



# Civil Resolution Tribunal

Date Issued: January 15, 2024

File: SC-2023-003534

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shaw (dba Metamorphic Garden Design) v. Eger*, 2024 BCCRT 33

**B E T W E E N :**

LINDA SHAW (Doing Business As METAMORPHIC GARDEN  
DESIGN)

**APPLICANT**

**A N D :**

BEVERLY EGER and DAVID EGER

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

1. This dispute is about garden design services.
2. The applicant, Linda Shaw, doing business as Metamorphic Garden Design, says the respondents, Beverly and David Eger, contracted her to manage the installation of a

residential deck garden project. Ms. Shaw says she worked for 26 hours managing the project before ending the contract for non-payment. Ms. Shaw claims her unpaid invoice of \$1,950 for 26 hours at \$75 per hour.

3. The respondents say Ms. Shaw breached the parties' contract by ending it unexpectedly, though they did not file a counterclaim seeking damages. They argue Ms. Shaw did not work any of the hours in her invoice and ask that I dismiss her claim.
4. The applicant is self-represented. The respondents are both represented by Mr. Eger.
5. For the reasons that follow, I allow Ms. Shaw's claim for \$1,950.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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 "she said, they 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.

8. 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.
9. 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**

10. The issue in this dispute is to what extent, if any, the respondents owe Ms. Shaw the claimed \$1,950.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Shaw, as applicant, must prove her 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.
12. By way of background, Mrs. Eger first contacted Ms. Shaw in January 2023 about designing a layout plan for her residence’s deck. Ms. Shaw designed a layout plan and one or both respondents paid her. Those design services and payment are not the subject of this claim.
13. Ms. Shaw and Mrs. Eger then agreed to a new contract to manage the layout plan’s installation. A February 14, 2023 contract between Ms. Shaw and Mrs. Eger sets out the basic terms. Ms. Shaw was responsible for providing project management services, billed at \$75 per hour. Those services specifically included managing trades, schedule, budget, materials, and providing onsite supervision, among other tasks.
14. There is no estimate in the contract about the expected number of hours the project would take or its overall cost. The contract only provides that Ms. Shaw will make

“every effort” to deliver a top-quality process and ensure that she plans carefully to make the best use of time.

15. In open-ended hourly contracts, like this one, a commonly implied term is that the hours spent are reasonably required and put to some useful purpose. See the non-binding but persuasive decision *Simple Moves North Shore Movers Inc. v. Kenney*, 2022 BCCRT 452, referring to *Herbert v. Smith*, 2010 NSSM 44 at paragraph 26. I find the “best use of time” clause is intended to serve a similar purpose in this contract and requires Ms. Shaw to use any time she intended to bill reasonably and usefully.
16. The contract does not list Mr. Eger as a party. While Mr. Eger later communicated with Ms. Shaw, I find he never entered into either the existing contract or a new one. So, I dismiss Ms. Shaw’s claims against Mr. Eger.
17. From February 15 to March 9, Ms. Shaw says she performed a number of tasks relating to the project. Her activities were mostly phone calls and emails to contractors and Mr. and Mrs. Eger, but also included two days of in-person scouting at suppliers for project materials like plants and water features.
18. From March 3 to March 10, Ms. Shaw says she unsuccessfully requested funds from Mr. and Mrs. Eger to make necessary deposits to contractors and suppliers. She says the deposits were necessary to allow the project to continue. On March 10, Ms. Shaw sent Mr. and Mrs. Eger an email resigning from the project, explaining that she could not continue without payment for deposits and was cancelling the project. I address the parties email discussions from March 3 to 10 in greater detail below.
19. In a second March 10 email, Ms. Shaw sent Mrs. Eger her invoice for \$1,950, along with an activity report, providing details about how she spent her time. It is undisputed that Mrs. Eger never paid Ms. Shaw’s invoice.
20. In submissions, Mrs. Eger argues that Ms. Shaw did not prove that she worked “any of” the hours she invoiced. Beyond that broad assertion, Mrs. Eger did not dispute any specific hours Ms. Shaw claimed.

