



Civil Resolution Tribunal

Date Issued: July 20, 2018

File: SC-2017-007014

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reavley v. Martin*, 2018 BCCRT 349

BETWEEN:

Todd Reavley

APPLICANT

AND:

Wally Martin

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Todd Reavley, provided a set of building plans to the respondent Wally¹ Martin, through the applicant's business 'Aspect Designs'. The applicant says the respondent used those plans to obtain a building permit and construct a house. This dispute is about the applicant's outstanding balance on his June 14, 2017 invoice, for \$1,562.30. The applicant also claims contractual interest of 1.5% per month.
2. The respondent says the applicant's plans are incomplete and inaccurate, and that "any error on a building plan is not acceptable". 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. An oral hearing was not requested.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in

¹ The respondent's name was set out as "wally Martin" in the application for dispute resolution, which I find was a typographical error. I have corrected that error and capitalized the respondent's first name in the style of cause.

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.

ISSUE

7. The issues in this dispute are to what extent is the applicant entitled to payment of
a) his outstanding invoice, and b) contractual interest?

EVIDENCE AND ANALYSIS

8. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
9. The parties' business relationship began in March 2017. The respondent acknowledges that he and his wife met with the applicant to obtain a "detailed drawing" of the new house, which fell within the Township of Langley's heritage building requirements and required heritage approval. The respondent submits that the parties' agreement was that the applicant would produce "accurate plans".
10. On April 18, 2017, the applicant, through Aspect Designs, issued his invoice #041701 to the respondent, for \$1,400.00 inclusive of GST. The invoice was originally for \$2,100 but reflected the applicant's \$700 deposit. The invoice set out a flat rate for various items: energy efficient calculations (\$500), detail assemblies (\$500), "as-built plans" (\$350), site plan (\$250), "spatial/height calcs" (\$150), and joist layout (\$250). The invoice does not reference any contractual interest rate.
11. As discussed further below, the respondent says the relationship broke down on June 15, 2017 after which time the applicant was allegedly unresponsive to their concerns. At that point, the respondent says they sought alternative sources of design information in order to rectify the respondent's alleged design errors,

detailed below (although most of these alleged errors were not known to the respondent until mid-October 2017 or later).

12. Based on the evidence before me, sometime between June 15 and 25, 2017, the applicant attended the respondent's home and provided a flash drive that contained his design and the \$1,400 invoice.
13. The applicant provided a copy of the respondent's August 11, 2017 Facebook post and photo, showing the respondent and his wife holding their approved building permit and another November 3, 2017 photo showing house under construction, apparently about halfway through the framing stage.
14. On June 23, 2017, an employee from the Township of Langley's permit department emailed the respondent requesting several items, one of which was a correction to address certain energy requirements, which on June 28, 2017 the respondent asked the applicant to address. Later on June 28, 2017, the applicant emailed the respondent with updated plans that addressed those energy requirements. Based on the evidence before me, I consider this issue resolved. Apart from the respondent's submissions set out below, I have no evidence before me to support a conclusion the applicant failed to complete its contractual requirements.
15. The respondent submits that the Township of Langley does not guarantee the accuracy or completeness of plans, which was the applicant's responsibility. This may be true, but the fact that the Township of Langley issued the building permit based on the applicant's plans is some evidence that the plans were acceptable. The respondent points to a "Special Conditions" clause in the building permit, which states "Field Building Inspectors may require additional engineering and/or information not noted on the accepted plans or permit documentation", and says the applicant has intentionally made himself unavailable to fulfill that obligation. I do not agree that this "Special Conditions" clause means the applicant failed in his contract with the respondent to draw house plans. The applicant is not an engineer nor was he retained in that capacity.

