



Civil Resolution Tribunal

Date Issued: July 13, 2018

File: SC-2017-004582

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yazbek v. Tang*, 2018 BCCRT 329

BETWEEN:

Sarkis Yazbek

APPLICANT

AND:

Jack Tang

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about payment for boat repairs. The applicant, Sarkis Yazbek, says the respondent, Jack Tang, has failed to pay for structural and cosmetic repairs the applicant performed to his boat. The applicant seeks an order that the respondent pay \$2,000 for boat repairs and \$100 for GST.
2. The respondent says the applicant did not finish the work he agreed to perform, and is therefore not entitled to payment.
3. The respondent is self-represented, and the applicant is represented by a relative, Petra Yazbek.

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. 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.
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. 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.

ISSUES

8. The issue in this dispute is whether the respondent must pay the applicant \$2,000 for boat repairs plus \$100 for GST.

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. The applicant says that in June 2016 the parties agreed that the applicant would perform structural and cosmetic repairs to the respondent's boat. He says he started the work in June 2016, which was supposed to be completed quickly. However, he was then advised that the shipyard where he was working on the boat was shutting down. He says he completed structural repairs so the boat could be safely moved. He says the respondent agreed to bring the boat to the applicant's shop so the repairs could be completed, but the respondent did not do so and did not return the applicant's calls.
11. The applicant says the value of the work performed on the respondent's boat is \$2,000, and the respondent has failed to pay. He says all of the structural repairs, which were the most labour-intensive, were completed, and he spent money on labour and materials. He says the remaining work to be performed on the boat is cosmetic, with a value of only \$500.
12. The respondent says the applicant agreed to repair the boat for \$2,500, to be paid upon completion of the work, and that the applicant said the work could be completed within 10 days. He says the applicant only performed a small portion of the agreed-upon work, although the boat was in the shipyard for a month. The

respondent says the applicant said he could complete the work on the boat while it was in its slip at the marina, but he did not do so for an entire year, and did not request that the boat be moved to his shop until August 2017. The respondent says moving the boat to the applicant's shop was not part of their original agreement, and his boat was not available on the day offered by the applicant because it was being used elsewhere. The respondent says he later tried to arrange another appointment with the applicant, but the respondent demanded payment of \$2,000 in advance in order to complete the job.

13. As noted previously, the burden is on the applicant to prove his claim for \$2,100, on a balance of probabilities. I find that the applicant has not met this burden. While the parties agree that the applicant performed some work on the boat, they agree that he did not finish the job. I note that the applicant has not disputed the respondent's assertions that the completed work was promised within 10 days, that this deadline was not met, and that the applicant did not contact the respondent about completing the repairs for a year after the work began. I find that all of these facts diminish the applicant's claim to payment for work performed, since I find that part of the parties' verbal agreement was for completion within 10 days.
14. Most significantly, while the applicant says the majority of the work was completed, and that the completed work is worth \$2,000, the evidence before me does not support these claims. It is impossible to know from the photographs exactly how much work remains unfinished. Also, the applicant has not provided any timesheets or other records to show how much time he spent working on the boat, or what value he assigns to his labour. While the applicant says he paid for materials, he did not provide any invoices, receipts, or lists of materials. He says he paid for labour, but did not indicate who performed the labour, what was done, how long it took, or the rate charged.

15. Without any evidence about labour, materials, time spent, or specific tasks performed, I find that the applicant has not established that the respondent owes \$2,100 for boat repairs.
16. The respondent says that at some point he offered to pay the respondent \$1,000. On a judgment basis, I find that amount is reasonable in the circumstances as payment for work performed. I order the respondent to pay the applicant \$1,000 plus GST for boat repairs, for a total of \$1,050.
17. The applicant is also entitled to pre-judgment interest on the \$1,000, pursuant to the *Court Order Interest Act* (COIA). The parties' original agreement was for payment upon completion, but the work was never completed. While the applicant says he demanded partial payment before he filed his dispute with the tribunal on August 30, 2017, he did not indicate a specific date, and did not provide any evidence showing such a date. For these reasons, I find that interest is payable from August 30, 2017.
18. The respondent says he should be reimbursed for shipyard fees incurred and reduced rental income on the boat. However, I decline to make this order as the respondent has not filed a counterclaim, and has not provided any evidence such as invoices or receipts to support these claims.
19. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was partially successful. However, since the respondent offered to settle this matter for the ordered amount before the dispute was filed, I find the applicant is not entitled to reimbursement of any tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

20. I order that within 30 days of this decision, the respondent pay the applicant a total of \$1,058.70, broken down as follows:
 - a. \$1,000 for boat repairs,

- b. \$50 for GST, and
 - c. \$8.70 in pre-judgment interest.
21. The applicant is also entitled to post-judgment interest under the COIA. The balance of the applicant's claims are dismissed.
22. 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.
23. 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.

Kate Campbell, Tribunal Member