



Civil Resolution Tribunal

Date Issued: August 21, 2023

File: SC-2022-003808

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cosway v. Green*, 2023 BCCRT 708

BETWEEN:

GREGORY COSWAY

APPLICANT

AND:

SHANE GREEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a trailer. In November 2020, the applicant, Gregory Cosway, and the respondent, Shane Green, jointly purchased a 1975 Airstream Sovereign trailer for \$6,500. At some point the parties agreed to sell the trailer and split the sale proceeds evenly.

2. Mr. Cosway says that in March 2022, Mr. Green sold the trailer for over \$20,000 and has failed to pay him any of the sale proceeds. Mr. Cosway claims reimbursement of \$3,250 for his initial investment in the trailer, and \$1,750 for the trailer's appreciation, for a total of \$5,000, which is the monetary limit for small claims disputes at the Civil Resolution Tribunal (CRT).
3. Mr. Green says that after the parties purchased the trailer, he renovated it and incurred other expenses related to it, and Mr. Cosway did not contribute to either the renovations or the expenses. He says he sold the trailer for \$16,700, not \$20,000 as alleged. He also says Mr. Cosway owes him \$3,900 for renovations he allegedly completed on Mr. Cosway's mother's house. He says he does not owe Mr. Cosway anything, and that Mr. Cosway owes him money. Mr. Green did not file a counterclaim, so I infer he claims \$3,900 as a set-off.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.
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. Mr. Cosway submitted late evidence. Mr. Green had an opportunity to review and respond to it but chose not to provide a response. Given the CRT's mandate to be flexible, and because I find Mr. Green was not prejudiced by it, I allow Mr. Cosway's late evidence and have considered it in my decision.
10. Mr. Cosway submitted as evidence an April 5, 2022 demand letter he sent to Mr. Green by process server. The letter says it is "without prejudice" and contains a settlement offer. Generally, when communications are marked "without prejudice" in a settlement negotiation, they are protected by settlement privilege from being disclosed as evidence in a dispute or court action. Since there is no indication that Mr. Green consented to this letter being in evidence, I have not considered it in this decision.

ISSUE

11. The issue in this dispute is whether Mr. Cosway is entitled to \$5,000 in damages for Mr. Green's failure to pay him proceeds from the trailer's sale.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Mr. Cosway must prove his claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
13. In November 2020, the parties jointly purchased the trailer for \$6,500, with each party paying \$3,250. As noted above, at some point the parties agreed to sell it and split

the sale proceeds evenly. Mr. Green sold the trailer in March 2022 and has not shared any of the sale proceeds with Mr. Cosway. None of this is disputed.

14. Ms. Cosway says that in March 2022, Mr. Green listed the trailer for sale for \$21,000. In support of this allegation, he submitted an undated Facebook advertisement showing Mr. Green listed the trailer for sale for \$21,000. The advertisement says the trailer was sold. Mr. Green says he sold the trailer for \$16,700, not \$21,000. He submitted a March 18, 2022 cheque in his name for that amount. Mr. Green does not explain the discrepancy between the amount listed on the Facebook advertisement and the cheque amount, but I find it is likely he agreed to a lower price and did not update the price on the advertisement. I also find the cheque is the best evidence of the sale proceeds. I find Mr. Green sold the trailer for \$16,700.
15. Mr. Green undisputedly incurred some expenses while the trailer was in his possession, and Mr. Cosway did not contribute to any of them. However, the parties disagree on the amount of expenses Mr. Green incurred.
16. Mr. Green says that shortly after the parties purchased the trailer, he paid \$300 to have it towed to his property, and \$600 to have the title changed to his name. Mr. Cosway says Mr. Green has not provided any receipts or other evidence that he incurred these expenses, and I agree. In the absence of any documentary evidence, such as receipts, invoices, or bank statements, I find Mr. Green has not proved that he incurred these expenses.
17. Mr. Green also says that before selling the trailer, he extensively renovated it. He says when he started working on the trailer, he discovered the floor was completely rotted through to the steel frame. He says he had to rebuild the steel frame, and that he also installed new plywood throughout the trailer, including flooring. I find the Facebook advertisement describing the updates to the trailer and the much higher retail price support Mr. Green's evidence about the extent of the renovations he completed. However, I find Mr. Green's evidence about the value of his renovation work is inconsistent.

