



# Civil Resolution Tribunal

Date Issued: January 15, 2024

File: SC-2022-009424

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schultz v. Creston Valley Forest Corporation*, 2024 BCCRT 35

BETWEEN:

ROGER SCHULTZ

**APPLICANT**

AND:

CRESTON VALLEY FOREST CORPORATION

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about a road use agreement. Roger Schultz owns property in Creston, BC. Mr. Schultz signed an agreement with Creston Valley Forest Corporation (CVFC) allowing CVFC access to a road on their property in exchange for CVFC taking responsibility for the construction, maintenance, and use of the road for the duration of its logging operation. Mr. Schultz says CVFC failed to fulfil its

obligations under the agreement, so they were required to purchase materials and complete the road construction themselves. Mr. Schultz claims \$1,506.91 as reimbursement for construction materials they say they purchased, and \$3,410 for their own labour, for a total of \$4,916.91. Mr. Schultz also claims an unspecified amount as compensation for the trees they say CVFC improperly removed from their property.

2. CVFC says it fulfilled all of its responsibilities under the contract with the exception of burning the slash piles on Mr. Schultz's property. It says it does not owe Mr. Schultz anything.
3. Mr. Schultz is self-represented, and CVFC is represented by an employee.

## **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). 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.
5. 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.
6. 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 court.

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. Schultz submitted some late evidence, and CVFC was given the opportunity to respond to it. So, I find CVFC is not prejudiced by accepting the late evidence. Given the CRT's mandate to be flexible, I accept Mr. Schultz's late evidence, and have considered it in my decision.
9. I was unable to view some of the parties' evidence, but for the following reasons, I find it does not affect the outcome. I was unable to view one of CVFC's documents entitled "XL spreadsheet detailing payments to date". However, since the parties do not dispute the payments CVFC made to Mr. Schultz, I find nothing turns on this evidence, and it is not necessary for me to view it.
10. I was unable to view some videos Mr. Schultz submitted which are described as showing them burning the slash piles CVFC left on their property. However, the parties do not dispute that Mr. Schultz burned the slash piles, so I find nothing turns on this evidence, and it is not necessary to me to view it.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is Mr. Schultz entitled to \$3,410 for their labour on the construction project?
  - b. Is Mr. Schultz entitled to reimbursement of \$1,506.91 for construction materials they purchased?
  - c. Is Mr. Schultz entitled to compensation for CVFC's allegedly improper tree removal from their property?

## EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Mr. Schultz must prove their 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. For the following reasons, I dismiss Mr. Schultz's claims.
13. On December 20, 2021, the parties signed a road use agreement under which Mr. Schultz agreed to provide CVFC with access to a private road on their property. In exchange, CVFC agreed to be responsible for the construction, maintenance, and use of the road for the duration of its logging operations. The agreement says CVFC's improvement of "the approach leading up from the Lakeview Arrow Creek Road onto the private land" would be completed "to the landowner's satisfaction once weather conditions permit (early spring 2022)". It says the work would include installing culverts and hauling material in to build up the approach.
14. There are several references in the agreement to CVFC completing its work in spring 2022. However, the agreement also says that in the event of excessive rain or very wet ground conditions, CVFC would suspend hauling until road conditions improved. CVFC undisputedly did not complete its improvements to the approach leading up from Lakeview Arrow Creek Road until August 2022. By September 29, 2022, CVFC completed grass seeding on exposed soil areas on both sides of the road and deactivated the skid trail.

