



Civil Resolution Tribunal

Date Issued: July 6, 2018

File: SC-2017-005353

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chattha v. Farah et al*, 2018 BCCRT 308

BETWEEN:

Amrinder Chattha

APPLICANT

AND:

Thor Farah and Vincent Farah

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Susan E. Ross

INTRODUCTION

1. This is a contract dispute. The parties are self-represented. The applicant, Amrinder Chattha, began this Civil Resolution Tribunal (tribunal) dispute on September 29, 2017. He claims \$5,000 from the respondents, Thor and Vincent Farah, plus \$31 for registered mail and \$175 in tribunal fees. The respondents deny the claim and make no counterclaim.

2. The parties agree the applicant did renovation work at the respondents' home in the summer of 2017 for which the parties had agreed on a price of \$18,000 and the respondents paid the applicant \$17,700. They disagree whether the contract price was tax-included or tax-extra, what 'extra' items were added to the agreed price, and whether there were deficiencies in the applicant's work that offset what the respondents owe to him.

JURISDICTION AND PROCEDURE

3. 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). Its 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 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through the parties' written submissions explaining their side of the dispute. Significant contradictions and omissions in those materials undermined the credibility and reliability of both parties' accounts. I decided it was unnecessary to hear them orally or through other additional means to determine an outcome.
6. 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

- 7. The issues in this dispute are:
 - a. Was the \$18,000 contract price a tax-included price?
 - b. Did the respondents agree to extra items other than \$1,200 for the tile backsplash?
 - c. Was the applicant's work substandard or incomplete?
 - d. Do the respondents owe the applicant an unpaid balance?

EVIDENCE AND ANALYSIS

- 8. 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. The dispute is about whether the \$18,000 contract price was a tax-included price, what extra items were agreed to, and whether there were offsetting deficiencies in the applicant's work. There is no signed contract but the parties exchanged other documents and communications they say support their respective versions of events.
- 9. The applicant alleges that the respondents still owe \$5,803 but limits his claim to \$5,000, the monetary limit of the tribunal's small claims jurisdiction. He has provided an unsigned contract dated June 26, 2017, along with a document dated August 16, 2017, which he describes as the original quote. Thor Farrah's name and address, details of work to be done, the contract price and a payment schedule are typed into the unsigned contract.

10. The applicant says that before starting work he and a companion delivered the unsigned contract and original quote to Vincent Farah at his home. However, both of the respondents' names were filled in on the unsigned contract. He says Thor Farrah's wife was present, he discussed the contract in detail with Vincent Farah and encouraged him to discuss it with Thor Farah and come back with any questions. As a result, he understood the respondents had checked the details of the contract before they allowed the applicant to begin work.
11. The unsigned contract has a Description of Work provision. August 5, 2017 is inserted for substantial completion. No dates are inserted for commencement or final completion. The Terms of Payment are (bold emphasis included):

Stipulated variable costs as discussed over phone and details below, plus GST and PST. Payments shall be due and payable as outlined in the **Payment Schedule.**

A total of \$18,000 for the work scheduled above.
12. The Payment Schedule calls for: deposit on contract signing (\$1,000), tile work—end of Day 1 (\$4,500), installation of baseboard and crown molding (\$2,500), painting work—end of Day 1 (\$7,000), painting work—end of Day 2/last day (substantial completion) (\$2,500), full completion (remaining amount), \$500 holdback for 15 days after completion. The Changes in Work provision requires changes to be done by written Change Order Form signed by both the owner and contractor, with adjustment to the contract and price accordingly.
13. The original quote is for described renovations at a global \$18,000 cost for labour and materials, plus tile leveling work “extra as required”. It says all prices are before tax at 12% on materials and 5% on labour.
14. The respondents deny receiving a written contract until the applicant started this dispute, but agree the parties did agree on a price of \$18,000 for the job. They

say they were led to believe this was a tax-included price as that was how other contractors quoted their prices which the applicant agreed to meet.

15. The applicant has not named or provided a statement from his companion when he says he delivered the unsigned contract and original quote to Vincent Farah. He gives no explanations for why there is no signed contract, why the unsigned contract is in the name of Thor Farah if the contract delivered named both respondents, why the original quote is dated August 16, 2017, after the end of the job, if it was delivered with the unsigned contract before work started, why there are no change orders for extra items (other than a July 15 text about the tile backsplash), or why the original quote includes “backsplash” in the \$18,000 contract price. Minor gaps standing alone would not lessen the applicant’s credibility. However, these collective gaps do matter because his claim depends upon proving the respondents received and agreed to the unsigned contract and detailed quote before work started, and because he is claiming extra items without accompanying change orders required by the very contract he seeks to enforce.
16. The parties have different accounts of how and when money changed hands. The respondents say the applicant insisted on an initial \$10,000 that they paid “in cash” for which he gave them no receipt or breakdown. At some point, they paid him \$5,500 more in cash. When is not said. On August 14, the applicant collected a \$2,200 cheque from them and asked for \$1,000 to resolve the matter, which the respondents refused. The applicant says the respondents paid by cheques: an initial deposit of \$1,000, \$4,500 once tiles were installed, and \$10,000 after the interior and exterior paint work. He has provided a screen shot of text messages on Saturday, July 15, in which the applicant requested \$2,500 “for baseboard as per the contract”, \$7,500 “for paint job”, and received go ahead to install a backsplash for \$1,200. Thor Farah texted that he would pay “cash” on Monday. The applicant says the texts show payments were made according to the Payment Schedule in the unsigned contract. I disagree. I find they support the respondents’ credibility at least as much as the applicant’s and that Thor Farah’s