16. The applicant says the respondent refused to respond to the applicant's attempts to collect payment for several months. On August 22, 2017, the applicant emailed the respondent to say he would provide his CAD files for the site plan to the respondent's land surveyor, once the respondent paid the outstanding \$1,400 balance owing. Hearing nothing from the respondent, the applicant started this tribunal proceeding on November 30, 2017.
17. The respondent says building plans must be "100% accurate", and that the applicant has refused to make corrections. The respondent lists the following specific errors on the applicant's plans:
 - a. *Elevation points.* Instead of setting out all 119 elevation points as set out on a topographical survey the respondent gave to the applicant, he only used 19 of them, and, also used 6 incorrect elevation points. The respondent says the failure to use the correct elevation points resulted in incorrect contour lines that in turn resulted in an impossible drainage plan for the lot. The respondent says the complete drainage plan should have been included with the building plans. The respondent says this error was known on June 15, 2017.
 - b. *Window and door construction details.* The respondent says the applicant failed to show how one window would be constructed to prevent water ingress, and as drawn it would result in water leakage. The respondent says this error was known on November 1, 2017.
 - c. *Bathroom door layout.* The respondent says there is a headroom problem in the layout of bedroom 2 and the hallway and door that connects with the ensuite. The respondent says this is unworkable because there is a sloped ceiling over the door and the door is drawn where the height is insufficient for the door to open. The respondent says this error was known on October 15, 2017.

- d. *Garage stairway design.* The respondent says the stairway designed to access the room above the garage is unworkable because the stairway does not allow sufficient room for the overhead garage doors to operate. The respondent says this error, known to them on November 30, 2017, caused them delay and extra costs to redesign the stairway. I note there is no counterclaim before me.
18. The respondent says the applicant's plans contain errors and "we have not been able to use them". Yet, the respondent as noted above acknowledges he has already obtained the building permit (in August 2017, after the plan was submitted on June 15, 2017) and does not deny the house was under construction as of November 2017. The respondent has not provided any evidence to support their assertion that they had to hire another plan designer.
19. The respondent submits the applicant did not correct deficiencies as they became known and had he done so, the respondent would have paid him. As noted above, most of the deficiencies identified above arose on October 15, November 1, or November 30, 2017, long after the applicant's plans were submitted to the respondent and construction had started. In the interim, the respondent made no effort to pay the applicant's April 2017 invoice or express any concerns about the elevation points the respondent says it identified on June 15, 2017.
20. For the later-known deficiencies, I do not accept the respondent's unsupported assertion that gave the applicant a reasonable opportunity to correct the alleged deficiencies. In any event, I am not prepared to accept the respondent's unsupported position about an unidentified window having the potential for water ingress.
21. There is no expert evidence before me to establish that the applicant improperly drew the elevation points, as submitted by the respondent. There is no evidence before me that the applicant agreed to draw a complete drainage plan. I reject the respondent's argument about the elevation points.

22. On balance, I find the evidence establishes that the applicant reasonably fulfilled its contract to draw house plans for the respondent. When the energy efficiency issue was brought to his attention in June 2017, the applicant dealt with the concern immediately to the respondent's and the Township of Langley's satisfaction. I find the respondent unreasonably failed to pay the applicant's invoice when it was presented in June 2017.
23. The respondent also submits that he refuses to pay because the applicant failed to provide contact names and estimates for various jobs, as the applicant allegedly agreed to do. The applicant chose not to provide any reply submission to this evidence. However, there is no evidence before me that the applicant agreed to provide these services. As noted above, there is no counterclaim before me. I therefore place no weight on these concerns, bearing in mind the applicant's outstanding invoice does not charge for these items.
24. Given my conclusions above, I find the respondent must pay the applicant the claimed \$1,400.00. As noted above, I find there is no agreement for 1.5% monthly interest and I dismiss that particular claim. Instead, I find the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,400, from Monday June 26, 2017, a date I consider reasonable in the circumstances.
25. In accordance with the Act and the tribunal rules, the successful party is usually entitled to reimbursement of tribunal fees paid and any reasonable dispute-related expenses. I see no reason to deviate from that general rule here. The applicant was successful and is entitled to reimbursement of \$125 in tribunal fees paid. He is also entitled to reimbursement of the \$14.54 dispute-related expense for service of the Dispute Notice on the respondent.

ORDERS

26. I find the respondent must immediately pay the applicant a total of \$1,553.87, broken down as follows:
 - a. \$1,400 for payment of the applicant's outstanding invoice,

- b. \$14.33 in pre-judgment interest under the COIA,
 - c. \$125 in tribunal fees, and
 - d. \$14.54 in dispute-related expenses.
27. I dismiss the applicant's claim for contractual interest. The applicant is entitled to post-judgment interest under the COIA, as applicable.
28. 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.
29. 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.

Shelley Lopez, Vice Chair