



Civil Resolution Tribunal

Date Issued: June 11, 2018

File: SC-2017-006014

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kiwicana Stone Works Ltd. v. Samra*, 2018 BCCRT 247

B E T W E E N :

Kiwicana Stone Works Ltd.

APPLICANT

A N D :

Harminder Singh Samra

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The respondent Kiwicana Stone Works Ltd. seeks \$1,880 from the respondent Harminder Singh Samra as an outstanding payment for countertops including installation. The applicant also seeks \$440 in interest on that \$1,880 balance. 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. Neither party requested 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: 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.

ISSUE

6. The issues in this dispute are to what extent, if any, the respondent owes the applicant:
 - a) an outstanding balance for countertop installation, and
 - b) interest on that balance.

EVIDENCE AND ANALYSIS

7. 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.
8. On January 13, 2017, the respondent signed the applicant's quotation for \$3,950 for "counter top service" and \$330 for sinks. On January 14, 2017, the respondent paid \$2,000 as a deposit, with the balance due on the installation date. Based on the evidence before me, the applicant completed the installation on about March 2 or 3, 2017.
9. The applicant says it offered the respondent a \$400 discount, leaving the balance owing as \$1,880, the amount claimed in this dispute.
10. On March 3, 2017, the respondent gave the applicant a cheque for \$1,880 but by March 6, 2017 it was returned by the bank as 'NSF', due to insufficient funds. The respondent texted the applicant on March 6, 2017 that it should be able to clear his cheque, but that he would come see the applicant's principal to make the payment. Similar exchanges were made later in March and April, 2017, with the respondent saying "I'll let u know soon when you can deposit it again thx sorry about that". In April 2017, the respondent expressly stated he would pay the applicant's "\$1800" bill, but that he was considering bankruptcy. The respondent offered a payment plan. The respondent never expressed any concern about the quality of the countertops or their installation.
11. The parties' text messages in evidence indicate that the respondent offered to make monthly instalment payments, but then when the time for payment came the respondent failed to pay.
12. The respondent's submission is brief. He says that he called the applicant many times and its principal never answered his phone calls and never called him back. The applicant denies this, and the text messages exchanged do not support the

respondent's assertion. The respondent also says the applicant "left the job uncompleted I was very frustrated". He says he called someone else to fix the washroom countertops, who installed a new one.

13. In the latter respect, the respondent submits a March 18, 2017 invoice from another company for \$1,600. This invoice is for cabinets, not countertops. In any event, I place little weight on this other company's invoice, given the respondent repeatedly told the applicant through July 2017, if not later, that he would pay the applicant's outstanding balance and never expressed concern about the work product or having to get other work done.
14. I find the weight of the evidence favours the applicant's position. The respondent never indicated at the time that he was unsatisfied with the applicant's work such that he should be entitled not to pay for it. Instead, he wrote the applicant a cheque for the \$1,880 balance, which was returned insufficient funds. Between March and July, 2017, the respondent continued to acknowledge his responsibility for the \$1,880 balance but was financially unable to do so. This evidence supports the conclusion the respondent owes the applicant \$1,880 and I so order.
15. What about the applicant's claim for \$440 in interest? The quotation signed by the respondent states that interest will be charged on overdue accounts at 26.86% per annum. The parties' contract provided the \$1,880 was due on installation, which I find was on March 3, 2017. I find the applicant is entitled to contractual interest at 26.86% from March 3, 2017 to the date of this decision, which totals \$644.70.
16. As the applicant was successful in this dispute, it is also entitled to reimbursement of the \$125 it paid in tribunal fees.

ORDERS

17. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$2,649.70, broken down as follows:
 - a. \$1,880 for the balance owing on the parties' contract,

- b. \$644.70 in contractual interest at 26.86% per annum, and
 - c. \$125 in tribunal fees.
18. The applicant is also entitled to post-judgment interest, as applicable.
 19. 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.
 20. 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 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.

Shelley Lopez, Vice Chair