text in fact supports payments being made in cash, which the applicant has denied.

17. A demand letter from the applicant dated August 16, 2017 states that the work was done in July and August, the respondents made the first four contract payments but refused to make the final one. It refers to an invoice detailing the work performed and amount still due. An invoice described as “Thor Farah final quote”, also dated August 16, 2017, breaks down work and materials in the amount of \$22,050 as: labour (\$18,000), tile leveling work (\$1,000), backsplash (\$1,200), deck paint (\$500), exterior door paint (\$500), extra plumber work (\$350) and exterior downspout paint (\$500). Taxes of \$1,453 are added at 12% against \$5,000 in materials and 5% against \$17,050 in labour. From the \$23,503 total, \$17,700 is deducted as already paid leaving \$5,803 owing. These documents establish that by August 16 the parties were in conflict over the contract. The applicant’s rendering of the tax-extra final quote does not resolve whether the parties had in fact agreed to that. The final quote is also less than convincing because of the absence of receipts or other information to verify or reconcile the labour and materials claimed.
18. The applicant has provided a “Tradesman Statement” said to be from a subcontractor, Jaspal Khanna of Magic Wall Painting. It states that Thor Farah requested Mr. Khanna to do extra paint work and pay him directly but never did. I attach little weight to this as it is undated, unsigned, there is no cost given, and no receipts for materials are included. There is also inconsistency in relying upon a statement that does not follow the terms of the unsigned contract, upon which the applicant is also relying, that prohibits direct payment to a subcontractor.
19. The respondents provided an undated list of items and costs for work by a handyman they hired to complete unfinished work of the applicant, at a total cost of \$1,300. They say this should be offset against money owed to the applicant, that they agreed only to the backsplash extra, and that their handyman did the leveling and plumber work which the applicant has claimed as extra items. They

challenge the reasonableness of the applicant's extra material costs and note, as I have, the absence of verifying receipts. However, the respondents evidence about the handyman's work, which the applicant claims is fabricated, is no more convincing, as they have not named or provided a statement from the handyman.

20. The respondents particularly oppose the extra charge and poor work quality for the exterior door. The applicant says this is a deeply discounted cost for the difficult process of painting three exterior doors, which was not included in the contract price. I do not find this evidence convincing as it is inconsistent with both the unsigned contract, which specifically includes doors, and the final quote in which this extra is a material charge, "exterior door paint", not a labour charge.
21. The respondents provided photos to show the applicant's work was incomplete or substandard. The applicant says these are dated and show only normal wear and tear, lack of proper care by the respondents, and poor work by their own handyman. I find the photos and further screen shots of text messages are not convincing one way or the other in resolving this dispute.
22. Suppliers of goods and services are required to indicate whether a price is tax-extra or tax-included. In this dispute, there is no signed contract and the parties disagree whether the agreed contract price was tax-extra or tax-included. Both parties' submissions have significant inconsistencies and omissions. Neither provided verifiable witness evidence, receipts for materials, or documentation of money changing hands, when and for what. The applicant must prove his case on a balance of probabilities. That means proving that the money he claims is owed. I find the applicant has not proven the respondents received or agreed to the unsigned contract, agreed the \$18,000 contract price was tax-extra, or agreed to extra items other than \$1,200 for the backsplash. At the same time, I find the respondents have not provided convincing evidence of offsetting deficiencies. This leaves the question of whether the respondents owe an unpaid balance. I find the contract was for \$18,000 plus \$1,200 for the backsplash, for a total of \$19,200, tax-included. The parties agree that the respondents paid \$17,700. I

find the respondents owe the applicant \$1,500 plus \$175 in tribunal fees as the applicant was substantially successful, but not the postal fee which is unproven.

ORDERS

23. Within 30 days of the date of this order, I order the respondents to pay the applicant a total of \$1,688.16, broken down as follows:
 - a. \$1,500.00 as the balance owed for the applicant's renovation work,
 - b. \$13.16 in pre-judgment interest under the *Court Order Interest Act* from August 17, 2017 to July 6, 2018, and
 - c. \$175.00 in tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable.
25. 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.
26. 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.

Susan E. Ross, Tribunal Member