



# Civil Resolution Tribunal

Date Issued: March 11, 2024

File: SC-2023-001358

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ableson v. Loring (dba Majestic Taxidermy)*, 2024 BCCRT 245

BETWEEN:

DENNISON HAROLD GRANT ABLESON

**APPLICANT**

AND:

MARTY LORING (Doing Business As MAJESTIC TAXIDERMY)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about taxidermy work. The applicant, Dennison Harold Grant Ableson, paid the respondent, Marty Loring (dba Majestic Taxidermy), for taxidermy work including mounting a full shoulder elk with antlers, mounting a Dall sheep, and preparing a Dall sheep cape. Mr. Ableson paid \$4,050 for this work, which Mr. Loring has not completed. In the Dispute Notice, Mr. Ableson claims a refund of this amount.

Mr. Ableson also says the parties reached a binding settlement during the facilitation phase of the dispute resolution process.

2. Mr. Loring says they never agreed to complete the work in a specific timeline. They also say the work can still be completed on the elk, and the sheep cape can be returned to Mr. Ableson. Mr. Loring does not address the settlement agreement.
3. Mr. Ableson is represented by a family member. Mr. Loring represents himself.

## **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 that 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 that 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.

### ***Settlement discussions***

8. Mr. Ableson provided evidence of negotiations between the parties during the CRT's facilitation stage, including settlement discussions. CRTA rule 1.11 says that communications made attempting to settle claims in the tribunal process are confidential and must not be disclosed during the tribunal decision process, unless the parties agree. Here, both parties agreed to the disclosure of the settlement negotiations, so I have considered them in making my decision.

### **ISSUES**

9. The issues in this dispute are:
  - a. Did the parties have a binding settlement agreement?
  - b. If not, is Mr. Ableson entitled to a \$4,050 refund?

### **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Mr. Ableson must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision. Mr. Loring did not provide any documentary evidence despite the opportunity to do so.
11. In January 2021, Mr. Ableson hired Mr. Loring for taxidermy services including mounting an elk with antlers, mounting a Dall sheep head, and preparing a purchased Dall sheep cape. The total cost was \$5,195, and Mr. Ableson paid \$4,050 in instalments towards that amount.
12. Mr. Ableson says Mr. Loring agreed to perform the work within 6 months, but never started the work, so he stopped making payments. In the Dispute Notice, Mr. Ableson claimed a refund of the \$4,050 he paid. Mr. Loring denies ever providing a timeline and says they can still perform the work for Mr. Ableson.

***Did the parties have a binding settlement agreement?***

13. Mr. Ableson says that during the CRT's facilitation stage, the parties came to a settlement agreement. The proposed terms were set out in an email by a CRT case manager, and said that by November 24, 2023, Mr. Loring would:
  - a. Complete the elk mount as initially agreed,
  - b. Give the Dall sheep cape to Mr. Ableson, and
  - c. Refund Mr. Ableson \$550.
14. In that October 26, 2023 email setting out the proposed settlement terms, the case manager asked both parties to confirm their agreement by October 30. Mr. Ableson responded that he accepted the terms, but Mr. Loring did not respond to the email, and undisputedly did not satisfy any of the agreement's terms.
15. For a binding settlement agreement to exist, there must be an offer and acceptance of that offer, without qualification. The agreement does not have to be signed, or even written, to be enforceable. Whether the parties had a consensus, or a "meeting of the minds", on the contract's essential terms is determined from the perspective of an objective reasonable bystander, not the parties' subjective intentions (see: *Salminen v. Garvie*, 2011 BCSC 339, at paragraphs 24 to 27).
16. As Mr. Loring did not clearly accept the settlement agreement's terms, I find the parties did not have a binding settlement agreement. With that, I turn to the merits of Mr. Ableson's claim.

***Is Mr. Ableson entitled to a refund?***

17. To date, Mr. Loring has undisputedly not provided Mr. Ableson with the mounted elk head, mounted sheep head, or the sheep cape. As noted, Mr. Ableson says Mr. Loring agreed to complete the work within 6 months. Mr. Loring denies this, and says a tannery would require at least 6 months to a year to tan the hides, so they would not have agreed to a 6 month timeline.

18. Although I find the parties did not have an express agreement on timeline, I find their agreement contained an implied term that Mr. Loring would complete the taxidermy work in a reasonable timeframe. Implied terms are contractual terms that the parties did not expressly consider, discuss, or write down, but which are based on the parties' common presumed intention. The courts (and the CRT) will imply a term if it is necessary to give business efficacy to the contract. In other words, an implied term must be something that both parties would have considered obvious when they entered into the contract (see: *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216). I find that is the case here.
19. It has now been over 3 years since Mr. Ableson hired Mr. Loring for the taxidermy work, and there is no indication Mr. Loring has started the work, despite stating they can still complete it. I find Mr. Loring breached the parties' contract by failing to complete the work in a reasonable time.
20. The usual remedy for breach of contract is damages. In this case, I find Mr. Loring must reimburse the \$4,050 Mr. Ableson paid them for work that was not completed. I also find Mr. Loring must return Mr. Ableson's elk head. I considered whether Mr. Loring should also return the sheep cape. However, Mr. Ableson undisputedly intended to purchase the taxidermized sheep cape from Mr. Loring. Although Mr. Loring says he can give Mr. Ableson the cape, I am not satisfied it has been properly taxidermized, as the parties agreed. So, I find a full refund for the sheep cape is appropriate.
21. Under the *Court Order Interest Act*, Mr. Ableson is entitled to pre-judgment interest on the \$4,050. Calculated from March 29, 2021, the last payment date, this equals \$289.03.
22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Mr. Ableson was successful, I find Mr. Loring must reimburse him \$200 in paid tribunal fees. He did not claim any dispute-related expenses.

## ORDERS

23. Within 10 days of the date of this decision, I order Mr. Loring to make the elk head available for pick up by Mr. Ableson, or someone Mr. Ableson has designated in writing to pick up on his behalf, at Majestic Taxidermy's business location as noted on the invoice, or some other mutually agreeable location, on 3 days' notice.
24. Within 21 days of this decision, Mr. Loring must pay Mr. Ableson a total of \$4,539.03, broken down as follows:
  - a. \$4,050 in damages,
  - b. \$289.03 in pre-judgment interest under the *Court Order Interest Act*,
  - c. \$200 in tribunal fees.
25. Mr. Ableson is also entitled to post-judgment interest, as applicable.
26. This is a validated decision and order. 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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Andrea Ritchie, Vice Chair