



# Civil Resolution Tribunal

Date Issued: December 9, 2022

File: SC-2022-003631

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tomich v. Tong*, 2022 BCCRT 1328

B E T W E E N :

ROBERT TOMICH

**APPLICANT**

A N D :

STEPHEN TONG

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about an alleged breach of a contract for several home tasks and repairs. The applicant, Robert Tomich, says the respondent, Stephen Tong, hired him to do the work. Mr. Tomich says Mr. Tong breached the contract by unjustifiably cancelling the work just before he was to begin the job. Mr. Tomich seeks \$700, which he says was the agreed-upon price, excluding materials.

2. Mr. Tong disagrees. He denies entering into a binding contract. He says, at most, the parties had agreed to an appointment for Mr. Tomich to review the proposed worksite.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mr. Tomich's claims.

## **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. 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.
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.

## **ISSUES**

9. The issues in this dispute are as follows:
  - a. Did the parties have a binding contract?
  - b. If so, did Mr. Tong breach the contract, and are any remedies appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Tomich must prove his 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. I note that Mr. Tong provided no documentary evidence, though he was given the opportunity to do so.
11. Mr. Tomich says the alleged contract is partially documented in emails and text messages, and includes verbal terms in a phone call. I will discuss these below.
12. In May 2022, Mr. Tong contracted a third party, MP, to do work on a variety of tasks. MP outlined the work to be done in a May 19, 2022 email. It consisted of installing backyard motion sensors, installing a front porch flagpole, tiling a wall section in a downstairs bathroom, and repairing and replacing rotten wood in Mr. Tong's yard and porch.
13. MP included Mr. Tomich as a recipient of the email. MP described Mr. Tomich as a "colleague" that would contact Mr. Tong the following week to arrange a time for these

tasks. No parties say that Mr. Tomich was MP's subcontractor, and I find nothing turns on this in any event.

14. On May 20, 2022, Mr. Tomich texted Mr. Tong to request pictures of what needed to be done. Mr. Tong sent photos of the gate and latch, railing, bathroom, and deck. On May 27, 2022, Mr. Tomich texted Mr. Tong and said he would be there tomorrow at 9:00 a.m. He asked Mr. Tong to confirm, and Mr. Tong texted back the appointment time worked.
15. The text messages do not describe the appointment's purpose. Mr. Tomich says it was to do the work. Mr. Tong says it was an opportunity to provide a quote. For reasons discussed further below, I find it was likely to provide a quote.
16. Mr. Tomich submits that at some point, the parties verbally agreed on the phone that the work would cost \$700 plus the cost of materials. I note this contradicts his own statements in the Dispute Notice, that says the parties agreed to the price by text. I find the alleged agreement on price unproven for 2 reasons. First, Mr. Tong says the parties spoke, but denies they ever agreed upon any price. Second, the text messages do not mention this price or any price at all. I find that if the parties had agreed upon a price, it likely would have been mentioned in the parties' text messages or emails.
17. On the morning of May 28, 2022, Mr. Tong texted Mr. Tomich that he had to cancel the appointment. He explained that his significant other had already hired someone for the work without his knowledge.

***Did the parties have a binding contract?***

18. The basic principles of contract formation and interpretation are outlined in *Shaw Production Way Holdings Inc. v. Sunvault Energy, Inc.*, 2018 BCSC 926 at paragraphs 138 to 152. The test for intention to create a valid contract is objective. It is based on what a reasonable person in the parties' situation would have believed and understood, rather than what individual parties believed. In order for an

agreement to be binding between the parties, they must have reached consensus on the essential terms of their contract, and the terms in question must be enforceable. The party relying on the contract must prove the terms of the contract they seek to enforce on a balance of probabilities.

19. Here, Mr. Tomich alleges the existence of a contract that is partially documented in emails and text messages, and partially verbal. He says that the parties verbally agreed upon a price of \$700. However, I have already found this term unproven on a balance of probabilities. So, I find he cannot rely on a breach of it.
20. Because I find the parties never agreed on price, I also find it likely that the parties agreed, at most, for Mr. Tomich to visit Mr. Tong to review the worksite and provide a quote. From the text messages, I find the parties never agreed that Mr. Tong would face any particular consequences for cancelling the appointment. So, I dismiss Mr. Tomich's claims.
21. If I am mistaken and the parties had a binding contract, I would still dismiss Mr. Tomich's claims. Section 17 of the *Business Practices and Consumer Protection Act* (BPCPA) defines a "future performance contract" as a contract between a supplier and consumer for goods or services for which the supply or payment in full is not made at the same time as the contract. Section 17 lists certain exclusions which I find do not apply here.
22. Under Mr. Tomich's version of events, the parties entered into a binding contract by May 27, 2022, through text messages and emails, to commence work the next day. I find it would have been a future performance contract since neither the supply nor payment were made at the same time as the contract.
23. Section 23(3) of the BPCPA requires a supplier such as Mr. Tomich to give a copy of the future performance contract to the consumer, Mr. Tong, within 15 days after the contract is made. Under section 23(5) of the BPCPA, a consumer like Mr. Tong can cancel a future performance contract by giving notice of the cancellation within 1 year of receiving a copy of the contract if the contract does not contain the information

required under the BPCPA. Section 19(f) says this information includes an itemized purchase price for the goods or services supplied under the contract.

24. Mr. Tong's copy of the alleged contract consists of the emails and text messages in evidence. Since they lack any price, I find Mr. Tong was entitled to cancel the contract under BPCPA section 23(5) through his May 28, 2022 text message.

25. For all those reasons, I dismiss Mr. Tomich's claims.

26. 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 dismiss Mr. Tomich's claims for reimbursement of CRT fees. Mr. Tong did not pay CRT fees and the parties did not claim any specific dispute-related expenses.

## **ORDER**

27. I dismiss Mr. Tomich's claims and this dispute.

---

David Jiang, Tribunal Member