shrinkage of up to 10% depending on weather and storage methods.
15. Mr. Dessau says Ms. MacArthur made multiple promises to pay and refused to allow him to pick up unused hay bales. He says there were no complaints about the hay's weight or quality until he filed this claim with the CRT in March 2022. Ms. MacArthur says the "late weighing of bales was due to not having access to a truck at the time".
16. In support of his position about his hay's bale weights, Mr. Dessau submitted a March 31, 2022 scale ticket with gross weight figures and a handwritten notation "628.5 per bale". Mr. Dessau says this hay was from the same crop of hay he sold Ms. MacArthur. Ms. MacArthur does not dispute this, so I accept it.

17. Mr. Dessau also submitted screenshots of online advertisements for hay to demonstrate the price Ms. MacArthur alleges should be paid is not consistent with market pricing and would be less than what it cost him to harvest the hay. I find this evidence is of limited assistance given I cannot tell if it is the same type of hay Mr. Dessau sold Ms. MacArthur.
18. Next, Mr. Dessau submitted copies of various online articles that he says show that in 2021 hay had shrunk due to weather and environmental conditions. I accept the hay was subject to 10% shrinkage, given this evidence and because Ms. MacArthur does not dispute it.
19. Mr. Dessau also submitted a handwritten record showing that Ms. MacArthur paid him \$3,800 for 40 bales of hay in April 2019. He submitted a similar handwritten record that in August 2020 she bought 31 bales for a total of \$3,410. The record shows she paid off that debt over time between September 27, 2021 and April 14, 2022, leaving a \$60 balance owing. Mr. Dessau submitted a similar handwritten record of Ms. MacArthur's hay purchase for the September 2021 hay at issue. In none of the records is the hay bale's weight recorded, just that it was a "round" bale.
20. I place some weight on these handwritten records because Ms. MacArthur admits she bought the number of bales recorded. Her allegation is that the bales sold in 2021 were much lighter than prior years. She has provided no evidence of the weights of the hay bales she bought from Mr. Dessau in prior years. However, in support, Ms. MacArthur submitted a July 22, 2022 witness statement from her neighbour TF. TF says they assisted with feeding Ms. MacArthur's horses since 2020. TF says in 2021 the bales were light and could be rolled out by one person but in prior years they were heavy and it took 2 to 3 people to roll out the bales. TF says they have never seen Ms. MacArthur run out of hay as she did in 2021. In response, Mr. Dessau says TF also owes him money and reiterates his baler could not have produced hay bales that were 900 to 1,000 pounds each, as Ms. MacArthur alleges was the weight she had bought in prior years.

21. Ms. MacArthur submitted 4 undated photos of her truck with hay in the back, at a weigh scale showing weights between “4170” and “4200”. Another undated photo shows the truck’s tare weight as “3910”. I cannot reconcile these figures with Ms. MacArthur’s submission the hay bales each weighed an average of 594 pounds, which I note is just under the weight Mr. Dessau says they averaged. However, I find nothing turns on these scale photos because I do not accept these undated photos show the hay Mr. Dessau sold Ms. MacArthur in September 2021, noting Mr. Dessau says the pictured hay does not appear to be his bales.
22. Overall, I find the bales Mr. Dessau sold in 2021 were likely somewhat lighter than prior years. However, given the evidence before me I do not find they were significantly lighter.
23. Here, I find what matters is the parties’ agreement. I find the hay was sold by the bale, not by a particular weight. However, as noted above, I also find it unproven the bales sold in 2021 weighed significantly less than prior years. I come to these conclusions because of Ms. MacArthur’s undisputed prior orders and because I find if she expected hay bales to be around 1.5 times the weight that she did receive, she would likely have said something to Mr. Dessau about it before he started this CRT dispute. TF asserts the weight was lighter than prior years and so I find Ms. MacArthur would have known this and yet did not say anything to Mr. Dessau about it. Given TF’s involvement, I do not accept Ms. MacArthur’s apparent assertion she said nothing earlier because she did not have a truck to weigh the bales. In short, I find all this supports the conclusion the hay was sold by the bale not by weight.
24. Ms. MacArthur also does not address the multiple calls Mr. Dessau made requesting payment from her and the fact she never responded. She also does not deny she told him in January and again in February 2022 that she would pay within 2 to 3 weeks, so I accept she did. I find this also supports the conclusion that Mr. Dessau sold his hay by the bale and Ms. MacArthur received what she ordered. To the extent Ms. MacArthur alleges the hay bales were deficient, I find the burden is on her to prove this and find she has not done so.

25. In summary, I find Mr. Dessau is entitled to \$3,180, which is the \$3,600 purchase price less the \$420 partial payment. I do not allow contractual interest, which Mr. Dessau included on his February 25, 2022 invoice, as there is no evidence the parties ever agreed to contractual interest. Further, in this dispute Mr. Dessau claims non-contractual interest under the *Court Order Interest Act* (COIA), which applies to the CRT.
26. Mr. Dessau is entitled to pre-judgment COIA interest on the \$3,180. Calculated from the original September 25, 2021 invoice date to the date of this decision, this interest equals \$27.23.
27. 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. Since Mr. Dessau was successful, I allow his claim for reimbursement of \$175 in paid CRT fees. Mr. Dessau also claims \$11.36 for a registered mail expense and \$10 reimbursement of what he paid to weigh 2 bales of hay for this dispute. I find these expenses reasonable and I allow them.

ORDERS

28. Within 21 days of this decision, I order Ms. MacArthur to pay Mr. Dessau a total of \$3,403.59, broken down as follows:
 - a. \$3,180 in debt,
 - b. \$27.23 in pre-judgment interest under the COIA, and
 - c. \$196.36, for \$175 in CRT fees and \$21.36 in dispute-related expenses.
29. Mr. Dessau is entitled to post-judgment interest as applicable.

30. 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.

Shelley Lopez, Vice Chair