



# Civil Resolution Tribunal

Date Issued: December 27, 2024

File: SC-2023-008798

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Isacson v. Reinartz*, 2024 BCCRT 1311

B E T W E E N :

GARY ISACSON

**APPLICANT**

A N D :

NILE REINARTZ

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Mark Henderson

## INTRODUCTION

1. This is a fence dispute between neighbours. The applicant, Gary Isacson, and the respondent, Nile Reinartz, agreed to split the cost to build a fence between their properties.

2. Mr. Isacson also provided excavation services to Mr. Reinartz on other parts of Mr. Reinartz's property. Mr. Reinartz built the fence with a carpenter's help.
3. Mr. Isacson says Mr. Reinartz has not paid him for the excavation services. Mr. Isacson also says Mr. Reinartz is attempting to overcharge some of the materials that Mr. Reinartz supplied for the fence build. Mr. Isacson seeks \$1,892.74 as a refund of money already paid for the fence and for excavation services provided.
4. Mr. Reinartz says he is willing to pay for the excavating services but says the parties never agreed on the final price for the fence build. Mr. Reinartz says he has asked questions about the final invoices that Mr. Isacson has not answered.
5. Both parties represent themselves.
6. For the reasons set out below, I dismiss Mr. Isacson's claim.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 says 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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
8. 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. I find that an oral hearing is not necessary in the interests of justice.

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.
10. 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.

## ISSUES

11. The issues in this dispute are:
  - a. Is Mr. Isacson entitled to \$1,296 or some other amount for the excavation work?
  - b. Is Mr. Isacson entitled to a refund for fence payment?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Mr. Isacson must prove his 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.

### ***Is Mr. Isacson entitled to \$1,296 or some other amount for the excavation work?***

13. Mr. Isacson agreed to do some excavation work for Mr Reinartz with an excavator that Mr. Isacson owns with a business partner. The rate for using the excavator was normally \$144 per hour but Mr. Isacson said he would arrange a reduced rate of \$100 per hour. There was also a \$250 fee for moving the excavator to the work site.
14. Mr. Isacson provided an invoice from Allterra Construction Ltd. for the cost of the excavator. The invoice shows the total cost of the excavator was \$1,296 for 9 hours of excavation work at \$144 per hour. There were also further charges for moving the excavator and a fuel surcharge.

15. Neither party raises the issue that the excavation costs were invoiced by Alterra Construction, not by Mr. Isacson directly. Mr. Isacson has not explained why he should be paid rather than Allterra Construction Ltd.
16. Allterra Construction Ltd. is not a party to this claim. A corporation is a separate legal entity. Based on the invoice, I find the cost of the excavation services is owed to Allterra Construction Ltd. and not to Mr. Isacson. So, I find Mr. Isacson is not entitled to any of the cost of the excavation services. So, I dismiss that part of Mr. Isacson's claim.
17. Mr. Isacson did not present separate evidence or name Allterra as a party to this dispute, so I make no findings about Allterra's entitlement to payment for the excavator time.

***Is Mr. Isacson entitled to a refund for fence expenses?***

18. Around February 1, 2023, the parties began discussions to split the cost of a fence between their properties. Mr. Reinartz intended to build the fence himself with a friend's help.
19. During March 2023 the parties exchanged text messages discussing the fence build estimate and cost of materials.
20. Mr. Reinartz sent Mr. Isacson an estimate on March 10, 2023, for a total of \$7,761.61 for all the materials and additional labour to build the fence. The parties exchanged text messages on March 10 discussing the work.
21. Mr. Isacson and Mr. Reinartz agreed in their text messages on March 10th that neither party would charge for their own time. So, I find that Mr. Reinartz agreed not to charge for his time to build the fence and Mr. Isacson agreed not to charge for his time to operate the excavator.
22. Mr. Reinartz said he had Mr. Isacson's approval for the estimate. Mr. Reinartz relies on a text message response from Mr. Isacson. The parties were discussing when to get the lumber order to the sawmill, Mr. Isacson replied "Ok sounds good". It is not

clear from the text messages if the “Ok sounds good” responded to the proposal as whole or just to the lumber quote. In any event, I find that by the parties’ conduct Mr. Isacson agreed to the March 10 quote and approved Mr. Reinartz to proceed with the work.

