



Civil Resolution Tribunal

Date Issued: March 18, 2024

File: SC-2023-001643

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rushworth v. Robinson (dba Custom Fab Enterprises)*, 2024 BCCRT 277

B E T W E E N :

CRAIG RUSHWORTH

APPLICANT

A N D :

JAMES ROBINSON (Doing Business As CUSTOM FAB ENTERPRISES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a deposit for a custom-built meat smoker.
2. The applicant, Craig Rushworth, says he paid the respondent, James Robinson (doing business as Custom Fab Enterprises) a \$2,500 deposit to build a meat smoker. Mr. Rushworth says the total agreed price, including deposit, was \$3,500.

3. Mr. Rushworth says Mr. Robinson has not provided the smoker. Mr. Rushworth asks for an order that Mr. Robinson return the deposit, or alternatively that Mr. Robinson accept payment of the remaining \$1,000 and deliver the smoker with the agreed-upon specifications.
4. Mr. Robinson says he worked on the smoker for two weeks, then Mr. Rushworth rejected it. Mr. Robinson says Mr. Rushworth's claim is "false", and that in fact Mr. Rushworth owes Mr. Robinson \$60 for his labour and shop time above the \$2,500 deposit.
5. The parties are each self-represented.
6. For the reasons set out below, I find in favour of Mr. Rushworth. I order Mr. Robinson to refund the \$2,500 deposit.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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.
8. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
9. CRTA section 42 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.

ISSUES

10. The issues in this dispute are:

- a. Is Mr. Rushworth entitled to reimbursement of the \$2,500 smoker deposit?
- b. Alternatively, must Mr. Robinson give Mr. Rushworth the smoker if Mr. Rushworth pays the outstanding balance?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Rushworth, as the applicant, must prove his claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
12. In this dispute, both parties referred to correspondence between them. However, neither party provided any copies of this correspondence. In the CRT's facilitation process, parties are instructed to provide all relevant evidence. So, I place no weight on what the parties say about the content or timing of their correspondence. Mr. Rushworth also made submissions about settlement offers during the facilitation, but I place no weight on that, since those discussions are confidential.
13. The parties also made submissions about a previous contract to build a smoker between Mr. Rushworth and a different builder. There is no evidence before me about that contract or any aspect of the previous transaction. I also find it is not relevant in determining the issue before me in this dispute. So, I make no findings about the previous smoker contract.
14. The parties agree that Mr. Rushworth hired Mr. Robinson to build a fire-fueled meat smoker, mounted on a trailer. Mr. Rushworth says Mr. Robinson drafted an agreement setting out the details of their contract. There are no emails in evidence, but Mr. Rushworth provided a copy of a May 27, 2022 invoice from Custom Fab Enterprises. I infer that is the agreement that Mr. Rushworth refers to.

15. The invoice sets a price of \$3,500 for an item described as a steel “250 lb reverse flow smoker trailer.” The following details are written on the main portion of the invoice:

- 250 lb reverse flow smoker on trailer
- 1500 lb axel set
- Wheels and tires
- Wood storage on trailer
- Thermometers
- Paint
- Registration complete for transfer

16. There is no other information on the invoice about the smoker’s specifications. Both parties say they corresponded further about the smoker’s size and components. However, as noted above, there is no correspondence before me in evidence. So, I find the invoice sets out the full agreement between the parties.

17. The parties’ submissions and photos in evidence show that the smoker was built using second-hand propane tanks: one for the main smoking chamber, and a smaller one for the firebox. Mr. Rushworth says Mr. Robinson built the smoker using the incorrect tank size for the main smoker. Specifically, Mr. Rushworth says the parties agreed that the main smoker would be made with a 250 gallon propane tank.

18. Mr. Robinson admits he did not use a 250 gallon tank, but instead used 250 pound one, which is smaller. Mr. Robinson says they agreed that he would use a 250 pound tank. Mr. Robinson says a 250 gallon tank would have required a dual axel trailer, to accommodate its size and weight.

19. When Mr. Rushworth discovered that the smoker did not have a 250 gallon tank, the parties’ agreement broke down. Mr. Robinson did not complete the remaining work on the smoker, which he estimates at 10%. Mr. Rushworth did not pay the remaining balance owed.

20. Based on the invoice, which is the only evidence before me about the parties' agreement, I find the parties agreed that the smoker would include a 250 pound tank. This is written twice on the invoice. There is nothing in the invoice that mentions a 250 gallon tank, and again, no other correspondence in evidence showing an agreement about a 250 gallon tank. So, I find Mr. Robinson did not breach the parties' agreement by using a 250 pound tank.
21. However, Mr. Robinson admits the smoker is still not complete. For that reason, I find it would not be practical to order that Mr. Rushworth pay the remaining \$1,000 balance owed and take delivery of the smoker.
22. Mr. Rushworth asserts that Mr. Robinson agreed to refund his deposit on July 3, 2022. Mr. Rushworth also says that at the time of CRT submissions, Mr. Robinson had the smoker listed for sale on Facebook Marketplace for \$5,000.
23. Mr. Rushworth did not provide specific evidence to confirm these assertions, but Mr. Robinson did not deny them. So, I find Mr. Robinson offered to refund the deposit, and can get back his labour and supply costs by selling the smoker. For these reasons, I find it appropriate to order Mr. Robinson to refund the \$2,500 deposit.
24. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Rushworth is entitled to pre-judgment interest from May 27, 2022 (the date of the invoice). This equals \$167.84.
25. As Mr. Rushworth was successful in this dispute, under CRTA section 49 and the CRT's rules I find he is entitled to reimbursement of \$175 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

ORDERS

26. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$2,842.84, broken down as follows:
 - a. \$2,500 deposit refund,

- b. \$167.84 in pre-judgment interest under the COIA, and
- c. \$175 in CRT fees.

27. Mr. Rushworth is entitled to post-judgment interest under the COIA, as applicable.

28. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Tribunal Member