



Civil Resolution Tribunal

Date Issued: October 19, 2018

File: SC-2017-005684

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ZAD Holdings Ltd. v. Stephenson*, 2018 BCCRT 631

B E T W E E N :

ZAD Holdings Ltd.

APPLICANT

A N D :

Michael Stephenson

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jordanna Cytrynbaum

INTRODUCTION

1. This dispute is about an invoice for home renovation services (invoice).
2. The applicant ZAD Holdings Ltd. says that the respondent agreed to the fee it charged for services.

3. The respondent Michael Stephenson refused to pay the whole invoice because he says that the parties had agreed to a lower fee.
4. The applicant is represented by an employee or principal named Nader Kianzad. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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; or
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are as follows:
 - (a) Is the applicant entitled to payment of \$621.05 balance outstanding on the invoice?
 - (b) Is the applicant entitled to interest at a contractual rate of 2% per month?
 - (c) Is the applicant entitled to reimbursement for tribunal filing fees?
10. For the reasons that follow, I find that the applicant is entitled to the claimed \$621.05 invoice balance (balance), plus interest.

EVIDENCE AND ANALYSIS

11. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
12. The applicant is in the business of installing floors and providing home renovation services.
13. Mr. Stephenson initially retained the applicant to install hardwood floors in his home in about March 2017. Sometime later, Mr. Stephenson asked the applicant to supply and install kitchen countertops, which the applicant did. The fee for these countertop services is what is in issue in this dispute.
14. The parties' evidence largely consists of email communications between the parties. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

15. In this case, I took the unusual step of asking the parties to provide additional correspondence and documents that appeared to be missing from the parties' submissions. It seems that the applicant misunderstood the reason for the request because, as set out in greater detail below, I was not provided with the information requested. On the whole of the evidence I am nevertheless satisfied that the applicant has proved on a balance of probabilities that Mr. Stephenson agreed to pay its fee, and that the balance plus interest is due and owing.
16. Mr. Stephenson initially asked the applicant for a quote to install a particular colour and brand of quartz countertops. The applicant delivered an initial proposal with a fee quote for \$5,200 before tax. The parties agreed that the applicant would supply and install the countertops for this price after work on the kitchen cabinets was complete.
17. On June 13, 2017 Mr. Stephenson's partner wrote to the applicant and said that the kitchen cabinets were nearly done, and that they wanted to change their countertop selection to a different colour. It appears that most of the correspondence between the applicant and the respondent involved Mr. Stephenson's partner – who in a number of instances provided instructions on behalf of Mr. Stephenson.
18. On June 14, 2017, the applicant told the respondent that the cost of the work with their new countertop selection would be \$6,880. The applicant asked the respondent to confirm their decision to switch, and their agreement to the applicant's terms of service by return email. The applicant also asked the respondent to sign and return a form attached to the email. It is not clear from the record before me what form was attached to this email, and the form does not appear to be in evidence. There is also no evidence before me as to whether the respondent signed and returned the form.
19. The respondent replied by asking for a breakdown of the increased cost and advised that a competitor had offered them a 10% discount. Based on the record, I find that the discount would have been \$251.50 (or \$6,628.50 before tax).

20. In response, the applicant told the respondent its profit margin would be so low that it was difficult to justify, and asked the respondent to split the difference.
21. The respondent answered by saying they would prefer to pay the discounted price offered by the competitor. The applicant wrote back a short time later to say that it had already paid a deposit for the countertops to its supplier, and so the applicant would “eat the difference of \$251.50 off [the] total countertop bill.”
22. The applicant provided the respondent with a document called a “sales agreement” that appears to be dated June 19, 2017. The sales agreement set out the terms on which the applicant would provide its services, which included:
 - (a) the applicant’s fee for the work, would be \$6,628.50 before tax; and
 - (b) all late payments would be subject to 2% interest per month.
23. I find that the respondent accepted these terms of the sales agreement, and that they formed the basis of a contract between them to supply and install countertops (contract). I find that the applicant proceeded with the project on the basis of the contract.
24. The next thing that happened is the applicant took measurements to confirm the countertop dimensions and forwarded them to its supplier. A few days later, the applicant’s supplier noted that the island size appeared to have increased, which meant that there would be a seam through the length of the island. The other option the supplier offered (to avoid a seam) was to use different countertop material that came in a “jumbo” slab.
25. On June 21, 2017, the applicant forwarded the supplier’s information to the respondent and said going with the jumbo slabs would increase the price to \$7,810. The applicant asked the respondent to confirm what they wanted to do.

26. On June 26, 2017 the respondent sent the applicant an email that stated they were attaching a signed change confirmation form. The form does not appear to be in evidence before me. The respondent asked the applicant to confirm that the change meant there would be no seam on the island.
27. The next day the applicant answered and confirmed that there would be no seam, and provided an attachment with the updated price. This attachment does not appear to be in evidence either. However, on the basis of the correspondence between the parties summarized above, I find that the respondent agreed to the price increase to \$7,810 and that the contract was amended accordingly. I also find that the respondent paid a deposit as required by the contract, but there is no evidence before me as to when the deposit was paid, or the amount of the deposit.
28. From the record, it appears that the applicant installed the countertops on July 15, 2017. The next day, on July 16, the applicant asked the respondent to confirm that it could charge the balance of the account to the respondent's credit card. Mr. Stephenson responded that the invoice amount was wrong and suggested a lower amount was owed. The applicant explained why the amount was correct and asked the respondent to make arrangements for payment of the account.
29. It then appears that Mr. Stephenson avoided the applicant's requests for payment for more than 3 months.
30. In response to one of the applicant's requests for payment, Mr. Stephenson wrote to the applicant on October 10, 2017 to suggest that the price changed without his approval: "I did not approve or consent to the increased price." I cannot accept Mr. Stephenson's position or evidence on this point. As the applicant notes, Mr. Stephenson's partner had approved the price increase on his behalf, and Mr. Stephenson was copied on all of the email correspondence. I find that Mr. Stephenson in fact authorized the price increase, and that he is now attempting to find ways to avoid his responsibilities under the contract.

31. Eventually Mr. Stephenson paid the applicant's invoice, less the \$621.05 balance in dispute. However, there is no evidence as to when Mr. Stephenson made this payment.
32. Based on my conclusions above, I find that the balance in the amount of \$621.05 became due on July 16, 2017. I grant the applicant's claim for payment of the balance plus interest at the contractual rate of 2%.
33. Given the applicant was successful, I find that it is entitled to reimbursement of its tribunal fees totaling \$125.

DECISION AND ORDERS

34. I order that within 30 days of this decision, Mr. Stephenson must pay the applicant a total of \$935.47, broken down as follows:
 - (a) \$621.05 on account of the balance owing under the contract;
 - (b) \$189.42 in contractual interest; and
 - (c) \$125 as reimbursement for its tribunal fees.
35. The applicant is entitled to post-judgment interest as applicable.
36. 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.
37. 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.

Jordanna Cytrynbaum, Tribunal Member