



Civil Resolution Tribunal

Date Issued: April 17, 2018

File: SC-2017-03248

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hodgson v. Millions*, 2018 BCCRT 135

B E T W E E N :

Angela Hodgson

APPLICANT

A N D :

Clinton Millions

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathryn Berge, QC

INTRODUCTION

1. This is a dispute about whether a deposit is refundable under a contract to provide building plans. The applicant, Angela Hodgson, says that the respondent, Clinton Millions, breached a contract to provide plans for the construction of a building on

the applicant's property. The applicant wants the respondent to refund the \$3,500 deposit she paid for the plans. The respondent says that he performed the work required to create the plans, incurred costs, and is under no obligation to refund all of the deposit. The parties are self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a) order a party to do or stop doing something;
 - b) order a party to pay money;
 - c) order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are:
 - a) What were the terms of the parties' contract?
 - b) Did the respondent breach the contract?
 - c) Is the respondent entitled to keep all or any part of the deposit?

EVIDENCE AND ANALYSIS

Contract Terms

7. I have reviewed all of the evidence provided but have referenced only what is necessary for my decision. The applicant bears the burden of proof, on a balance of probabilities.
8. Based on the evidence before me, I find that on April 4, 2017 the parties agreed to a contract with the following terms:
 - a) the respondent agreed to provide the applicant with "an approved set of structural mechanical and architectural plans" for a building to be constructed on the applicant's property. The respondent promised to obtain an engineer's approval of the plans and see the project through the "permit/planning process" with the local building authority,
 - b) the respondent would receive a \$1,200 fee for providing these approved plans, plus reimbursement for "filing fees" paid and the "costs of the production of the drawings themselves" (the expenses),
 - c) the applicant would pay a \$3,500 advance deposit for the respondent to do this work. Out of this deposit, the respondent would deduct his \$1,200 fee, account for the expenses and provide receipts for them. If there was any balance of the deposit remaining, he would refund it.

9. I find there was no agreement about:
- a) when the respondent would produce the plans. When the applicant enquired, the respondent estimated that the plans would be available in approximately the second half of April, 2017, subject to the engineers' schedule and seeing the site,
 - b) what would happen if either party cancelled the contract before the approved plans were produced, and
 - c) if the respondent was entitled to be paid for early work done by him in late 2016 to produce some drawings for a somewhat different building that the applicant then proposed constructing on her property.

Did either party breach the contract?

10. The applicant paid the deposit on April 4, 2017. The respondent went on a site visit on April 15, 2017 that took him approximately seven hours. He advised the applicant that before preparing the drawings for the engineers' approval, he had to make enquiries of a friend who worked at the local building authority about the permitted height of the project. During the last week of April, 2017, the applicant twice contacted the respondent to find out when the plans would be ready. She made it clear that she was eager to begin construction as soon as possible. On April 28, 2017, the respondent replied that he was still waiting to hear from his friend. After that he did not respond to the applicant's enquiries. On May 12, 2017, the applicant advised the respondent that she was cancelling the contract and asked for a refund of her deposit. She says that the respondent breached the contract when he did not fulfill his contractual obligations and should be ordered to refund the deposit in full.
11. The respondent says that he submitted the plans to the engineers on May 10, 2017 before the applicant cancelled the contract on May 12, 2017. After the contract's cancellation, he did not withdraw the project from them. He provided no

explanation for this. He says that he picked up and paid for the engineer-approved plans on July 27, 2017.

12. The respondent also says that the applicant unreasonably cancelled the contract on the basis of delay, because the contract did not require him to provide the approved set of plans by any particular date. He also says that it should be taken into account that he did work prior to the April 4, 2017 contract date by doing the late 2016 drawings and investing considerable time overall on the project, including for the site visit.
13. The respondent says that he should be able to retain \$1,200 of the deposit for his fee for creating the preliminary plans, and having them approved and produced by the engineers. In addition, his view is that he should be able to keep \$2,000 of the deposit to reimburse himself for the cost of obtaining these engineer-approved plans, which price he reached by “rounding up” of the engineers’ fee, plus a “modest mark-up of 11%”. The respondent asks the tribunal to order him to refund the \$300 deposit balance remaining after the above two sums are deducted and to deliver the drawings to the applicant.
14. For the applicant to succeed in her claim for return of her deposit, she must prove that it was more likely than not that the respondent breached the contract’s terms and, therefore, the deposit must be returned. If one party receives a benefit from a contract that was later cancelled, that benefit may be taken in to account in resolving a claim in respect of the contract’s cancellation.
15. I have already found that a contract was entered into by the parties. I find the respondent breached all of its major terms. He did not provide any reliable evidence that he did what the contract required him to do. He submitted no objective evidence that he ever prepared the final drawings based upon the correct height requirements, submitted the plans to the engineers, or picked them up and paid for them. The only evidence that any of these things occurred came from the respondent’s own statements, despite the fact that objective evidence should have been easy to obtain. Further, he did not provide receipts for his expenses or

submit the plans to the planning authority for approval as he had promised to do. In addition, I note that there was no agreement whatsoever that the respondent was entitled to “round up” the cost of the engineers’ work or add on a bonus for handling that transaction.

16. I also find that the respondent did not reasonably conduct himself overall in respect of this contract. Despite the applicant’s repeated efforts to reach him after April 28, 2017, he did not respond to her enquiries about when he would perform the terms of the contract. Further, if he did submit the plans to the engineers for their approval on May 10, 2017, it was unreasonable for him not to make an effort to withdraw the work from them when the contract was cancelled only two days later. He did not provide the plans during the approximate later-April 2017 time frame that he had put forth to the applicant, nor reasonably communicate with her regarding the reasons for delay.

17. I conclude:

a) the applicant has established that the respondent breached the contract when he did not provide her with planning-authority approved drawings for the construction, expense receipts, and refund of any excess deposit,

b) at the same time, the respondent invested time and energy on the project in reliance upon the contract. He provided some detailed 2016 preliminary drawings, did a time-consuming site visit, and communicated with the applicant about the project. I find that she received a benefit from these efforts. Therefore, I find the respondent is entitled to set-off \$400 for these efforts, being one-third of the \$1,200 fee agreed upon for his work. The respondent must refund the \$3,100 deposit balance to the applicant.

18. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule, as the applicant was successful overall in her claim. I order the

respondent to reimburse the applicant for tribunal fees in the total amount of \$150.00.

ORDERS

19. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$3,299.82, broken down as follows:
 - a) a partial deposit refund of \$3,100 00,
 - b) pre-judgement interest of \$24.82 under the *Court Order Interest Act* (COIA),
and
 - c) tribunal fees of \$175.00.
20. The applicant is also entitled to post-judgement interest under the *COIA*, as applicable.
21. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
22. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kathryn Berge, Q.C.