



Civil Resolution Tribunal

Date Issued: September 20, 2018

File: SC-2018-000790

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wasilieff v. Rojas et al, 2018 BCCRT 544*

B E T W E E N :

Shacara Wasilieff

APPLICANT

A N D :

Shayla Mejia Rojas and Gus Mejia Rojas

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Shacara Wasilieff, says the respondents, Shayla and Gus Mejia Rojas, have improperly failed to return a \$5,000 deposit for a roof replacement that was never done. The applicant says the deposit was to be used to buy supplies,

but the roofing work never started despite plans to do so. The applicant wants the \$5,000 refunded.

2. The respondents are represented by Shayla Mejia Rojas (Ms. Rojas), and the applicant is 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.
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: 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 issue in this dispute is to what extent, if any, the respondents must refund the applicant the \$5,000 roof replacement deposit.

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 only referenced the evidence and submissions as necessary to give context to my decision.
9. At the time the roofing job began in late September 2017, the parties were friends and the respondents were already doing some other interior renovation work for the applicant. I find that only the roofing job is relevant to this dispute. To the extent the respondents argue that the roofing and interior renovation jobs are interconnected, and any monies owing under the other renovation work should be deducted from the \$5,000 roofing job deposit, I disagree. As discussed further below, I find the parties' texts establish the roofing job was a separate piece of work agreed upon between the parties.
10. The 2 central issues in this dispute are whether the respondents were responsible for the roofing project not proceeding as planned, and, whether the respondents bought supplies for the applicant's roofing job with the \$5,000 deposit.
11. Ms. Wasilieff bought her house in August 2017, and took possession of it on August 26, 2017. At the time, based on a roofing inspection, Ms. Wasilieff did not believe there were any substantial problems with the roof that required immediate replacement. However, she began to experience a minor leak in October 2017, which turned into "disastrous leaking" on December 29, 2017 when an ice storm hit.
12. In September 2017, Ms. Wasilieff mentioned to Ms. Rojas that her roof needed replacement. The parties agreed that Mr. and Ms. Rojas would do the roofing job, in addition to the interior renovation work. There was no written contract, but that fact does not mean the parties did not have an enforceable agreement. While the text messages between the parties support a conclusion that to some extent the interior renovation job was heavily discounted to reflect the parties' friendship,

ultimately the roofing job was a transaction based on the parties' agreement (as set out in their text messages).

13. It is undisputed that the \$5,000 deposit at issue was paid for that roofing job. To the extent the respondents suggest it, I cannot agree that any part of it was intended to pay for anything related to the interior renovation work.
14. In a September 21, 2017 text, Ms. Rojas estimated the roofing job would be "all together about \$7000", which included a \$500 "dumping fee for the old roof at the dump" and \$2900 - \$3400 in materials". Later in this same text, Ms. Rojas asked for a \$5,000 deposit "that will cover the supplies" and allow Mr. Rojas to pay his worker and the dump fee. Ms. Wasilieff e-transferred the requested \$5,000 that day.
15. On October 5, 2017, Ms. Rojas texted Ms. Wasilieff about other unrelated renovation work, but added "the roof is scheduled to be worked on the weekend after your party weather permitting, a little rain is OK but pouring is not".
16. In late October, the respondents began to indicate they could not start the roof. In particular, on October 28, 2017, Ms. Rojas texted Ms. Wasilieff to ask if Mr. Rojas was at her house, and he was not. Mr. Wasilieff texted that she thought Mr. Rojas was starting the roof that day, and Ms. Rojas said as far as she knew that was true. Ms. Rojas added that she saw a "big bill go through on the account" so she believed Mr. Rojas and his worker were still coming. I note I have no receipt before me with respect to this "big bill".
17. These October text messages are inconsistent with Ms. Rojas' submission that they could not start the roof in October as agreed because that is when the weather turned cold. If the reason for not doing the work was due to cold weather, I find Ms. Rojas would have said so in the above text messages instead of indicating the plan was still to start the roof. I find the fact that the roof was delayed therefore at least partially is the respondent's fault. This supports a conclusion that

the \$5,000 deposit is refundable, subject to appropriate deductions, discussed below.