21. Ms. Shaw provided copies of her email exchanges that align with the activity report. The emails show Ms. Shaw making specific and detailed requests about availability of materials for the project, requesting estimates for cost, and providing specifics to potential suppliers. She corresponds with both Mr. and Mrs. Eger about the project, seeking feedback and providing options.
22. Contrary to Mrs. Eger's argument, I find Ms. Shaw's evidence shows she worked on the project in a diligent and reasonable fashion. Her emails are consistent with her detailed activity report. Her communications were professional and focused on the project's goals. The amount of time required to research, write, and send her emails, provide in-person services, and make ongoing adjustments to the project plan are not obviously out of line with the detailed activity report. So, I find Ms. Shaw has proved she provided 26 hours of project management, as claimed.
23. While Mrs. Eger did not file a counterclaim, she argues that Ms. Shaw breached the parties' contract by terminating it without good reason. I infer she is arguing for the equitable remedy of "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 remaining balance. For the reasons that follow, I find Mrs. Eger has not proved she is entitled to any set off.
24. When a party alleges a set off, the burden of proving the set off is theirs, including proving what damages arise from the breach. See: *Wilson v. Fotsch*, 2010 BCCA 226 and *Dhothar v. Atwal*, 2009 BCSC 1203. So, by alleging Ms. Shaw breached the parties' contract, Mrs. Eger must prove both the breach and the damages that flow from the breach.
25. Mrs. Eger argues Ms. Shaw breached the parties' contract by ending it with no valid reason. Mrs. Eger also argues Ms. Shaw did not introduce her to any tradespeople, in breach of the parties' contract.
26. The evidence shows Ms. Shaw began seeking payment for a deposit on March 4. On that date, in response to Mrs. Eger's instructions, Ms. Shaw called Mr. Eger to ask

for a deposit. Ms. Shaw and Mr. Eger exchanged emails, discussing the form of payment and other topics, from March 6 to March 8. Mr. Eger was clearly engaged and once he understood Ms. Shaw's requests, generally agreed to proceed as she wished.

27. On March 8, Mr. Eger suggested delaying any deposit payment for 2 weeks, when Mrs. Eger would return from a vacation. In her response that evening, Ms. Shaw wrote to both Mr. and Mrs. Eger to request a change in payment format from e-transfer to cheque. She asked them to confirm when she could pick up the deposit cheque if the parties intended to move ahead with the project.
28. Approximately 2 hours later, Ms. Shaw emailed Mrs. Eger alone to warn that further delays could impact her timelines, that certain topiaries she had scouted would likely be purchased, and noted that everything was on hold until there was a further response. Ms. Shaw also said she could not guarantee her availability moving forward, as she could not "wait" without accepting other projects. However, Ms. Shaw did not say that she would terminate the project if Mr. or Mrs. Eger failed to provide deposit funds by a certain date. Instead, her clear statement was that the project was "on hold" pending Mrs. Eger's response.
29. On March 10, shortly after noon, Ms. Shaw emailed Mr. and Mrs. Eger to say she could not proceed without funds. She advised them she was cancelling all pending orders and plans. In that email, she did not raise the possibility of an opportunity for Mrs. Eger to make the payment and continue the contract.
30. Given the short amount of time that had passed from the evening of March 8, when Ms. Shaw's final email about payment arrangements was made, to the early afternoon of March 10, I find Ms. Shaw's action in ending the contract without further warning and cancelling plans was a breach of the contract.
31. The challenge for Mrs. Eger, however, is that even though she proved Ms. Shaw breached the parties' contract, she has not provided any evidence of damages. Mrs. Eger has the benefit of Ms. Shaw's consultations and scouting, as contained in Ms.

Shaw's emails. Mrs. Eger has the names of the tradespeople Ms. Shaw contacted, again, through those emails.

32. Mrs. Eger did not provide any evidence to show that she incurred additional costs as a result of Ms. Shaw's alleged breach of the contract, and so has not established any amount to set off against Ms. Shaw's invoice.
33. As a result, I find Mrs. Eger has not proven she is entitled to an equitable set-off.
34. I also note that while I find Ms. Shaw repudiated the parties' contract, each party is still responsible for obligations that have already matured. Repudiation is when a party indicates to another party that it no longer intends to be bound by their contract. See: *Mantar Holdings Ltd. v. 0858370 B.C. Ltd.*, 2014 BCCA 361, *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 665 (SCC)).
35. In this case, despite Ms. Shaw's repudiation, Mrs. Eger still had an obligation to pay Ms. Shaw for her work.
36. Mrs. Eger argues that she disagreed with the budget and revised layout plan Ms. Shaw provided. However, I note nothing turns on the respondents' disagreement about the budget or layout, as the dispute is whether the applicant overcharged for her time, and I have found she did not.
37. Ms. Shaw is entitled to her invoice for \$1,950.
38. The *Court Order Interest Act* applies to the CRT. Ms. Shaw is entitled to pre-judgment interest on the \$1,950 from March 10, 2023, the invoice's date, to the date of this decision. This equals \$79.69.
39. 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 Ms. Shaw is entitled to reimbursement of \$125 in CRT fees. She did not claim any dispute-related expenses.

## ORDERS

40. Within 14 days of the date of this order, I order Mrs. Eger to pay Ms. Shaw a total of \$2,154.69, broken down as follows:
- a. \$1,950 in debt,
  - b. \$79.69 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
41. Ms. Shaw's claim against Mr. Eger is dismissed.
42. Ms. Shaw is entitled to post-judgment interest, as applicable.
43. 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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Christopher C. Rivers, Tribunal Member