



Civil Resolution Tribunal

Date Issued: May 2, 2018

File: SC-2017-003066

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jacques v. Rona Inc.*, 2018 BCCRT 164

B E T W E E N :

Chang Jacques

APPLICANT

A N D :

Rona Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Susan E. Ross

INTRODUCTION

1. The applicant is self-represented. The respondent is represented by a lawyer, Andrew Epstein.

2. The applicant began this dispute on July 17, 2017. She claims that in August 2015 she contracted with the respondent for custom materials and construction of a fence and paving stones on her property. The work was done the same month and in September 2015 she became aware of deficiencies in the installation of the project. She says the wrong materials were used and materials that the applicant paid for were used for someone else's project. The applicant says the respondent made representations about the project that deceived or misled the applicant and failed to comply with the *Business Practices and Consumer Protection Act*. The applicant has continually tried to resolve the dispute. She seeks a full refund of the contract price, \$3,824.00, plus fees paid to the Civil Resolution Tribunal (tribunal) and other allowable expenses and charges.
3. The respondent replies that its materials, and its services through a contractor which I take to be a subcontractor for whose work the respondent takes responsibility, were satisfactory. The respondent says the applicant indicated her satisfaction with them at the time. The respondent denies it engaged in any misleading or deceptive sales practices. The applicant wanted additional work done but did not wish to pay for it. On September 2, 2015, the respondent gave the applicant a refund of \$154.48 for unused materials even though they were non-refundable, special order materials. When the applicant then complained outside the one-year warranty period, the respondent nonetheless repeatedly attempted to satisfy and settle her complaints, which the applicant refused. The respondent says it has fulfilled all of its obligations to the applicant and the dispute should be dismissed.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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.

5. Section 171 of the *Business Practices and Consumer Protection Act* states that the Provincial Court has jurisdiction over proceedings to recover damages for failure to comply with the *Business Practices and Consumer Protection Act*. Since the tribunal has no authority to award damages under the *Business Practices and Consumer Protection Act*, this decision will decide only the contract dispute between the applicant and respondent.
6. 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.
7. 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 there are no significant questions of credibility affecting the issues in dispute or other reasons that might require an oral hearing. I find the written evidence is conclusive.
8. 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.

ISSUE

9. The issue in this dispute is whether the respondent broke its contract with the applicant.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have reviewed all of the evidence but have only commented upon what is necessary to give context to my decision.
11. This is a contract dispute. The terms of the parties' written contract, an August 8, 2015, Product Sale and Installation Agreement, are not contested. It is for a total amount of \$3,703.89. It refers to Order 160581 for services in the amount of \$2,730.00 and Order 160582 for materials in the amount of \$973.84. Both of the orders state that they are Special Orders. The contract also contains the following terms:
 - During installation it may become apparent that extra services and/or materials may be required to complete the jobs as intended. Changed orders will be quoted separately, signed and paid in full before proceeding.
 - All special order products ordered are not returnable.
 - 1 year warranty on services.
12. Order 160581 describes the services contracted for as labour on decks and fences involving: the removal and replacement of the top layer of a major foundational wall, removal and replacement of four posts from a paving stone area, build 8-foot fence along stairway with post, build gate top of stairway, delivery and disposal, no painting or staining. The materials contracted for in Order 16082 are various wood products, concrete, nails and gate hardware.
13. The applicant's submissions detail four areas of complaint, as discussed below.
14. First, the applicant claims that the respondent built "the top of major foundation retaining wall on top of the rotten layers and refused to rebuild the wall and I had to hire another contractor." The respondent claims the applicant only wanted the first layer removed and replaced due to rot and nothing further due to cost. I find that the contract was specifically for only the top layer. If the applicant wanted more

work done to replace rotten layers below that, a change to the contract, at greater cost, was needed. The applicant did not authorize or pay for a change. The respondent did not break the initial and only contract to replace the top layer of a major foundational wall.

15. The applicant provided a March 14, 2016 invoice for work she claims she had done by another contractor to fix deficiencies in the respondent's work. This invoice includes timber replacement described as removing the top layer of the timber carefully as it is good condition and then removing and replacing all the rotten timber on the second layer. This is consistent with the respondent having replaced the top layer, as contracted. I infer that the applicant changed her mind and also wanted the second layer of rotten timbers removed. But she did not contract with the respondent for that work and the respondent was not responsible to do it.
16. Second, the applicant claims that the respondent promised cement would be used to build up the foundation of the paved entrance area, but instead only a slice of treated wood was slipped in, which is not holding up, and the respondent has refused to fix the problem. The respondent claims that the paved area had existing settlement problems from its original installation and the applicant was clear that she only wanted five timbers framing the pavers replaced with no leveling, in order to keep costs down. I find that the terms of the contract were specifically only for the replacement of four timbers from the paving stone area. The respondent did not break the initial and only contract and the applicant did not authorize and pay for a change to that contract.
17. Third, the applicant claims that the respondent used the materials that she paid for on someone else's landscape project. As evidence of this, she points to Order 160582 describing the materials purchased. I do not find her claim evident from the list of materials in Order 16082. The respondent's September 2, 2015 refund to her \$154.48 for unused materials, even though Order 160582 was for non-

refundable, special order materials, is also inconsistent with the respondent taking advantage of the applicant in the way she claims.

18. Part of the applicant's argument that the respondent was using her money for materials for a different project is that Order 160582 lists the purchase of 3-25 kg bags of concrete when her whole project only required cement for two ground posts for the fence. However, the applicant has not explained why the cement ordered was necessarily too much for the project requiring the anchoring of ground posts.
19. I also bear in mind the tribunal's mandate to be proportionate in the adjudication of disputes. The bags of cement cost \$8.37 each, so the three bags cost \$25.11. This is a small sum and small fraction of the materials for the applicant's project. I find the applicant's belief the respondent was redirecting her materials to someone else's project, and even caused her to buy more than was needed so the respondent could redirect the excess to another project, is speculation and not proven.
20. Fourth, the applicant claims she purchased cedar materials, but the respondent instead used spruce for the fence frame, resulting in the applicant having to hire another contractor to rebuild the fence. The respondent claims that it built an 8 x 5-foot solid cedar fence with a gate hinged from the new fence and latched onto the applicant's perimeter fence. Order 160582 lists the purchase of three cedar products in units of 10, 8 and 25, respectively. It is not possible to tell the wood used for the gate and fence from the photos that the applicant has provided. The wood appears consistent with cedar but could also be some other kind of wood.
21. Although the applicant claims she had to have the fence rebuilt by another contractor, she provided no evidence of that. The only contract for work by another contractor she provided relates to replacing the second layer of timbers for the foundation wall and leveling pavers. She also provided no evidence from that contractor that the respondent used wood other than cedar. I find that the applicant has not proven the respondent used spruce rather than cedar for her fence.

Because my analysis of the rest of the dispute has found the respondent's accounts of events more credible and consistent with the contract and other documents, I also prefer the respondent's evidence over the applicant about the type of wood used.

22. I find that the respondent did not break its contract with the applicant as claimed.
23. The applicant's Amended Dispute Notice says that a conversation and video recording with the respondent's store manager prove that the respondent "breached his oral promise and tried to cover up the store's deceptive practicing." However, no video recording was provided in evidence.
24. Finally, the respondent relied on the 1-year warranty on services. Yet the applicant says she complained repeatedly from just one month after the completion of the contract in August 2015. I find that the warranty is not relevant to this dispute as I have concluded that the contract was not broken, regardless of when the applicant brought forward some of her complaints.

ORDERS

25. I dismiss the applicant's dispute.

Susan E. Ross, Tribunal Member