### ***Is Mr. Schultz entitled to \$3,410 for their labour on the construction project?***

15. Mr. Schultz says CVFC failed to complete the road construction as required under the contract, so they were required to do some of the work themselves. Mr. Schultz claims the following amounts totaling \$3,410:
  - a. \$660 for 6 hours at \$110 per hour for placing and leveling "brought in materials",
  - b. \$220 for 2 hours at \$110 per hour for placing a culvert,

- c. \$880 for 2 hours at \$220 per hour for building a retaining wall,
  - d. \$550 for 5 hours at \$110 per hour for “ditching and fine tuning access”, and
  - e. \$1,100 for 2 hours at \$220 per hour and 6 hours at \$110 per hour for leveling ruts, smoothing landing, skid trails, and water bars, and moving slash piles.
16. Mr. Schultz did not provide the dates or times that they completed the work claimed, nor did they explain why they charged 2 different hourly rates for the same work. CVFC says it completed all of its obligations under the agreement except for burning the slash piles, which I address below.
17. I address each of Mr. Schultz’s allegations against CVFC in turn. First, Mr. Schultz says they “ended up doing the approach off the Highway” at their own cost, but they did not explain why this was necessary, or what exactly this work involved. They did not provide any maps or diagrams to show the parts of the road CVFC was responsible for building and maintaining under the agreement or showing the parts of the road Mr. Schultz claims to have completed themselves. It is unclear from the photos in evidence who completed the work, or when it was completed. I find this particularly problematic because Mr. Schultz says they were planning on developing their land starting in May 2022, so it is possible some of the work shown in the photos was for that purpose, and unrelated to their agreement with CVFC.
18. Mr. Schultz also says CVFC failed to repair ruts it made on their private road, which Mr. Schultz had to repair themselves. The parties’ agreement required CVFC to repair any rutting or damage to Mr. Schultz’s private road. However, I find it is unclear from the photos in evidence where or how, exactly, CVFC damaged Mr. Schultz’s private road.
19. Mr. Schultz also says CVFC failed to use the marked skid trail on their property. CVFC says that on the day it began harvesting, its contractor went out with Mr. Schultz to look at the skid trail location. CVFC says Mr. Schultz agreed that CVFC could move the trail by a few metres for its operations. Mr. Schultz denies this and says CVFC’s contractor never walked the skid trail with them. However, Mr. Schultz acknowledges

they had a discussion with CVFC's contractor about "adjusting the landing" where it had already been "logged off", and that there was "a little bit of room to move but still well away from the approximate property line". It is unclear whether the "landing" Mr. Schultz refers to from this discussion is the same thing as the skid trail. In any event, even if CVFC did move the skid trail, I find it unclear from Mr. Schultz's submissions and the photos in evidence that it had any negative effect on Mr. Schultz's property or required them to complete any of the specific work claimed above.

20. Mr. Schultz also says CVFC damaged standing trees and a fence post pile on their property. However, I find the photos in evidence are insufficient to establish whether any of the trees or the fence post pile are on Mr. Schultz's property, whether they were actually damaged, and if they were, who damaged them.
21. Mr. Schultz also says CVFC failed to push off and level the landing where the logging process was done. However, I find the photos in evidence are insufficient to prove this allegation.
22. Mr. Schultz also says CVFC left debris on their property that they were required to clean up. I address Mr. Schultz's allegations about the slash piles separately below. For the remaining debris, I find I cannot determine from the photos in evidence whether the debris was on Mr. Schultz's property, or if it was, who left it there.
23. Mr. Schultz says CVFC left the slash piles too close to the neighbouring property and standing trees, so they had to move the piles for fire safety. CVFC says it refuses to pay Mr. Schultz for moving the slash piles. It says it offered to have its logging contractor complete this work using their excavator, which was on site at the time. CVFC says Mr. Schultz declined this offer and said they would do the work themselves, because they wanted to remove any usable firewood from the debris piles. Mr. Schultz does not specifically dispute this, and they submitted a September 29, 2022 photo which they say shows them picking apart a slash pile. I find this supports CVFC's position, and I find Mr. Schultz is not entitled to compensation for moving the slash piles.

