



Civil Resolution Tribunal

Date Issued: November 15, 2018

File: SC-2018-002271

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jason Foran (Doing Business As Foranapplications) v. Anthony*,
2018 BCCRT 730

B E T W E E N :

Jason Foran (Doing Business As Foranapplications)

APPLICANT

A N D :

Michael Anthony

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about whether the applicant, Jason Foran (Doing Business As Foranapplications), is owed \$800 for a commercial painting project he allegedly did for the respondent, Michael Anthony.¹ The parties 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario as to whether or not a contract exists between the parties. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the

¹ The applicant misspelled the respondent's first name as "Micheal" in his application for dispute resolution. The respondent advised that the correct spelling of his name is "Michael", and I note that the applicant has used this spelling elsewhere. In the circumstances, I have amended the style of cause to reflect the correct spelling of "Michael".

tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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 applicant had a contract with the respondent for commercial painting services and, if so, whether the respondent should pay the applicant \$800.

EVIDENCE AND ANALYSIS

7. It is apparent from the submissions that the relationship between the parties, whatever its nature was in the past, now has broken down. The submissions refer to police interventions and the publication of commentary on social media, which I find are not relevant to this dispute. Although I have read all of the submissions and evidence, I have commented on only what is necessary to give context to my decision.

8. The applicant submits that the respondent only paid him \$400 of \$1,200 owing to him under a commercial painting contract. He seeks payment of the balance of \$800.
9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. He has provided evidence in support of his submission that he had a contract with the respondent, and that he is owed money under that contract.
10. The applicant has provided photographs of buildings that he says establish that he completed the painting project. He has also provided a document from a financial institution that shows 5 e-mail money transfers totaling \$3,800 being made to an unidentified recipient from a sender called "Color One Corporation" between July and November of 2017.
11. The applicant's evidence also includes a series of photographs that show a portion of a statement made to a police agency by a Vernon Stromkins. In this statement, Mr. Stromkins appears to confirm that the applicant was hired to perform painting, and a dispute over outstanding payment resulted in some sort of altercation. The photographs also show a portion of a statement made by the respondent to the police, which discusses a possible contractual relationship between the applicant and an unidentified company owned by Mr. Stromkins.
12. The respondent says he is an employee of Miccara Holdings Inc., a consulting company that was overseeing a project. According to the respondent, his role is to approve the quality of the work and he has no control over, or involvement with, the payment of invoices. The respondent states that this matter is unrelated to him and suggests that the applicant has filed his claim against the wrong party.
13. The respondent's submission includes an August 6, 2018 letter from Mr. Stromkins, in which he identifies himself as the president of Color One Corporation. Mr. Stromkins wrote that he met with the applicant and approved the scope of work and the contract amount. According to Mr. Stromkins, the respondent was not the contractor on the jobsite, and that the applicant was aware of this fact.

14. I note that the applicant commenced his claim against both the respondent and Mr. Stromkins. Later, he decided to withdraw his claim against Mr. Stromkins. My jurisdiction in this dispute is confined to the participants, being the applicant and the respondent, and I am not able to consider any other parties. I make no order about Mr. Stromkins' liability in this dispute. The issue before me is whether the evidence establishes that the respondent had an obligation to pay the applicant under a contract between them. After careful consideration, I have determined that it does not.
15. The evidence does not include any written contracts. Although a verbal agreement may constitute a contract, they are more difficult to prove. For a contract to exist, there must be an offer by one party that is accepted by the other, as well as agreement on the essential terms of the contract. Although there is a suggestion that the applicant and respondent were on the same jobsite, and the applicant likely did some painting work there, I do not find that they had a contractual relationship that would make the respondent responsible to pay the applicant for that work.
16. The photographs provided by the applicant show the exterior of a building that the applicant says he painted. The document from the financial institution shows that an unidentified party received monetary transfers from Color One Corporation. I do not find that this information is of assistance in determining whether a contract was made with the respondent. The images of the police statements do not reflect the complete statements but, in any event, do not support the existence of a contract with the respondent.
17. The respondent's evidence was that the applicant did perform some painting work, but not under a contract with him. The letter from Mr. Stromkins does not support a contractual relationship between the applicant and the respondent. Although given an opportunity to do so, the applicant did not provide contrary evidence in response to Mr. Stromkins' statement.

18. I find that the evidence provided by the applicant does not prove that he had a contract for painting services with the respondent. Accordingly, I find that the respondent is not responsible for any payments under that contract.

19. As neither party claims reimbursement of fees or expenses, I do not need to address that issue.

ORDER

20. I dismiss the applicant's claims, and this dispute.

Lynn Scrivener, Tribunal Member