



Civil Resolution Tribunal

Date Issued: May 18, 2018

File: SC-2017-003944

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ranogajec v. Harbar*, 2018 BCCRT 193

B E T W E E N :

Marijan Ranogajec

APPLICANT

A N D :

Danette Harbar

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about whether the respondent Danette Harbar owes \$650 to the applicant contractor, Marijan Ranogajec, for the hourly-rate masonry work he did in her yard in July 2017. The applicant says his helper was paid in full and there is no reasonable explanation for why he was not paid.

2. The respondent says the applicant did a poor job and damaged her wall. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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. Neither party requested an oral hearing.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
7. While she was given the opportunity to do so, the respondent did not file a counterclaim. Therefore, I have not considered any claim that Mr. Ranogajec owes her damages for necessary repairs to her wall. However, as discussed below, I have considered her position that Mr. Ranogajec damaged her wall in determining whether he is entitled to payment for his time.

ISSUES

8. The issue in this dispute is to what extent does the respondent owe the applicant the \$650 claimed for hourly rate masonry work he did in her yard.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. I find the parties agreed the applicant would do the masonry work in the respondent's yard based on the applicant earning \$25 per hour. The respondent did not dispute this, and instead focused on her submission that the applicant damaged her wall.
11. In particular, the respondent says the applicant installed incorrect materials, and billed her for his time for doing so. She also says no one instructed the applicant to pour concrete on a plastic drain pipe or use broken blocks to stop cement. The applicant's photos show a broken concrete retaining wall that appears rough and unfinished in places. The photos also show concrete poured over a plastic drain pipe, which the respondent says caused it to break. The applicant provided an undated \$650 estimate from a company to repair the masonry work and expose the broken pipe so it can be repaired.
12. The applicant's submissions are brief. He says that because he worked "by the hour" he should be paid for the time he worked. The applicant further says the respondent told him to go home to sleep, and he did so, and thus he could not finish the work or correct any deficiencies.
13. The applicant also says he was working by the hour "trying to fix up" a concrete block wall built by the applicant's son, Grant Harbar. However, Mr. Harbar's written statement to the tribunal indicated that he did not build the concrete wall, and was not living in British Columbia at the time in question.

14. Whether the applicant and his helper caused the damage to the respondent's wall, or whether her son did, is a central issue in this dispute. As discussed below, I find that the applicant is responsible for the damage claimed by the respondent.
15. Apart from his brief submissions, the applicant provided only 2 invoices, both dated July 12, 2017, and a February 4, 2018 statement from F, his helper.
16. The applicant's 2 invoices were addressed to "Jennie and Grant Harbar". Nothing turns on the fact that Grant Harbar was named in the invoices, because Grant Harbar was not named as a party in this dispute. Further, contrary to the respondent's submission, it is irrelevant that the applicant and F referred to the respondent as Jennie, because it is undisputed the applicant did masonry work on the respondent's wall.
17. F wrote that he worked with the applicant "at Jennie's house on the Gorge last year" and that he thought the dispute was about a clash of personalities and not about workmanship, noting he was paid in full and the applicant was not. The respondent says she paid F in full because he was the helper and she did not want to penalize him.
18. F further wrote that the applicant was an established masonry tradesman. F stated that he and the applicant were left with the task of trying fix "Jennie's sons mistakes" after he tried to dabble in masonry. The respondent and Mr. Harbar deny Mr. Harbar "dabbled", as noted above, and say that the applicant caused the damage to the wall.
19. In his statement, written 7 months after the event, F wrote that they did "Stage 1" of the work, which was passed by the city engineer. Mr. Harbar wrote that F's reference to a city engineer is "nonsensical and not supported". Based on the photos in evidence, it is unclear to me why a city engineer would be involved in an inspection of this retaining wall. The applicant made no reference to a city engineer in his submissions.

20. In any event, F further wrote that “when we came back to do stage 2 Jennie’s son” had tried his hand at it and it was a mess. Again, the respondent and Mr. Harbar deny this. F said the applicant and the respondent had a “few words” and she then sent them home, and that was their last day of work. F did not explain how many hours total he worked or what he understood the applicant had worked, or over how many days.
21. Based on F’s account, they did no work or very little work the day they returned to do stage 2. I find this account is inconsistent with the applicant’s submission that the respondent sent him home to sleep. The applicant made no reference to having “words” or any sort of argument with the respondent.
22. Further, the applicant submits that he was working by the hour trying to fix up the wall that Mr. Harbar “built”. I find this is inconsistent with F’s account that he and the applicant built “stage 1” of the wall, had it passed by the city inspector, and that Mr. Harbar “dabbled” on the wall after stage 1. In his submissions, the applicant did not mention “stage 1”.
23. The applicant also says that he poured concrete into the wall built by Mr. Harbar, and that “blocks leaked out because of poor installation”. He says that he used broken blocks to stop concrete that was leaking out. He submits that because of Mr. Harbar’s poor installation he was working by the hour.
24. As noted above, the applicant bears the burden of proof. I find the inconsistencies between his and F’s accounts are significant in terms of who caused the damage to the wall that is evident in the photos and the basis for the respondent’s repair estimate.
25. The applicant must prove he fulfilled his masonry contract in order to get paid. An implied condition of the parties’ agreement is that the work is performed to a satisfactory level. Based on the applicant’s own submission and the overall evidence before me, I find the more likely scenario is that the applicant caused the material damage to the wall: the broken pipe and the leaking concrete that he tried

to stop with broken blocks. I find that his doing so was a breach of the parties' contract.

26. If the applicant is an experienced masonry tradesperson, he has not explained why he approached the wall's repair the way he did, which I have found allowed concrete to leak out and damage a pipe.
27. I turn then to the applicant's invoices and his \$650 claim. He was an independent contractor, not an employee. There is some lack of clarity in the invoices and the amounts billed for the applicant's time and F's time with at minimum a \$40 discrepancy. As referenced above, the respondent paid F \$280. Given my conclusion below, I find I do not need to resolve this issue.
28. The invoices describe hourly rate work for forming, pouring concrete, stripping forms, transport and placement of caps, and "fixing corner blocks". I find that this was the very work that caused the damage to the wall. I find that the applicant's work, which was based on an hourly rate, failed to comply with the implied contractual condition that the work would be to a satisfactory level. I find the applicant has not proven he is entitled to the \$650 claimed.
29. In accordance with the tribunal's rules, as he was unsuccessful in this dispute I find the applicant is not entitled to reimbursement of the \$125 he paid in tribunal fees.

ORDER

30. I order that the applicant's dispute is dismissed.

Shelley Lopez, Vice Chair