

Citation: *Holm v. Roe*, 2026 YKSM 4

Date: 20260619
Docket: 25-S0071
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Christie

ERIN HOLM

Plaintiff

v.

AUSTIN ROE

Defendant

Appearances:
Erin Holm
Austin Roe

Appearing on her own behalf
Appearing on his own behalf

REASONS FOR JUDGMENT

Introduction

[1] This Small Claims Court case is about the return of a deposit made by a homeowner for a custom sauna project that was not completed by a contractor.

Background

[2] On September 16, 2025, the Plaintiff, Erin Holm, and the Defendant, Austin Roe, began discussions via text, email, and phone, about construction of a custom sauna. Ms. Holm paid Mr. Roe \$100 by e-transfer for the custom sauna project “design and

consultation,” to be deducted from the project cost, if completed. Mr. Roe provided a draft of the proposed project work to Ms. Holm.

[3] Problems began at an early stage. On September 28, 2025, Ms. Holm realized that there were communication difficulties and questioned Mr. Roe on whether he should continue with his services. Mr. Roe apologized and said that he could do the job over the next two weeks. The parties sent more messages back and forth about proceeding with the work. On October 1, 2025, Mr. Roe provided a quote via email for a total of \$8,500. The quote was based on \$4,000 for labour and \$4,500 for materials, including the stove.

[4] Mr. Roe explained that a deposit of \$3,500 was required to “get materials ordered” and to “start the framing.” A proposed contract was attached to the email. The proposed written contract was not signed by the parties. Ms. Holm expressed concerns about some of the clauses. As a result, the parties proceeded without a written contract based on their discussions as well as communication via emails and text messages.

[5] Ms. Holm paid the \$3,500 deposit with cash on the same day. A receipt was issued by Mr. Roe on October 5, 2025. Ms. Holm’s evidence was that she paid Mr. Roe the \$3,500 deposit in good faith, that they agreed that the deposit was refundable, and that the deposit was requested by Mr. Roe specifically so that materials could be ordered for the sauna.

[6] The proposed written contract included a clause that Ms. Holm asserted she was relying on prior to making the deposit. It was also referenced in text messages from Mr. Roe:

8. A deposit of \$3,500.00 is payable by the client upon execution of this agreement.

- Deposit will be refunded if the project doesn't start or is cancelled, however the contractor will be entitled to compensation for any work done prior to cancellation.

[7] Mr. Roe agreed that the deposit would be used to order materials and that the project would begin immediately. Relying on this commitment, Ms. Holm spent approximately \$1,400 to have several trees removed and the site cleared so construction could start right away.

[8] On October 3, 2025, Ms. Holm sent more queries by text message, asking for better communication and expressing her concerns. Mr. Roe confirmed that the \$3,500 was a first deposit and that later he would require \$1,500 more for what he called “midway” payment, and then a “final” payment of \$2,000 when the job was complete.

[9] Ms. Holm’s evidence, as supported by photographs taken by her home “Blink” camera system, show Mr. Roe doing work at Ms. Holm’s property on October 1, 2025, for less than one-half hour, when he viewed the site and marked the location for the sauna. The second day he attended the property was on October 5, 2025. Ms. Holm explained that Mr. Roe made four cuts of the wood he had brought and spent less than one hour on site, mostly chatting, but also leaving the site twice, including one trip to get gravel. He also set up four concrete blocks that she later realized were not parallel or level.

[10] On October 7, 2025, Ms. Holm became concerned because of the minimal work done so far by Mr. Roe and that he had told her that the materials would be delivered by

the building supplier company, Kilrich Building Centres (“Kilrich”), on that upcoming Friday, October 10, 2025. However, Ms. Holm was unable to confirm this order and delivery with Kilrich. She says that a representative of Kilrich advised her that no material order existed. This was confirmed a few days later in an email from a representative of Kilrich.

[11] The text messages show that Ms. Holm was asking reasonable and polite questions about delivery of the materials and the work schedule. Mr. Roe’s responses were impolite. He appeared to be changing the parameters of the project. As a result, Ms. Holm asked for a refund of her deposit. Following more discussions, Mr. Roe responded with the following, "Ok Erin, let's just go with the refund."

[12] Mr. Roe filed an affidavit in this proceeding which included a receipt for materials from Home Hardware dated October 5, 2025, which totalled \$496.94.

[13] Mr. Roe later refused to refund the full deposit, claiming design time and estimates, and proposed to return only \$2,000. He said that because Ms. Holm did not sign the proposed written contract, the terms were not binding. Therefore, he explained that he would retain \$1,500 of the deposit for his time and the materials. Ms. Holm’s understanding was that the \$3,500 was supposed to be fully refundable if the materials were not delivered, and that the minimal amount of work done by Mr. Roe, up to termination of the contract, was flawed and of no value.

