Civil Resolution Tribunal

Date Issued: November 6, 2024

File: SC-2024-002238

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shoolestani v. Zhu*, 2024 BCCRT 1127

B E T W E E N :

ESMAIL SHOOLESTANI

APPLICANT

A N D :

DAN ZHU and JIANYE SI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Eric Regehr, Vice Chair

INTRODUCTION

1. The applicant, Esmail Shoolestani, lives in the strata lot below a strata lot owned by the respondents, Dan Zhu and Jianye Si. The applicant says that the respondents agreed to pay him $3,000 after a water leak damaged his strata lot. He says they have refused to pay the settlement amount. He claims that $3,000, plus $2,000 for wasting his time and causing his health to deteriorate. He is self-represented.

2. The respondents say the parties never reached an agreement, so they do not owe the applicant anything. Mr. Si represents the respondents.

JURISDICTION AND PROCEDURE

3. 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 says 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.

4. 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. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, any potential benefit of an oral hearing is outweighed by the CRT's mandate to provide proportional and speedy dispute resolution. I find that an oral hearing is not necessary in the interests of justice.

5. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

6. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

7. The issues in this dispute are:

    a. Did the parties have a binding settlement agreement?

b. If so, did Mr. Shoolestani repudiate it?

c. If not, what are Mr. Shoolestani's damages?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, Mr. Shoolestani as the applicant must prove his claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

9. In 2023, there was a leak from the respondents' strata lot into Mr. Shoolestani's strata lot. In January 2024, he demanded compensation for the damage he says the leak caused. The respondents provided evidence about the parties' negotiations, including their disagreement about whether Mr. Shoolestani should have made an insurance claim. They also question how much damage the leak actually did, suggesting that Mr. Shoolestani inflated his initial claim against them. However, Mr. Shoolestani's claim is based solely on the parties' alleged settlement agreement. So, I will not address these issues as I find them irrelevant.

10. On February 1, 2024, Mr. Si emailed Mr. Shoolestani offering $3,000 to settle their dispute. Mr. Shoolestani emailed back the same day accepting the offer. There were no conditions on Mr. Si's initial offer or on Mr. Shoolestani's acceptance of it. Mr. Shoolestani asked to be paid by e-transfer.

11. Later on February 1, Mr. Si emailed Mr. Shoolestani that he would only make the $3,000 payment in person with a bank draft. He required Mr. Shoolestani to present photo identification. He also attached a "memo of agreement" confirming the terms of their settlement.

12. On February 2, Mr. Shoolestani emailed back. He did not believe a signed agreement was necessary because their email communications leading up to the settlement were detailed enough. He said that if Mr. Si insisted on a signed agreement, Mr. Shoolestani would need to hire a lawyer and, in that case, would

require another $1,000 to cover those costs. He reiterated his preference to receiving the settlement funds by e-transfer. However, he said his son could meet with the respondents in person. He said his health was too poor do to it himself.

13. On February 3, Mr. Si emailed Mr. Shoolestani agreeing to meet with Mr. Shoolestani's son. Mr. Si said Mr. Shoolestani's son would need to sign the settlement agreement on Mr. Shoolestani's behalf. On February 4, Mr. Shoolestani emailed Mr. Si confirming a meeting time of 1:15pm on February 5. Later on February 4, Mr. Si sent Mr. Shoolestani two emails requesting Mr. Shoolestani's son's full legal name. Otherwise, he said, "the meeting cannot happen". Mr. Shoolestani did not respond to these emails.

14. Mr. Shoolestani says his son waited for the respondents on February 5, but they did not show up.

15. On February 17, Mr. Shoolestani emailed the respondents offering to meet the next day to receive the bank statement. He also committed to signing the settlement agreement. He says his health had improved enough to do it himself. He followed up again on February 18 and 24, but the respondents did not respond. He started this CRT dispute on February 26.

16. I will first address one of Ms. Zhu's arguments. A tax notice in evidence confirms that she is the sole legal owner of the strata lot. She says that she never authorized Mr. Si to make any offer or agree to a settlement with Mr. Shoolestani on her behalf. Mr. Si and Ms. Zhu are spouses. She does not explain this submission further, but I infer she is arguing that she is not a party to any settlement agreement.

17. I do not accept Ms. Zhu's evidence on this point. I find that her decision to have Mr. Si represent her in this dispute undermines any suggestion that he dealt with Mr. Shoolestani without explicit or implicit authority from Ms. Zhu. If Mr. Si had unilaterally attempted to negotiate and settle a dispute with a neighbour without Ms. Zhu's knowledge and approval, I find it unlikely that she would have him represent her in this dispute.

18. Also, the rest of the respondents' submissions are identical. They both say that "we" made decisions about how to deal with Mr. Shoolestani. I find that those submissions reinforce my conclusion that the respondents made decisions together. I find that Mr. Si acted as Ms. Zhu's agent and acted within the scope of authority throughout his dealings with Mr. Shoolestani. Also, the fact that Mr. Si is Ms. Zhu's spouse suggests that he likely has a beneficial interest in the property even if he is not a registered owner. Overall, I find that the respondents are both parties to any settlement agreement.

19. For a settlement agreement to exist, there must be an offer and an unqualified acceptance of that offer. If the parties agree to the essential terms of a settlement, it is binding even if the parties still have to work out details like the terms of a release or the method of payment.[1]

20. Here, I find the parties clearly agreed to a settlement on February 1, 2024. Mr. Si offered $3,000 and Mr. Shoolestani unequivocally accepted it.

