



Civil Resolution Tribunal

Date Issued: July 30, 2018

File: SC-2017-006019

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mirza v. Mahmoodi*, 2018 BCCRT 395

BETWEEN:

Ghulam Rasul Mirza

APPLICANT

AND:

Bijan Mahmoodi

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maureen Abraham

INTRODUCTION

1. The applicant Ghulam Rasul Mirza claims \$2,650 as additional pay for time he spent working on a renovation project with the respondent Bijan Mahmoodi. The respondent claims \$6,893 as dispute-related expenses for his time spent dealing

with this dispute and the market value of his own work on that project. There is no counterclaim before me.

2. Although one other person worked on the renovation project with the parties, the applicant has only brought this claim against the respondent. The applicant and respondent are both 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. Although the parties take issue with each other's credibility, given the amount at issue, the fact that there is sufficient evidence to make a decision without basing it on determinations of credibility alone, and that the tribunal's mandate to resolve disputes quickly, informally and economically, I have decided to hear this dispute through written submissions. I find an oral hearing is not required.
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 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. Is the applicant entitled to payment of \$2,650 from the respondent?
 - b. Is the applicant entitled to reimbursement of his tribunal fees by the respondent?
 - c. Is the respondent entitled to payment of \$6,863 from the applicant?

EVIDENCE AND ANALYSIS

8. The applicant is a finishing carpenter. The respondent is an electrician.
9. By the beginning of June 2017, the applicant had agreed to do a renovation project for a client to convert part of their house into a suite (the project). The project included creating a new bathroom and laundry room.
10. The applicant asked the respondent to manage the project and share in the work. The respondent wanted to bring in a third partner on their project, J, who is a plumber, and the applicant agreed. The parties provided very little evidence about their initial agreement with respect to payment. The respondent has indicated that the plan was to share the profits equally. The applicant does not dispute that this was their plan, but says he ended up spending more time working on the project and so he should receive additional money rather than an equal share.

11. The partners started work on the project on June 9, 2017, and completed it in approximately 5 weeks
12. The applicant has submitted a timesheet setting out the number of hours he says he worked each day, time worked, and a description of the tasks done. He has also submitted his receipts for project supplies purchased by him. Although the applicant says his expenses totalled \$1,053.12, his receipts only total \$930.30.
13. The respondent has submitted a summary of all the tasks done to complete the project, indicating which of the three partners did which task. He has also submitted his receipts for supplies purchased or supplied to the project in the total amount of \$4,421.50.
14. As the applicant has not made any claim for payment from J, J has not directly provided submissions or his evidence. Both parties indicate that J was reimbursed for \$1,161.47 in supplies purchased by him for the project.
15. The client paid a total of \$15,900 for the project inclusive of all labour and materials. The partners were each reimbursed their materials expenses out of the money received. Although the applicant has alleged that the respondent failed to account in his expenses a credit for unused flooring returned to the store, the receipts submitted by the respondent do show that the money from that return was used to off-set his claimed expenses.
16. The applicant was reimbursed \$1,053.30, which was set-off by \$400 in cash he had requested and received from the client directly during the course of the project.
17. After reimbursement, the money remaining to be divided by the three partners for their respective work on the project was \$9,263.91 (profit). The respondent, who had received the money from the client, divided the profit into three equal sums and each of the partners was paid \$3,087.97.

18. The applicant was unhappy with the division of profit. He says that he ended up spending much more time than the respondent on the project and so the respondent should pay the applicant an additional \$2,650 out of the respondent's share of the profit.
19. The applicant says that his time summary shows he spent over 300 hours. He says he worked between 7 and 12 hours each day, 6 days per week, and only took Sundays off. The applicant points out that is self employed and so could work on the project full-time, while the respondent and J have full-time jobs so could only have worked part-time.
20. The respondent says that he was fair and generous to the applicant in dividing the profit equally. He says the applicant's time summary is not accurate and that the applicant spent much less time and did less work on the project than he has claimed. The respondent also says that the applicant's work was not skilled labour and some work was improperly done or incomplete.

Is the applicant entitled to payment of \$2,650 from the respondent?

21. This is a civil claim, and the applicant has to prove his claim on the balance of probabilities.
22. Based upon the evidence of both parties, a great deal of work was necessary to complete the project. The applicant's evidence shows that much of his time was spent providing unskilled labour and his tasks included demolition, painting, framing, and drywall. The respondent and J appear to have worked mostly as skilled trades, including installation of all ductwork, electrical wiring, plumbing, flooring and kitchen cabinets.
23. The applicant provided a copy of a text message sent by J to the applicant after the project was completed. In it, J questions the amount of the work actually done by the applicant, and says he supports the respondent in this dispute.

24. The applicant has not provided any calculations or explanation as to how he calculated \$2,650 as a reasonable amount to claim. He says only that he is entitled to that amount of additional pay based on the time he spent working, which is set out in a timesheet summary he prepared.
25. The applicant's description of time spent and work done by him each day is sometimes inconsistent, either internally or with his receipts.
26. Some of the time recorded appears very high in relation to the tasks done. For example, the applicant has indicated that he spent 37 hours removing carpet and vinyl flooring, 39 hours painting and 26 hours tiling a bathroom. The respondent says that these tasks were done in less time and that they were not particularly difficult or complicated so as to take extra hours.
27. Some tasks set out in the applicant's summary appear duplicated, such as the 7 hours described to repair a laundry room ceiling on June 29th. This is inconsistent, as his entry for June 28th indicates the laundry ceiling repairs were both completed and painted that day.
28. In comparing the applicant's receipts with his time summary, there are some instances where the supplies being purchased do not appear related to the work described. For example, he says he spent 8 hours digging concrete on June 16th, but his receipts show that he purchased trim boards that day. On July 4th and 6th he says he spent the days installing doors, doing drywall repair and painting, while his receipts reflect that he purchased tiling supplies on both those days.
29. There is a significant inconsistency in the time the applicant says he spent cutting concrete floors. The photographs submitted by the applicant show that the cuts were a few feet long and appear less than a foot deep. The applicant's summary sets out that he spent 8 hours on June 15th cutting concrete, and 8 hours digging it out on June 16th.
30. However, the applicant's receipts show that concrete cutting equipment was rented on June 14th and returned less than 7 hours later. The applicant's time

summary for June 14th sets out that he spent 12 hours removing and repairing a wall and texturing a ceiling that day.

31. Based the various inconsistencies, I find that the applicant's time summary is not reliable and does not establish the actual amount of time spent by the applicant. He has not provided any other evidence to assess the value of his work.
32. As the applicant has not established the amount of time he spent on the project or how to value his work, he has not proven that he is entitled to more money for his contributions to the project.
33. I find that the applicant's claim must be dismissed.
34. As the applicant has not been successful, I find he is not entitled to reimbursement of his tribunal fees.

Is the respondent entitled to payment of \$6,863 from the applicant?

35. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses.
36. The respondent has not incurred any tribunal fees and did not bring a counterclaim against the applicant. He says he should be entitled to a total payment of \$6,863.00, based on \$2,313 for the market value of his work and \$4,550 for his time spent dealing with this dispute.
37. The respondent's compensation for project work is not an expense related to this proceeding. Compensation for time spent dealing with a dispute is generally not recoverable, and I see no reason to deviate from the tribunal's general practice. I dismiss the respondent's claim for \$6,863 in expenses.

ORDERS

38. I order that the applicant's dispute is dismissed.
39. I dismiss the respondent's claim for \$6,863 for expenses and time spent dealing with this dispute.

Maureen Abraham, Tribunal Member