18. The respondents also submit that on closer inspection the roofing job was broader than anticipated and that the applicant said she could not afford to do it. This evidence is simply not supported by the evidence. While the applicant said she could not afford to spend more on the interior renovation work, she consistently was asking about when the roofing project would proceed, as set out in the text messages in evidence.
19. On November 3, 2017, Ms. Rojas texted Ms. Wasilieff “the supplies came to \$397” and that Mr. Rojas would be there “tomorrow to start the roof”. Ms. Wasilieff says she never got a receipt showing what was bought for the \$397, and as discussed below I have no roofing-related receipts before me in evidence between October and November 3, 2017, other than an alleged “roof shingles” receipt that on its face was for a “recall” that amounted to about \$1,000.
20. On November 6, 2017, Ms. Rojas texted Ms. Wasilieff that she needed the car that day, so Mr. Rojas would not be attending. Ms. Wasilieff replied that “other than missing out on good weather”, she was not in a hurry. I find this establishes that Ms. Wasilieff was alive to the weather concern, and drew it to the respondents’ attention. On November 7, 2017, Ms. Rojas texted to postpone the roofing job again, as she was having a pre-planned medical procedure done and she needed Mr. Rojas to drive her. Ms. Rojas concluded that Mr. Rojas “will watch the weather and come when no rain”. In reply, Ms. Wasilieff asked what she should do with all the paper hanging off the roof.
21. Later in November 2017, in an undated text excerpt, Ms. Rojas said “I think the focus is the roof this weekend, how far he gets is dependent on the help that comes with him ... finding good reliable help is hard”. Yet, the evidence before me is that the roofing job did not significantly progress. This text also supports a conclusion there was no weather-related concern about roofing at that point.

22. On November 30, 2017, Ms. Wasilieff asked Ms. Rojas for the receipts for \$400 she had paid (which I infer relates to the \$397 figure referenced above). Ms. Wasilieff relies on this request as proof she asked for receipts and yet the respondents never provided any despite agreeing to do so.
23. According to an undated text excerpt, at some point in December 2017, Ms. Wasilieff told Ms. Rojas that she needed to deal with the roof's leaking issues now through her insurance, even though the respondents were unable to do it themselves in the winter. In the text, Ms. Rojas expressed disappointment but said that she would give Ms. Wasilieff the receipts for the roofing materials. Ms. Wasilieff replied that she could not afford to wait until the spring to let the respondents do the roof, which was the only timing they were willing to accept.
24. In early January 2018, Ms. Wasilieff and Ms. Rojas exchanged text messages. The gist was that Ms. Rojas understood that Ms. Wasilieff needed to get her roof replaced quickly, and that Mr. Rojas was not able to do it in only a couple of days, given the weather and the need for tarps that he did not have and which Ms. Wasilieff did not want to buy new herself. In one text, Ms. Wasilieff mentioned that the leaking roof was not the respondents' fault, but she also noted the roof was supposed to be done "months ago and for many reasons including the wrong colour shingles, it wasn't".
25. Ms. Rojas later replied that she felt it was not fair to Mr. Rojas that Ms. Wasilieff was choosing to go with another roofer after Mr. Rojas had already "spent time and money for things on the roof". Ms. Wasilieff then asked Ms. Rojas what was spent on materials, and acknowledged that "this was somewhat unfair to you guys". Ms. Wasilieff later texted and asked to pick up the materials Mr. Rojas had bought for \$400, which I infer refers to the \$397 figure. In reply, Ms. Rojas said "I think he spent about \$2500 in supplies but don't quote me on that".
26. Then, on January 18, 2018, Ms. Rojas texted Ms. Wasilieff "of course we will get the roof done as soon as the weather is good and [Mr. Rojas] isn't working on any other job at the time." Ms. Wasilieff responded that she was willing to have the

insurance-paid roofer work with Mr. Rojas, so that he would still get paid. Ms. Wasilieff wrote that she needed to get a new roof “now” to “stop the damage”. Ms. Wasilieff asked for a list of materials and associated receipts, for the roofing job. Again, the respondents did not provide the list or receipts.