21. The respondents say they came to believe that Mr. Shoolestani had inflated his claim as a "deliberate scheme" or "rip-off". They say he inappropriately leveraged them when he knew they were trying to sell their strata lot, including by threatening to file a Certificate of Pending Litigation to disrupt their sale attempts. They say the contract should not be enforced because of Mr. Shoolestani's actions.

22. At law, economic duress is a defence to the enforceability of a contract. To prove economic duress, the respondents must show that Mr. Shoolestani exerted pressure to such a degree that they could not truly consent to the agreement and that there was an improper or illegitimate element to the pressure.[2] I find that the evidence falls far short of proving economic duress. There is no evidence that a sale was imminent such that the respondents had no choice but to settle with Mr. Shoolestani. Also, according to the tax records in evidence, the respondents'

[1] See *Fieguth v. Acklands Ltd.*, 1989 CanLII 2744 (BC CA), at paragraphs 35 and 36, and *Salminen v. Garvie*, 2011 BCSC 339, at paragraphs 24 to 27.
[2] *Dairy Queen Canada Inc. v. M.Y. Sundae*, 2017 BCCA 442.

property had a 2023 assessed value of $721,000. In that context, and absent any evidence to suggest otherwise, I do not accept that a $3,000 settlement exerted so much financial pressure on the respondents that they did not truly consent to the settlement. Notably, the respondents' settlement offer was for around half of Mr. Shoolestani's claimed damages.

23. I also note that if Mr. Shoolestani had attempted to file a Certificate of Pending Litigation based on his claim for damages, the Land Title Office would not have accepted it because he had no claim for an interest in the land itself. The evidence shows the respondents had real estate agents assisting them with the sale, who could have told them it was an empty threat. So, I find that there was no duress and the settlement agreement is enforceable.

24. Once formed, the settlement agreement is binding unless one of the parties repudiates it. Repudiation occurs when a party to a contract demonstrates that they no longer intend to follow through on their agreement. If that happens, the other party can accept the repudiation and terminate the contract.[3] This is, in effect, what the respondents say happened.

25. First, the respondents say that Mr. Shoolestani unreasonably refused to sign a release. It is an implied term of settlement agreements that the parties will sign a standard release. It is true that Mr. Shoolestani initially resisted signing one. However, he never refused to do so, and he eventually agreed. So, I find his initial resistance was an acceptable post-contract negotiation and not a repudiation.

26. It is also true that Mr. Shoolestani said that he would need an additional $1,000 if the respondents insisted on a signed release. Sometimes, demanding further money can be a repudiation of the settlement agreement.[4] However, I find that Mr. Shoolestani did not say anything to suggest he would not follow through with their agreement. Instead, he affirmed the agreement. As noted, he later agreed to sign the release and never mentioned the $1,000 again.

[3] *Salminen*, at paragraphs 28 to 38.
[4] For example, *Adams v. Crippen*, 2022 BCCRT 304.

27. The respondents also take issue with Mr. Shoolestani's failure to follow through with their reasonable demands for payment method. I find it unnecessary to decide whether the respondents' demands were reasonable because Mr. Shoolestani never suggested he did not intend to complete the settlement. Like the release, I find that the parties' dealings about payment method were details they needed to negotiate, and in that context Mr. Shoolestani's preference for an e-transfer did not repudiate the contract. Also, on February 17, Mr. Shoolestani advised he would meet in person, with photo identification, and sign the respondents' release. So, less than three weeks after the parties reached an agreement, Mr. Shoolestani was prepared to meet all the respondents' demands. The respondents did not respond to his email.

28. In summary, I find that the parties' reached a binding settlement agreement and Mr. Shoolestani did not repudiate it. The agreement is therefore still enforceable, and Mr. Shoolestani is entitled to the $3,000 the parties agreed to.

29. However, I find that Mr. Shoolestani is not entitled to any damages beyond the $3,000. He claims $2,000 for harm to his health, wasted time and effort, and "costs associated with filing this action". There is no medical evidence of any harm to Mr. Shoolestani's health, and even if there were, I find it would be too remote from the respondent's breach to justify compensation. I also find that wasted time is not a compensable harm. As for the general claim for "costs", Mr. Shoolestani did not pay any CRT fees and did not claim any specific dispute-related expenses.

30. Finally, in submissions, Mr. Shoolestani asks the CRT to "consider imposing a significant penalty" on the respondents because they engaged in bad faith conduct. I interpret this as a claim for punitive damages. Punitive damages are available when a respondent's conduct has been so heavy-handed and outrageous that it deserves rebuke. While I have agreed with Mr. Shoolestani that the respondents breached their settlement agreement, I see nothing in the evidence to suggest any conduct that is deserving of rebuke. I dismiss this claim as well.

31. The *Court Order Interest Act* applies to the CRT. Mr. Shoolestani is entitled to pre-judgment interest from February 17, 2024, the date he agreed to the respondents' payment method, to the date of this decision. This equals $110.18.

ORDERS

32. Within 30 days of this decision, I order the respondents to pay Mr. Shoolestani a total of $3,110.18, broken down as follows:

    a. $3,000 in damages,

    b. $110.18 in pre-judgment interest.

33. Mr. Shoolestani is entitled to post-judgment interest, as applicable.

34. I dismiss Mr. Shoolestani's remaining claims.

35. 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 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.

Eric Regehr, Vice Chair