



Civil Resolution Tribunal

Date Issued: November 6, 2018

File: SC-2017-003709

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gardiner v. Skye's The Limit Cabinetry & Millwork Inc.*, 2018 BCCRT 697

B E T W E E N :

James Gardiner

APPLICANT

A N D :

Skye's The Limit Cabinetry & Millwork Inc.

RESPONDENT

AND:

James Gardiner

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrew Pendray

INTRODUCTION

- 1) In March 2017 the respondent, Skye's The Limit Cabinetry & Millwork Inc. (Skye's), was hired to complete a home renovation project. Skye's, in turn, contracted with the applicant, James Gardiner, to perform carpentry type work as part of the home renovation project.
- 2) This dispute is about the nature of that contract. Mr. Gardiner says that he performed additional duties at the project in addition to his expected carpentry work, and that he also worked at the renovation project for a week longer than was agreed to without being paid for his additional time. He claims a total of \$4,436.25 in damages, including \$3,575 for labour costs, \$500 in renovation consulting fees, and \$150 for a trailer fee.
- 3) In its counterclaim Skye's claims a total of \$3,75700 for additional costs incurred to complete the renovation job it says it had contracted Mr. Gardiner to complete. Those costs include \$2,044 paid to other trades for labour, as well as \$1,712.00 for labour costs incurred in paying one of its principals, Mr. Mazzei.
- 4) Mr. Mazzei is representing Skye's in this dispute. Mr. Gardiner 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) Given that Mr. Gardiner was an independent contractor and not an employee of Skye's, this dispute is not one in which the *Employment Standards Act* applies.

- 7) 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 I can fairly resolve the dispute before me based on the documentary evidence. I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
- 8) 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.
- 9) Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - 1) order a party to do or stop doing something;
 - 2) order a party to pay money;
 - 3) order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 10) The issues in this dispute are:
 - 1) To what extent, if any, does Skye's owe Mr. Gardiner for work completed at the renovation project?
 - 2) To what extent, if any, does Mr. Gardiner owe Skye's for costs incurred in completing the renovation work?

EVIDENCE AND ANALYSIS

- 11) In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

12) I note, at the outset, that it is apparent from the invoices he provided in this dispute that Mr. Gardiner conducts renovation work through a business called “Jaguar Enterprises”. There is no dispute, however, that Mr. Gardiner operates that business as a sole proprietor. I am satisfied that Mr. Gardiner is the properly named applicant and respondent by counterclaim.

Background

13) Skye’s was hired to perform a renovation project at a residence in the spring of 2017. In general terms, the project involved replacing kitchen cabinetry, replacing flooring, trim, and bathroom fixtures. The project was to begin in early March 2017, and Skye’s project plan anticipated a project length of four to six weeks.

14) Skye’s then contracted with Mr. Gardiner to complete carpentry type work for the renovation project. Mr. Gardiner attended the residence where the renovation was to be completed on two occasions before starting work for Skye’s. The parties agreed that Skye’s would pay Mr. Gardiner \$8,500 (\$9,000 minus \$500 for expenses) over six weeks to do the work required (the “Agreement”).

15) The Agreement was not set out in writing. Although there is reference in the parties’ submissions to the “scope of work” that the Agreement involved, there is no evidence before me as to what that “scope of work” actually involved. The parties do agree, however, that during the six-week period contemplated by the Agreement, Mr. Gardiner did some work at the project, at the homeowner’s request, that was in addition to what was initially anticipated. Both parties referred to these activities as “extra work”.

16) Mr. Gardiner continued to work on the project after April 28, 2017 (the end of the six week period contemplated by the Agreement), from May 1 to 5, and on May 8, 2017. I note that Mr. Gardiner’s time sheets indicate that his final day of work was May 7, rather than May 8, however, given that May 7 was a Sunday, I consider it more likely than not that the date in question was in fact May 8.

- 17) On or around May 8, 2017 Mr. Gardiner provided Mr. Mazzei with an invoice for the “extra work” he had done for the homeowner, in the amount of \$2,808.75. By that time, Mr. Gardiner had worked six days beyond the six-week period contemplated by the agreement.
- 18) Mr. Gardiner indicated to Mr. Mazzei at that time that he required further payment in order to continue working on the renovation project. There is an invoice before me for \$2,808.75, dated May 13, 2017. The items on that invoice are 45.5 units of renovation labour billed at \$50 per unit, and a further single unit of renovation labour billed at \$400 per unit. The invoice is issued to Skye’s, and it contains a note that it is an “invoice for extra labour” conducted at the renovation project.
- 19) On May 9, 2017 Mr. Mazzei informed Mr. Gardiner that he would not be paid anything further to complete the work required by the Agreement, as he had already been paid in full to do so.
- 20) Mr. Gardiner left the jobsite that date and did not return.
- 21) Mr. Mazzei says that as a result of Mr. Gardiner’s departure, he incurred further costs of \$3,756 to complete the renovation work.