27. Given the history set out above, I find that the \$5,000 deposit should be refunded, subject to a set-off for deductions for established receipts for materials and labour the respondents incurred for the roofing job. These are detailed below. I come to this conclusion because the respondents knew the roofing job needed to be done in good weather, and at least some of the delays between September 2017 and January 2018 were due to the respondents not being able to get to the applicant’s job. In any event, there is no documentary evidence to support a conclusion that the parties agreed the \$5,000 was a non-refundable deposit at the time it was paid.
28. Given the respondents themselves acknowledge that this was a business transaction and not just an offer of help by friends, it is reasonable to expect them to show what roofing materials they bought, by providing relevant store receipts. Yet, as set out below, very few relevant receipts have been provided. At the same time, the respondents should be able to show what labour charges they incurred for the roofing job, separate from any of the other renovation work not at issue in this dispute, yet they have only made vague assertions about spending a “chunk” of time and money. I note the respondents provided a map showing a 50 kilometer distance from their home to the applicant’s. Yet, the respondents do not provide any further detail of the number of trips related to the roofing job so as to arrive a mileage expense calculation.
29. So, what are the respondents’ receipts? The respondents submit that their submitted receipts show they “spent a good portion” of the \$5,000 getting the supplies and tools “required to complete the job”. I find this is a gross exaggeration, based on the evidence before me.

30. First, the respondents' receipts for other renovation work, not related to the roofing project, are not relevant to the \$5,000 deposit. The respondents did not file a counterclaim and I am not prepared to consider those other matters which are not before me in this dispute. As noted above, this dispute is about the \$5,000 the applicant paid as a deposit for the roofing job, and to what extent the respondents bought materials and incurred labour charges that should be deducted from any refund of the deposit.
31. Second, as for the roofing job, the respondents provided the following invoices or receipts they say are related to the roofing job, and after each I note my decision about whether that sum is properly owed by the applicant:
 - a. October 28, 2017 Home Depot receipt for \$1,027.05. This receipt does not describe an item purchased, but the line item is a "recall amount" of \$917.01 plus tax. While the respondents describe this receipt as being for roofing shingles, the Home depot receipt does not reflect this. There is some indication above that the wrong colour shingles were purchased. There were no shingles returned to the applicant. I find this amount is not properly paid out of the \$5,000 deposit.
 - b. November 4, 2017 Home Depot receipt for \$158.45, for a ladder. I find the applicant should not have to pay for a ladder, as that is not specific to the applicant's roofing job and the respondent has retained the ladder.
 - c. November 6, 2017 Home Depot receipt for \$176.18, which appear to be roofing materials. I find that the applicant should pay this expense.
32. Based on the above receipts, I find the applicant owed the respondents \$176.18 for the roofing-related materials. To this I add \$50 as a nominal amount for mileage, as the text messages indicate the applicant agreed to cover mileage. I also add \$200 as a nominal amount for the relatively small amount of labour the respondents put into the roofing job. This totals \$426.18. Therefore, I find the

respondents must refund the applicant the \$5,000 deposit, less \$426.18, for a net sum of \$4,573.82.

33. The applicant is entitled to \$37.61 in pre-judgment interest on the \$4,573.82, under the *Court Order Interest Act* (COIA), from January 31, 2018, a date I consider reasonable based on when the parties' agreement about the roofing job finally terminated.
34. The applicant was substantially successful in this dispute, and therefore in accordance with the Act and the tribunal's rules, she is entitled to reimbursement of \$175 for tribunal fees paid. There were no dispute-related expenses claimed.

ORDERS

35. Within 30 days of this decision, I order the respondents to pay the applicant a total of \$4,786.43, broken down as follows:
 - a. \$4,573.82 as a refund from the applicant's \$5,000 deposit for the roofing job, which takes into account the respondents' roofing-related expenses;
 - b. \$37.61 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
36. The applicant is entitled to post-judgment interest, as applicable.
37. 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.
38. 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