[14] Ms. Holm provided written notice on October 7, 2025, requesting full refund of the deposit and offering a reasonable allowance for limited labour and travel, but

Mr. Roe did not agree. Ms. Holm proposed that Mr. Roe pick up the concrete blocks and wood, which she had no use for. However, he did not do so.

Claim

[15] The Plaintiff therefore now claims:

- \$3,500 (full refund of the deposit);
- Pre-judgment interest from the date of filing October 14, 2025, until the date of trial, and post-judgment interest from the date of trial, January 7, 2025; and
- Court filing costs as permitted under the *Small Claims Court Regulations*, O.I.C. 1995/152 ("*Regulations*") .

Issues

[16] There are two issues to be addressed:

1. Is there a valid contract?
2. Is Ms. Holm entitled to a full or partial refund of the \$3,500 deposit she provided to Mr. Roe?

Law

[17] A contract is defined in a helpful manner by Cozens, J. in *Duplisea v. Wilson*, 2018 YKSM 3, at paras. 74 and 75:

74. Reduced to its simplest form, a contract is made when an offer is accepted. There must be an agreement between the parties on

fundamental terms in order for a contract to be made. The parties need to know what they are agreeing on and what services are to be provided in exchange for what consideration or value. There is not an enforceable contract if it cannot be determined with reasonable certainty what the terms are that the parties have agreed to. There must be certainty with respect to the fundamental terms of the contract in order for the contract to be enforceable. Whether the parties have reached an agreement that results in a contract being entered into, and as such imposing enforceable obligations on the parties, is to be viewed objectively. The question to be asked is, would an observer, acting reasonably, apprised of the relevant facts, conclude that the parties have agreed to enter into a legally binding relationship?

75. A contract, with some exceptions, does not need to be in writing to be enforceable. While enforceable, a verbal contract can be more difficult to enforce, as the terms may not be entirely clear in the event that there is a dispute between the parties.

[18] In *Oswald v. Start Up SRL*, 2021 BCCA 352, at para. 34, the Court set out the legal test for the formation of a binding and enforceable contract:

- (a) there must be an intention to contract;
- (b) the essential terms must be agreed to [by] the parties;
- (c) the essential terms must be sufficiently certain;
- (d) whether the requirements of a binding contract are met must be determined from the perspective of an objective reasonable bystander, not the subjective intentions of the parties; and
- (e) the determination is contextual and must take into account all material facts, including the communications between the parties and the conduct of the parties both before and after the agreement is made.

Decision

[19] I find in this case that the parties proceeded by agreement that was discussed in person and via emails and text messages. There was an intention to contract.

[20] Despite Ms. Holm not agreeing to the wording of some of the terms in the proposed written contract, and despite her desire to have them potentially reworded, both parties ended up agreeing on the essential terms; that is to proceed on the basis of a common understanding about the scope of work to be done, location, and design. They also agreed on the materials to be purchased, the deposit and payment schedule, and the time period for the work. These terms were sufficiently certain.

[21] There was offer and acceptance. There was a meeting of the minds that Mr. Roe would proceed with this project on her property and that Ms. Holm would pay him. A reasonable objective bystander would come to this conclusion based on the communications and conduct of the parties.

[22] Therefore, I find that there was a valid contract.

[23] I also find that the contract includes the refund clause and that Ms. Holm was entitled to rely on that, even though the written contract was not finalized. The parties discussed the refund clause at the initial stages when the nature of the project and payment were discussed and agreed to, before Ms. Holm paid the \$3,500 deposit to Mr. Roe. It is clear that she was relying on the deposit being refundable if the materials were not ordered or if the project did not proceed. The refund clause came up again later in texts between the parties and Mr. Roe himself referred to it as well when he terminated the project.

[24] The project was cancelled at a very early stage after Mr. Roe had done minimal work that was unsatisfactory to Ms. Holm. I find that despite Ms. Holm's best efforts at being civil, cordial, and reasonable, Mr. Roe was rude and did not communicate clearly.

He also showed himself to be unreliable about the order for materials, schedule, and what work was to be done. Problems were evident leading up to the termination. Most significantly, despite Ms. Holm's efforts at discussing the apparent contradiction with the issue of the materials and delivery, Mr. Roe refused to engage further with her. This amounted to termination of the contract that both parties agreed to.

[25] Ms. Holm is entitled to a partial refund of her deposit in the amount of \$3,000. I have reduced the refund by \$500 as compensation for work done by Mr. Roe and for his travel.

Costs and Interest

[26] Ms. Holm shall be awarded \$100 for preparation fees pursuant to s. 57 of the *Regulations*, \$200 as compensation for inconvenience and expense pursuant to s. 59 of the *Regulations*, filing fees, and any fees she expended on service, pursuant to s. 74 of the *Regulations*.

[27] Pursuant to s. 60 of the *Regulations*, Ms. Holm is entitled to pre-judgment interest from the date of filing her Claim on October 14, 2025. She is also entitled to post-judgment interest.

CHRISTIE T.C.J