



Civil Resolution Tribunal

Date Issued: August 17, 2018

File: SC-2017-006692

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yu et al v. Colourful Expressions Painting and Finishing*, 2018 BCCRT 459

B E T W E E N :

Peng-Hui Yu and Jackie Hsu

APPLICANTS

A N D :

Colourful Expressions Painting and Finishing

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Salima Samnani

INTRODUCTION

1. The applicants, Peng-Hui Yu and Jackie Hsu, hired Sheena Barber through her business, the respondent Colourful Expressions Painting and Finishing, to paint the exterior of their home. The applicants claim the respondent did not fulfil the contract between the parties. The respondent says it was fired before it could fulfil

the contract. The applicants seek a refund of the deposit paid to the respondent and costs for bringing this dispute. Both the applicants and the respondent 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.
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 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

6. The issues in this dispute are:
 - a. Did the respondent fulfill the terms of the contract?
 - b. If not, are the applicants entitled to a refund of the deposit paid to the respondent?

EVIDENCE AND ANALYSIS

7. I have only commented upon the evidence and submissions as necessary to give context to my reasons. The applicants bear the burden of proving their claims on a balance of probabilities.
8. On August 11, 2016, the applicants hired the respondent to paint the exterior of their home. The work was supposed to begin immediately. Prior to starting the work, the applicants paid a \$2,131.50 deposit, as required by the respondent.
9. The parties entered into a detailed written contract for the respondent to paint the exterior of the applicants' home. The contract stated all the separate pieces of the exterior home that needed to be painted, varnished and sanded and sprayed. A separate quote for preparation work was not provided. It is undisputed that that the preparation work included power washing and cleaning.
10. The applicants say that the respondent did not fulfil the terms of the contract despite many attempts to accommodate the respondent. The applicants say that the respondent did not prepare the exterior of the home for painting, only painted a small portion of the home, did not return calls in a timely manner, and missed appointments to complete the work. The applicants say the respondent continually stated it would complete the work but the applicants say the work not completed. In July 2017, the applicants requested a refund of their deposit. The respondent says it attempted to fulfill her contract but was fired before the work could be completed.

Did the respondent fulfill the terms of the contract?

11. The respondent does not dispute that it did not fulfil the contract. In fact, in a detailed invoice the respondent drafted in June 2018, the respondent did not invoice for painting. I find that the respondent did not fulfil the contract.

Are the applicants entitled to a refund of the deposit paid to the respondent?

12. The respondent argues that it was not able to fulfil the contract because of streaks of bad personal luck, uncooperative weather, and being fired in July 2017, before there were enough good summer days to paint. The respondent also argues that the respondents had a bad attitude making it difficult to fulfil the contract.
13. The parties communicated mainly through text message. The text messages show that the respondent took multiple days, weeks and even as long as a month to respond to text messages, if the respondent replied at all. These text messages most often consisted of a pattern where the applicants would contact the respondent asking when Ms. Barber will be coming to paint, the respondent gave a date, the applicants followed up the day before, and inevitably Ms. Barber would say she was sorry for not cancelling the appointment sooner, but that she was in fact cancelling the appointment. The excuses for cancelling the appointments were numerous and included a sick dog, various vacations, no cell service, a sick grandma, food poisoning, a spouse with a bad back, doctor's appointments, and bad weather. The weather was either too hot, too wet or too dry, and the respondent also blamed the air quality.
14. I find that the respondent's evidence is not credible. It is not plausible that between August 11, 2016 and July 27, 2017 the respondent could not find enough time and good weather days to fulfil the contract. I find that had the respondent was not stopped from fulfilling the terms of the contract because of situations beyond her control, but rather because the respondent simply did not make the effort to do so.

While there was no express deadline for completion of the contract, I find the near 12-month delay was unreasonable.

15. In the dozens of text messages and emails exchanged between the parties I find that the applicants were polite and patient, and showed genuine compassion and concern for the respondent's alleged streak of bad luck. I find the respondent was unprofessional in her delay in responding to emails, voicemails and texts. And when the applicants showed any impatience, almost a year after they paid their deposit, I find the respondent was aggressive and threatening. I do not find that the respondent was stopped from fulfilling the terms of contract because of the applicants' behaviour, as alleged by the respondent.
16. I do not find that the respondent was fired. In fact, I find the respondent abandoned the contract. In the summer of 2017 the applicants repeatedly asked the respondent to finish painting the home. Only towards the end of July did they ask for their deposit back. By the end of July 2017, the respondent had had ample opportunity to finish the work. Yet, the Ms. Barber continued to state that the weather was too hot and provided no timeline of when she would finish the work.
17. The respondent claims to have done some work of value and purchased items for the contract, which merits keeping the deposit. I find that any preparation work done in 2016 is inconsequential, as it would have had to be re-done in 2017 when the painting would be done. Further, the paint that was purchased by the respondent was not used due to the respondent's own actions. The applicants have asked Ms. Barber to collect her paint from their home but she has refused to do so.
18. The invoice prepared in June 2018 for preparation work completed proposes to charge the applicants \$3,329.48. The initial invoice from August 2016, for all the work, including the painting, was for the amount of \$5,328.75. It is not logical that the respondent now proposes to charge \$3,329.48 for partial preparation work, when the initial invoice was for just \$2000 more which included all the painting. I

find that the 2018 invoice is significantly inflated and is of no assistance in assessing whether the respondent deserves partial payment for work completed.

19. In accordance with my findings above, I find that the applicants proved their case on a balance of probabilities and are entitled to a full refund of the deposit they paid to the respondent.
20. To the extent the respondent's submissions amount to an argument that it is entitled to payment, the respondent has not filed a counterclaim. In any event, given my conclusion above I do not agree that any set-off is appropriate. .
21. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$10.50 in dispute-related expenses.
22. Under the *Court Order Interest Act*, the applicants are entitled to pre-judgment interest. I have calculated the interest from the date the deposit was paid to the decision date.

ORDERS

23. Within 15 days of the date of this order, I order the respondent to pay the applicants a total of \$2,302.97, broken down as follows:
 - a. \$2,131.50 as reimbursement for the deposit paid to the respondent.
 - b. \$35.97 in pre-judgment interest calculated from August 30, 2016, under the *Court Order Interest Act*, and
 - c. \$135.50, for \$125 in tribunal fees and \$10.50 for dispute-related expenses.
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.

Salima Samnani, Tribunal Member