To what extent, if any, does Skye’s owe Mr. Gardiner for work completed at the renovation project?

- 22) Having reviewed the documents provided, I consider that Mr. Gardiner is of the view that he performed “extra work” at the project for which he has not been compensated as follows:
 - 23.5 hours of labour involving various general renovation type activities such as “sky light repairs”, painting walls, and adding trim to windows and doors, billed at \$1,175.00 (\$50 per hour);
 - Installation of a door, billed at \$400;

- 10 hours for consulting with the homeowner about various questions and issues that arose during the project such as kitchen layout; billed at \$500.00;
- Labour activities from May 1 through May 8, 2017, and
- The provision of a trailer, for which he seeks to charge a fee of \$150.00.

23) I have no difficulty finding that Mr. Gardiner is not entitled to be reimbursed for the claimed trailer fee. Mr. Gardiner did not provide any evidence to support a conclusion that he had an agreement with Skye's which would call for him to be reimbursed for the use of his personal trailer.

24) I turn to the remainder of the items, which are essentially charges for Mr. Gardiner's labour services. In my view, the success or failure of Mr. Gardiner's claims for additional payments from Skye's for his labour services turns on the nature of the agreements between the parties.

25) I find that Mr. Gardiner's claim about the first three items set out above must fail.

26) I reach this conclusion because, in my view, the Agreement involved a comprehensive payment for Mr. Gardiner's services during the six-week period from March 20 through April 28, 2017. While Mr. Gardiner may have been involved in work tasks during that period of time (such as the repair of a skylight) which he had not contemplated being involved in at the time the Agreement was finalized, that fact does not, in my view, mean that he is entitled to additional payment for work he completed during the period of that Agreement.

27) I note, in making this finding, that Mr. Gardiner says that the Agreement was \$8,500 to be paid to based on a five-day, forty-hour work week, at a specific hourly rate of pay. Mr. Gardiner appears to suggest that as a result, he ought to be paid for any hours he worked in addition to the expected forty-hour work week. In my view, the evidence does support Mr. Gardiner's position.

28) Skye's has provided copies of invoices it received from Mr. Gardiner. The first of those, dated March 26, 2017, includes a line item for 40 units of renovation labour,

at a unit price of \$42.50, for a total of \$1,700.00. That invoice is the only one Mr. Gardiner provided to Skye's during the six-week period of the Agreement which appears to set out Mr. Gardiner's hourly rate.

- 29) I note further that the unit price for renovation labour set out in that March 26, 2017 invoice is inconsistent with Mr. Gardiner's expected hourly rate if the Agreement was in fact based on hours worked per day. If the Agreement had called for Mr. Gardiner to be paid on an hourly basis, assuming a six-week duration, Mr. Gardiner's hourly rate would be approximately \$35.
- 30) The three subsequent invoices Mr. Gardiner provided to Skye's during the period of the Agreement were all dated April 29, 2017. Each of those invoices has a line item for a single unit of renovation labour, at unit prices of \$1,780.95, \$1,700.00, and \$3,400 respectively. There is no indication in any of those invoices as to the number of hours Mr. Gardiner may have worked, or what rate he may have been charging on an hourly basis.
- 31) I find that if there had been an agreement between the parties that called for Mr. Gardiner to be paid at an hourly rate, it is more likely than not that Mr. Gardiner would have billed Skye's at an hourly rate in his invoices. I note in this respect that even when Mr. Gardiner did identify a specific number of hours for which he was billing, such as in the March 26, 2017 invoice, the 40 hours he identified on the invoice are inconsistent with the number of hours he recorded having worked that week on his own time sheet (43 hours).
- 32) Again, I find that if the Agreement truly called for Mr. Gardiner to work a specific number of hours, he would have billed for the number of hours he actually worked during the six weeks of the Agreement.
- 33) On the other hand, given that the parties have not provided any specific detail as to what work Mr. Gardiner was expected to complete during the six-week period, I am satisfied that it is more likely than not that the Agreement was in fact a general one

in which Skye's simply agreed to pay Mr. Gardiner \$8,500 for six weeks of carpentry work.

