



Civil Resolution Tribunal

Date Issued: November 14, 2018

File: SC-2018-001456

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SKR Consultants Ltd. v. McClary*, 2018 BCCRT 728

B E T W E E N :

SKR Consultants Ltd.

APPLICANT

A N D :

Charlie McClary

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, SKR Consultants Ltd., says that it was hired by the respondent, Charlie McClary, to perform an environmental assessment of a commercial property. The applicant says that the respondent has not paid \$1,139.25 for services it provided, while the respondent says that he did not enter into a contract

with the applicant. The applicant is represented by Ron Saimoto, an employee. The respondent is 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.

ISSUE

6. The issue in this dispute is whether the parties entered into an agreement for services and, if so, whether the applicant is entitled to payment of \$1,139.25 from the respondent.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have reviewed all of the evidence and submissions, I have commented on only what is necessary to give context to my decision.
8. The applicant believes that it was engaged to perform an assessment of the commercial property. There is no written contract in this case. Further, there is no indication that the applicant has filed a dispute against another real estate agent, the potential purchaser, or the real estate corporation involved in the failed transaction. I will make no findings in my decision about any claim the applicant may have against any other individual or corporation. In order for the applicant to be successful, the evidence must establish, on a balance of probabilities, that the respondent entered into a verbal contract with the applicant.
9. The applicant submits that the respondent, who is a real estate agent, asked for an assessment of a property on a rush basis, and provided documentation related to the property. The applicant says it obtained further information about the property from the City of Terrace in preparation for a field investigation, and incurred expenses in doing so. The applicant submits that the respondent refused to pay for these services as the buyer of the property backed out of the deal on the day of the planned field investigation. The applicant provided an invoice to the respondent, which has not been paid.
10. The applicant provided evidence in the form of images of the property, correspondence between itself and the City of Terrace, documents about soil

standards, and emails about the scheduling of an assessment and the outstanding payment for its invoice.

11. The respondent says that he did not enter into an agreement with the applicant and should not be held responsible for payment of its invoice. He says that he asked for quotes from two companies, one of which was the applicant, on behalf of the potential purchaser of the commercial property in question. The respondent says that he forwarded the potential purchaser's contact information to the applicant, along with the contact information for another real estate agent involved in the transaction, and advised the applicant that the other agent was the "lead contact" in the ordering of the report and the scheduling of an inspection. The respondent confirms that he provided some documentation about the property to the applicant, but says that this was at the applicant's request.
12. The respondent's position is that he referred the applicant to the potential purchasers, and did not provide instructions to the applicant to proceed with a preliminary site investigation. The respondent says that, as there was no work order authorized and no services provided, he should not pay for the applicant's invoice, or any fees, expenses or interest. The respondent did not provide additional evidence in support of his submissions.
13. A previous non-binding tribunal decision, *681288 BC LTD v. Hankin*, 2017 BCCRT 140, provides a helpful summary of the basic elements of a contract. At paragraph 19, this decision states that, in order for a contract to exist, "there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty." In that same paragraph, the decision does on to say that "[o]ne party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter."
14. I do not find that the evidence provided by the applicant establishes such a "meeting of the minds". While the respondent may have been involved with

requesting a quote from the applicant, I am not satisfied that the evidence establishes that he intended to form a contract with it, to the extent claimed by the applicant or at all.

15. I acknowledge the applicant's position that an exchange of email messages sent between March 30 and April 3, 2017, a copy of which it provided in evidence, supports the claim that the respondent verbally requested that the applicant complete an industrial site assessment. The exchange does appear to concern the scheduling of a site visit, and a request from the other real estate agent that the applicant contact him in this regard. Although the senders and recipients include the applicant, the respondent, the other real estate agent, and the prospective buyer, this is not of assistance in determining with whom a contract for this service may have been made. I am not persuaded that this exchange, or the fact that the respondent provided documents to the applicant, indicates that the respondent intended to be personally liable for any work, as opposed to acting as an agent for the potential purchaser.
16. The applicant also provided an image of an exchange of text messages with the respondent, which it says establishes the respondent's intention to pay the invoice. However, I am unable to conclude that this confirms the existence of a contract between the applicant and the respondent. The respondent did not comment on such an agreement in this exchange but, significantly, both this text message, and a December 2017 email exchange, do refer to maintaining the relationship with the applicant.
17. I am not satisfied that the available evidence establishes the key elements of offer and acceptance between the applicant and the respondent that would be necessary to create a contract. I find that the applicant has not met the burden of proving that it had a contract with the respondent. Accordingly, the respondent is not responsible for the payment of the applicant's invoice.

18. As the applicant was unsuccessful, in accordance with the Act and the tribunal's rules, I find it is not entitled to reimbursement for tribunal fees or the claimed \$495 in alleged dispute-related expenses.
19. 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. While I see no reason in this case not to follow that general rule, there is no indication that the respondent incurred fees or expenses.
20. The applicant also requested compensation for travel expenses and time spent on the dispute process. Even if I had found in favour of the applicant, I would decline to order this remedy as the tribunal generally does not order compensation for a party's time spent on a dispute.

ORDER

21. The applicant's claims and this dispute are dismissed.

Lynn Scrivener, Tribunal Member