



Civil Resolution Tribunal

Date Issued: September 26, 2018

File: SC-2017-006831

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cochrane v. Irvine*, 2018 BCCRT 560

B E T W E E N :

Michael Cochrane

APPLICANT

A N D :

Kimberley Irvine

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Darrell Le Houillier

INTRODUCTION

1. The applicant, Michael Cochrane, says that the respondent, Kimberley Irvine, owes him money for construction work he did in her garage and storage locker. Both the applicant 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 issue in this dispute is whether the respondent owes the applicant money for the completion of construction work in her garage and storage locker.

EVIDENCE

7. On June 26, 2017, the applicant provided the respondent an estimate to do work in her garage and storage unit. In the garage, the applicant was to install a garage door, drywall, and lights, and was to also repair a gutter. The total of material and labour for the garage was to be \$5,160.00. In the storage unit, the applicant was to install a door, finish the front exterior, pour a concrete floor, and install wooden composite board. The total of material and labour for the storage unit was to be \$4,332.00. All prices were to include applicable taxes. The total quote for both projects was \$9,492.00. There was no breakdown of labour costs.
8. In July 2017, the applicant sent the respondent texts to advise of his progress. He described persistent wetness affecting the interior corners of the garage. On July 13, 2017, the applicant advised the respondent there would be extra costs associated with drywall work done in the wet corners.
9. Also on July 13, 2017, the respondent replied that the applicant could use a fan from inside her house and leave the garage open to assist with drying. She offered to let the respondent store his tools inside of her house so that the garage could be left open to dry out. The applicant confirmed he would do so.
10. On July 14, 2017, the applicant texted the respondent and advised the corners were still wet.
11. On July 27, 2017, the applicant provided the respondent an invoice with a total of \$10,984.77 of material and labour expenses for the two projects. The invoice acknowledged payment of \$8,100.00 but stated \$2,884.77 remained owing.
12. According to the applicant, the respondent authorized him to do the extra work that resulted in expenses beyond those quoted in June 2017.
13. The respondent fired the applicant from the job following disagreements about the extra expenses associated with the work in the garage and the storage unit. At the time, the applicant was partway through the work in the storage locker.

14. On March 28, 2018, the applicant provided to the respondent an account of the expenses beyond those contained in the quote. They involved finishing inside corners with Drydex and a heat gun (\$1,347.00), changing the power outlet for the garage door (\$225.00), making an access door to the attic (\$260.00), reframing the garage door opening (\$100.00), installing baseboard and vapour barrier (\$475.00), finishing trim around doors (\$260.00), and moving gravel and an oil tank from a storage area (\$110.00). These totalled \$2,777.00.¹
15. The applicant contacted the respondent several times, demanding payment. The respondent took issue with the content and tone of these communications.

ANALYSIS

16. The applicant says his labour costs exceeded the estimate because the work had to be done on a faster turn-around time so that the garage door could be installed afterward. The applicant says he also had to reframe the opening for the garage door and move the power supply in the ceiling to be ready for the garage door installation on time. The applicant says he could provide contact information for previous clients satisfied with his work.
17. The respondent says that, of the amount she paid, \$5,160.00 was for the estimated material and labour costs of the garage. An additional \$2,135.00 was for the material delivered for the storage unit and labour costs associated with concrete work in the storage unit. She also paid an additional \$715.00 in labour costs (13 hours at \$55 per hour) for reframing the garage door, drywall above the garage door opening, and re-wiring the power supply for the garage door. Additionally, there were two other charges: \$200.00 for extra garage door insulation and \$40.00 for delivery but not installation of gutters. By this arithmetic, the respondent owes the applicant \$150.00.

¹ It is unclear how the applicant calculated the figure he provided to the respondent earlier on. The reason for the discrepancy between the two figures is also unclear.

18. The respondent also argued that the work done by the applicant was substandard. She attached photographs showing what she said was deficient in the work done by the applicant. The respondent annotated the pictures to describe how the applicant's poor planning meant work in the garage and the storage unit needed to be redone or was done inefficiently.
19. Because the applicant is relying on the contract between himself and the respondent, it is up to him to prove the terms of that contract. To be enforceable, a contract must reveal to an objective third party that there was agreement on certain essential terms. This typically includes price, or at least a method by which price can be determined.
20. There was a contract containing certainty of terms as described in the estimate. There was no agreement on price of the extra work and there was no way to calculate price. While the respondent later learned about the applicant's hourly rate, at the time there was no discussion about that rate or the amount of time that would be required beyond what was provided in the June 26, 2017 estimate. There was no way for the respondent to know how much the work was to cost and there was therefore no agreement between the applicant and the respondent on that point. The essential terms of the contract were not decided.
21. However, the fact remains that the applicant did work for the respondent and told her there would be an extra charge for unforeseen difficulties. The respondent did not disagree. The respondent has had the benefit of that extra work. I consider this an appropriate case in which to use the principle of *quantum meruit*. This allows me to try to decide an amount fairly owing to the applicant based on the work he did, even though the amount was not set out in the contract between the applicant and the respondent.
22. The respondent was satisfied to have paid for the quoted work from the garage, plus changing the power outlet for the garage door and reframing the garage door. The respondent also took no issue with paying for gutter delivery and garage door

insulation. I find that these were reasonable amounts to pay. They total \$5,725.00, according to the applicant's breakdown of charges.

23. The respondent did not convincingly describe any problems with the baseboard and vapour barrier installation, which was another \$475.00. I find that this is also a reasonable amount to pay. This brings the total under a *quantum meruit* analysis to \$5,960.00.
24. I have reviewed the pictures and the respondent's complaints about the drywalling, the access door, and the quality of the work around the garage door. I consider these to all have significant problems. The drywall involves visible drywall screws and tape seams. The access door seems poorly made and poorly fitted to its opening. There is exposed vapour barrier and visible daylight when looking at the garage door surround from the inside. I do not consider any payment suitable under a *quantum meruit* principal because I find the applicant has not proven he did the work to a standard and within a timeframe that the respondent should pay beyond the amount of his estimate.
25. The respondent has said that it was appropriate to pay for storage unit material delivered to her and for concrete work done for the storage unit. I agree that this was appropriate. I do not find that the amount invoiced for the removal of gravel and an oil tank from the storage area to be reasonable from a *quantum meruit* perspective. This was work that would have been obviously required as part of the concrete work and was contracted for. I am not satisfied that this work was done in with such timing or quality that more should be provided under a *quantum meruit* analysis. This brings the storage unit total to \$2,135.00.
26. I find that the total amount the applicant is due from a *quantum meruit* perspective is \$8,095.00. This is less than the amount that the respondent paid him. I cannot order any recovery of the \$5.00 difference because no counterclaim was filed.
27. 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. The applicant was not successful and I do not see any reason to order the respondent to reimburse him for tribunal fees and there were no dispute-related expenses claimed.

ORDER

28. I dismiss the applicant's dispute.

Darrell Le Houillier, Tribunal Member