- 34) The real issue, in my view, is whether Mr. Gardiner ought to be reimbursed for the additional time he worked on the renovation project beyond the six weeks contemplated by the Agreement.
- 35) Skye's takes the position that Mr. Gardiner has no entitlement to be paid anything beyond the \$8,500.00 agreed upon, particularly given that he did not in fact finish the work called for by the Agreement, the nature of which work, again, was undefined before me. While Skye's acknowledges that Mr. Gardiner had done extra work for the homeowner, it says that work was to be paid for by the homeowner directly.
- 36) Mr. Gardiner, on the other hand, says that he and Mr. Mazzei had agreed that Skye's would pay Mr. Gardiner for the "extra work" he had done, and that Mr. Mazzei would then obtain reimbursement for that work from the homeowner.
- 37) I prefer Mr. Gardiner's evidence on this point. I note that in Skye's Dispute Response Mr. Mazzei acknowledged that he had submitted Mr. Gardiner's invoice in the amount of \$2,808.75 for "extra work" to the homeowner. Mr. Mazzei further indicated that on May 9, 2017 he had informed Mr. Gardiner, via text message, that when Mr. Mazzei got paid by the homeowner, he would in turn pay Mr. Gardiner for that extra work.
- 38) I find it is clear that \$2,808.75 invoice for "extra work" is in fact a claim for payment for the days Mr. Gardiner had worked beyond the six weeks contemplated by the Agreement. I also consider Mr. Mazzei's indication to Mr. Gardiner that Mr. Gardiner would be paid when Mr. Mazzei was paid to be a clear indication that Skye's intended to pay Mr. Gardiner for the work completed beyond the six week period.
- 39) While Skye's position is now that the homeowner refused to pay any additional costs, I find that is an issue between Skye's and the homeowner, and not Mr.

Gardiner. Mr. Gardiner's Agreement was with Skye's. I find that Skye's knew that Mr. Gardiner had done extra work for which he needed to be reimbursed, and that Skye's had a responsibility to do so. I note further that Mr. Mazzei did not indicate any objection to the hourly rate Mr. Gardiner set out in the invoice for "extra work".

40) Having considered all of the above, I am satisfied that Mr. Gardiner is entitled to be reimbursed his invoiced amount of \$2,808.75 for his work completed at the renovation project from May 1 through May 8, 2017. I dismiss the balance of Mr. Gardiner's claims.

To what extent, if any, does Mr. Gardiner owe Skye's for costs incurred in completing the renovation work?

41) In order to succeed in its counterclaim dispute, Skye's must prove, on a balance of probabilities, that it had an agreement with Mr. Gardiner to complete specific work that he did not complete, thereby causing Skye's to experience a loss.

42) As I have indicated above, neither party has provided evidence as to the specific nature and scope of the work that the Agreement was to involve. Skye's has not provided any evidence indicating what work Mr. Gardiner agreed to perform, what work he failed to complete, and what specific costs it incurred in order to rectify that failure.

43) Rather, Skye's has indicated, in very general terms, that it had to pay for a number of hours of additional labour to complete some type of work at the renovation project.

44) With respect, I find that information to fall short of what is required.

45) As I have indicated above, I find it is more likely than not that the parties had a very general agreement that Mr. Gardiner would be paid \$8,500 for six weeks of carpentry type work. Mr. Gardiner worked the period of time in question, and in fact worked one additional week. While I can accept that Mr. Gardiner did not complete as much work as Skye's had hoped, absent some evidence showing a

specifically agreed upon scope of work and a failure on Mr. Gardiner's part to complete it, I am not satisfied Skye's has proven its case.

46) As a result, I find that Skye's counterclaim dispute must be dismissed.

Tribunal Fees

47) 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 Mr. Gardiner is entitled to reimbursement of \$200 in tribunal fees.

48) Similarly, given that Skye's was unsuccessful, I decline to order reimbursement of any tribunal fees it incurred.

ORDERS

49) Within 30 days of the date of this order, I order Skye's to pay Mr. Gardiner a total of \$3,052.62, broken down as follows:

- a) \$2,808.75 as reimbursement for work completed from May 1 to 8, 2017;
- b) \$43.87 in pre-judgment interest under the *Court Order Interest Act*, calculated from May 9, 2017, and
- c) \$200 in tribunal fees.

50) The applicant is entitled to post-judgment interest, as applicable.

51) I also order that Skye's counterclaim dispute be dismissed.

52) 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.

53) 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.

Andrew Pendray, Tribunal Member