



Civil Resolution Tribunal

Date Issued: June 12, 2024

File: SC-2023-001954

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dave Russell Enterprises Ltd. v. 1233209 BC Ltd.*, 2024 BCCRT 534

B E T W E E N :

DAVE RUSSELL ENTERPRISES LTD.

APPLICANT

A N D :

1233209 BC LTD. and ADELE MARJORIE FRASER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about a deposit for ground screws.
2. The applicant, Dave Russell Enterprises Ltd. (DRE) hired the respondent corporation, 1233209 BC Ltd., to install a deck using specialized ground screws as anchors.

Evidence shows 1233209 BC Ltd. does business as Space Logic, so for readability, I will use that name in this decision.

3. Space Logic was unable to complete installation due to the terrain and weather so refunded DRE's deposit, except for a mobilization charge and the ground screw's cost. Space Logic says it told DRE the ground screws were non-refundable prior to the agreement. DRE says it did not.
4. DRE does not dispute it is responsible for the mobilization charge but claims a \$1,208.48 refund for the ground screws. Space Logic asks me to dismiss DRE's claim.
5. DRE also named Space Logic's president, Adele Marjorie Fraser, in their personal capacity. Officers, directors, and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation, and there is no evidence they have done so. There is also no evidence Adele Marjorie Fraser contracted with DRE. So, I dismiss DRE's claims against Adele Marjorie Fraser.
6. DRE is represented by its president, Dave Russell. Space Logic is represented by an employee.
7. For the reasons that follow, I dismiss DRE's claim.

JURISDICTION AND PROCEDURE

8. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.
9. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.

10. 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.
11. Where permitted by CRTA section 118, 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

12. The issue in this dispute is whether DRE is entitled to a refund for the ground screws it purchased from Space Logic.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, DRE must prove its claims on a balance of probabilities. 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. While it had the opportunity to do so, DRE did not provide any final reply submissions.
14. On September 13, 2022, Space Logic provided DRE a quote for the deck's installation using large, specialized ground screws as its foundation. I note that throughout their communication, the parties also refer to the ground screws as anchors.
15. The September 13 quote included \$1,500 in engineering and drafting charges as well as two \$75 payments, totaling \$150, for travel and mobilization costs.

16. The next day, September 14, Space Logic sent DRE an email, attaching an updated quote. The brief email includes 9 bullet points under the sentence “A few things of note.” One of those bullet points reads “Anchors and screws are non refundable.”
17. On September 15, Space Logic requested a \$2,711 deposit. DRE undisputedly paid \$1,575 by e-transfer towards the deposit, leaving a balance owing of \$1,136. Space Logic’s evidence about the balance owing is contradictory. It says its bookkeeper believed DRE paid the deposit’s balance but was unable to find any supporting documentation. Since DRE did not provide any evidence or information about a further payment and did not claim any refund for payments on this quote, and since Space Logic did not file a counterclaim for any outstanding balance, I do not need to determine whether DRE paid the balance owing or not.
18. In any event, Space Logic arranged for the engineering. Using that information, it finalized its plans and on October 28, issued two invoices for the deck project.
19. The first invoice, for the screws and anchors, was \$2,416.96. The second invoice, for installation, was \$1,207.50. Both invoices say “Anchors are non-refundable.”
20. On October 31, DRE paid 50% of each invoice by e-transfer, sending payments of \$1,208.48 and \$603.75.
21. Unfortunately, the parties were unable to install the deck using the ground screws and cancelled the project. On January 17, 2023, Space Logic refunded DRE \$453.75 of its installation deposit, withholding the \$150 mobilization charge.
22. In a January 29, 2023 email, DRE said it received the refund and explicitly accepted the mobilization charge. However, DRE asked for the screws’ deposit’s return as well, and argued the screws were unused and in “as new” condition. DRE also acknowledged they had seen the statement in the invoice that the screws were non-refundable. Space Logic declined to refund the screws’ cost.
23. I find DRE is not entitled to any refund for the screws. Space Logic noted on three different documents that the screws were non-refundable. In all cases, DRE made

payments in the days after it received the documents. DRE also acknowledged the screws were non-refundable. Given this evidence, I find the screws' non-refundability was a term of the parties' contract.

24. DRE argues it only received notice that the screws were non-refundable when it received the invoices on October 28. The evidence shows that is incorrect, since Space Logic flagged that issue in its September 14 email. Even if that was the case, I find DRE still chose to proceed on that basis when it sent two different payments on October 31.
25. DRE argues it is left with ground screws it cannot install, as it does not have the necessary equipment. It also argues that Space Logic is in the best position to recover the ground screws' cost. However, I find neither argument assists DRE, since it agreed to purchase the screws, knowing they were non-refundable.
26. So, I find DRE is not entitled to any refund.
27. Under CRTA section 49 and the 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 dismiss DRE's claim for CRT fees. Space Logic did not claim any dispute-related expenses.

ORDER

28. I dismiss DRE's claims and this dispute.

Christopher C. Rivers, Tribunal Member