24. Mr. Schultz says CVFC failed to burn the slash piles as required under the agreement. They say CVFC did not contact them to complete the work during the 2022-2023 winter. Mr. Schultz says there was a prime weather opportunity in the spring of 2023, so they burned the slash piles on their own, then had to clean up the remaining debris. CVFC admits that as of the time of its submissions it had not yet burned the slash piles. It said it would do so once proper venting conditions allowed but provided no further details. CVFC does not dispute that Mr. Schultz burned the slash piles himself, so I find that they did. However, none of the labour compensation Mr. Schultz claims in this dispute is for burning slash piles, and they provided no information about the amount of work it required. Without more, I find Mr. Schultz is not entitled to compensation for burning the slash piles and removing the debris.
25. In summary, I find Mr. Schultz has failed to establish their entitlement to any of the labour charges claimed. I dismiss this claim.

***Is Mr. Schultz entitled to reimbursement of \$1,506.91 for construction materials they allegedly purchased?***

26. Mr. Schultz says they paid \$3,227.78 for materials for the road construction, and CVFC has only reimbursed them \$1,720.87. Mr. Schultz claims reimbursement of the \$1,506.91 balance. Mr. Schultz says they purchased unspecified materials in March 2022 for \$227.73, but provided no invoice, receipts, or other evidence of this purchase. Mr. Schultz submitted 2 August 2022 invoices from Sullivan Stone Company Ltd., one for \$992.37, and the other for \$2,007.68, totaling \$3,000.05. However, I find it is unclear from these invoices exactly what Mr. Schultz purchased.
27. CVFC denies that it owes Mr. Schultz anything for their material purchases. It says it offered to pay for all Mr. Schultz's materials, but Mr. Schultz agreed that CVFC would only cover the material costs listed in the contract.
28. Mr. Schultz does not specifically address CVFC's submission on this point. In the absence of any further explanation for these purchases, I find Mr. Schultz has failed to establish that they are entitled to reimbursement for them. I dismiss this claim.

***Is Mr. Schultz entitled to compensation for CVFC's allegedly improper tree removal from their property?***

29. Mr. Schultz says CVFC removed approximately a dozen trees from their property without authorization or compensation, though they do not claim a specific amount for this allegation in their Dispute Notice or their submissions.
30. CVFC says it compensated Mr. Schultz for a tree it removed from their property on January 4, 2022, when building the skid trail. CVFC says this compensation included having a portion of Mr. Schultz's land boundary professionally surveyed.
31. Mr. Schultz does not deny this. They submitted multiple photos they say show that CVFC cut down many trees from their property. However, I find it is unclear from the photos whether the felled trees were on Mr. Schultz's property, or who felled them. In any event, in reply submissions, Mr. Schultz says CVFC has compensated them for the loss of their trees. Mr. Schultz did not withdraw this claim, but based on this reply submission, I dismiss it.
32. I note here, that in both their Dispute Notice and submissions, Mr. Schultz says they expected to be able to develop their property starting in May 2022, but were unable to do so because CVFC failed to complete the road construction according to the agreed schedule. Mr. Schultz says this caused them to incur rental expenses. However, Mr. Schultz does not claim any specific amount for rental expenses either in the Dispute Notice or submissions.
33. Even if Mr. Schultz did make such a claim, I find they have failed to prove they paid rent or incurred any losses caused by CVFC's delayed completion of the work. Mr. Schultz did not submit any receipts, invoices, or other documentary evidence of rental charges incurred. They submitted some photos taken between July and October 2022 that they say show CVFC's delayed construction interfered with their development plans. However, they provided no details or documentary evidence about those alleged plans, or how those plans were delayed by CVFC. I find Mr. Schultz has failed to prove this allegation.



34. In summary, I dismiss Mr. Schultz's claims.

35. 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. Schultz was unsuccessful, I find they are not entitled to reimbursement of their CRT fees. CVFC did not pay any CRT fees, and neither party claimed any dispute-related expenses.

## **ORDER**

36. I dismiss Mr. Schultz's claims and this dispute.

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Sarah Orr, Tribunal Member