23. Based on a review of the parties’ text message conversation on March 10, 2023, I find that the parties agreed to split the total cost of the fence build. I also find that neither party discussed the possibility of changes to the estimate or delays in completing the project.
24. Mr. Isacson paid \$3,241 toward the lumber purchase on March 16, 2023. This sum only represented half of the estimate for the lumber, not the \$7,761.61 estimate for all of the work.
25. Mr. Reinartz built the fence on April 3 and 4 2023 with the assistance of a carpenter.
26. Mr. Reinartz provided two different submissions for the fence cost, one totaling \$7,643.22 and the other totaling \$7,790.08. The difference between Mr. Reinartz’s two final submissions is partly due to a charge Mr. Reinartz added for his time.
27. Mr. Reinartz provided invoices for the lumber, concrete and hardware, as well as the auger rental and concrete mixer rental. Based on the invoices provided, I accept Mr. Reinartz’s evidence that the total cost to build the fence was \$7,643.22.
28. Although the cost of the fence is lower than the original quote, Mr. Isacson says the number should be even lower than this because Mr. Reinartz used fewer posts and panels in the fence than originally quoted.
29. Mr. Isacson says that the original quote was for 25 panels and 26 posts but says Mr. Reinartz only used 16 panels and 19 posts on the shared property line. Mr. Isacson says he should not be responsible for panels and posts that were not used on the shared property line.

30. Mr. Reinartz acknowledged in an April 10 text using fewer posts and panels than originally purchased. Mr. Reinartz does not dispute that he used 16 panels and 19 posts as of April 10 and had one more panel to install.
31. Based on Mr. Reinartz's admission, I find that Mr. Reinartz used 17 panels and 19 posts. The fence design also included a cedar lattice on top of each panel. So, I find Mr. Reinartz also used 17 cedar lattice panels.
32. Mr. Reinartz provided the original purchase invoice showing 25 panels and 26 posts. Mr. Reinartz also provided a return invoice showing he returned 7 panels and 7 posts. So, I find that Mr. Reinartz bought a total of 18 panels and 19 posts. Mr. Reinartz did not explain why he needed to retain one panel or an extra post. So, I deduct the cost of one panel (\$153), and one cedar lattice panel (\$30) plus tax for a total of \$204.96 from the total \$7,643.22.
33. Mr. Isacson also disputes the amount of concrete that was used versus the amount charged. Mr. Isacson measured the height of the posts and calculated the rough depth of each post based on the height above ground. I find that Mr. Isacson's submissions about the amount of concrete used are speculative and not proved. So, I dismiss them.
34. Mr. Isacson also disagreed with the carpenter's invoice. However, I find that Mr. Isacson agreed with the original quote that included a quote for additional assistance. Mr. Reinartz explained that the work took longer because he had trouble with tree roots on the property line. Mr. Reinartz provided photos of the large trees on the property line. I accept Mr. Reinartz's explanation that these tree roots caused a delay in digging the postholes for the fence as it seems reasonable in the circumstances. I also accept that this delay increased the carpenter's time charged.
35. So, I find the total cost of the fence build was \$7,438.26. Therefore, each party owes \$3,719.13. Mr. Isacson has already paid \$3,241 for fence costs. So, I find that Mr. Isacson owes \$478.13 for fence costs.

36. Since Mr. Isacson owes \$478.13 for fence costs, I find Mr. Isacson is not entitled to a refund of any fence costs. In these circumstances, if Mr. Reinartz had filed a counterclaim, I would have awarded Mr. Reinartz the outstanding fence costs.

37. For these reasons, I dismiss Mr. Isacson's claim for \$1,892.74.

38. 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. Isacson was unsuccessful, I dismiss his claim for CRT fees. Neither party claimed dispute-related expenses.

## **ORDER**

39. I dismiss Mr. Isacson's claims and this dispute.

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Mark Henderson, Tribunal Member