18. In his submissions, Mr. Green says he put in 80 hours of work renovating the trailer at \$75 per hour, for a total of \$6,000. However, he also submitted a February 1, 2021 invoice for \$20,000 from Bowser Building Contractors (BBC) to Mr. Cosway. The address for BBC is the same as Mr. Green's address on the Dispute Notice, so I infer that BBC is Mr. Green's company. The invoice says \$500 was for materials and \$19,500 was for labour. It says, "all renovation work to Airstream" and then lists welding, flooring, bolting, cleaning, new bed, and new cabinets. The invoice does not state an hourly rate, or the amount of labour required. Mr. Green does not explain the significant discrepancy between the \$6,000 valuation in his submissions and the \$20,000 invoice.
19. Mr. Cosway says he has never seen the invoice before this dispute and that it is fraudulent. He does not deny that Mr. Green renovated the trailer, but he estimates the value of Mr. Green's work was between \$5,000 and \$7,000.
20. Given the parties' positions, the lack of detail on the \$20,000 invoice, and Mr. Green's failure to explain the significant inconsistency in his evidence, I find the value of Mr. Green's renovation work was \$6,000. The evidence before me indicates that the parties agreed to split the trailer's expenses and sale proceeds evenly. Having found Mr. Green sold the trailer for \$16,700 and the value of the renovations was \$6,000, this leaves a difference of \$10,700, 50% of which is \$5,350. However, since Mr. Cosway's claim is for \$5,000, and since \$5,000 is also the CRT's small claims monetary limit, I find Mr. Cosway is entitled to \$5,000 in damages.
21. Mr. Green says Mr. Cosway owes him \$3,900 for renovations he completed on Mr. Cosway's mother's house. As noted above, I infer Mr. Green seeks the \$3,900 as a set-off. An equitable set-off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue. An equitable set-off may be applied when the desired set-off is connected closely enough with an applicant's claimed rights that it would be unjust to proceed without permitting one (*Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34).

22. Mr. Cosway says any renovations Mr. Green completed on his mother's house have nothing to do with this dispute. I agree. There is no evidence before me that the parties' agreement about the trailer involved Mr. Cosway's mother or her house. In the circumstances here, I find it would not be unjust to proceed without permitting the claimed set-off. In any event, Mr. Green did not submit any evidence to support his set-off claim. I decline to award Mr. Green any amount as a set-off.
23. The *Court Order Interest Act* applies to the CRT. Mr. Cosway is entitled to pre-judgment interest on the \$5,000 owing, calculated from March 18, 2022, which is the date Mr. Green sold the trailer, to the date of this decision. This equals \$32.09.
24. 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. Since Mr. Cosway was successful, I find he is entitled to reimbursement of \$175 in CRT fees.
25. Mr. Cosway claims \$1,270.78 as a dispute-related expense for legal fees he says he incurred before starting this dispute. He submitted several invoices and an account statement from his lawyer supporting the amount claimed for legal fees incurred between March and June 2022. However, since Mr. Cosway incurred these legal fees before starting this dispute, they are generally not considered dispute related. Even if they were, under CRT rule 9.5(3) the CRT will not order one party to pay to another party fees a lawyer has charged in the CRT process unless there are extraordinary circumstances making it appropriate to do so. I find there is no evidence of any extraordinary circumstances here. For these reasons, I dismiss Mr. Cosway's claim for legal fees as dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Green to pay Mr. Cosway a total of \$5,207.09, broken down as follows:

- a. \$5,000 in damages,
- b. \$32.09 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

27. Mr. Cosway is entitled to post-judgment interest, as applicable.

28. I dismiss Mr. Cosway's claim for dispute-related expenses.

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.

Sarah Orr, Tribunal Member