



Civil Resolution Tribunal

Date Issued: December 3, 2018

File: SC-2018-002871

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roocan Manufacturing Inc. v. Sanders*, 2018 BCCRT 783

B E T W E E N :

Roocan Manufacturing Inc.

APPLICANT

A N D :

Kristi Sanders

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute over payment for custom-made radiator covers. The applicant, Roocan Manufacturing Inc., says that the respondent, Kristi Sanders, owes it \$1,200 for work she agreed to and it performed. The respondent disagrees with the applicant's position.

2. The applicant is represented by its principal, Paul Matthews. The respondent is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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, she said" scenario. 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 properly 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 tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
5. 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.

6. 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

7. The issue in this dispute is whether the respondent owes the applicant \$1,200 for work it performed.

EVIDENCE AND ANALYSIS

8. In a dispute such as this, the applicant bears the burden of proof on a balance of probabilities. I have read the parties' submissions in their entirety, but will comment only on what is necessary to give context to my decision.
9. There is no written contract in this case. While a verbal agreement may constitute a contract, it may be more difficult to prove. The basic elements of offer, acceptance and consideration must be present for a contract to exist.
10. The applicant says that, following an in-home visit, it provided a quote of \$1,800 to the respondent for the fabrication of radiator covers, to which she agreed. After the job was completed, the applicant says that the respondent requested certain upgrades and modifications, which it agreed to do on an "at cost" basis. The additional costs amounted to \$700.
11. The applicant says its total account was \$2,500, of which the respondent paid \$1,300. The applicant seeks an order for payment of the outstanding balance of \$1,200, plus fees and interest. The applicant says that it incurred additional costs for which it did not charge the respondent. While I acknowledge this submission, I

will consider only the amount charged to the respondent, and claimed by the applicant in this dispute.

12. The respondent disagrees with the applicant's characterization of their dealings. According to the respondent, the covers the applicant produced were not what she wanted. The respondent says that she agreed to pay \$1,300, with \$500 held back until the covers were modified to her liking. The respondent denies that she agreed to pay the applicant's costs for making the modifications, which she describes as fixing an error. The respondent is of the view that she should not have to pay additional amounts to the applicant.
13. In addition to her submissions about the contract, the respondent expressed concern about the quality of the covers she received, noting that her heating bills were higher than they were prior to the installation of the radiator covers. She also states that it is common practice in trades to get design approval before fabrication of a custom item, and provided a letter from an individual involved in custom millwork to that effect. However, the respondent did not bring a counterclaim in this dispute. For that reason, I will confine my analysis to the contract between the parties.
14. The parties do not dispute that there was a verbal agreement between them about the provision of the radiator covers. In addition to the existence of an agreement, there must be what is known in law as a 'meeting of the minds' about the contract's subject matter.
15. In this case, I find that the parties did have such a meeting of the minds about the initial contract for \$1,800. This is supported by the submissions of the applicant and the respondent, including an exchange of text messages between the parties as provided by the respondent. However, the evidence is less clear about the additional payment for modifications to the radiator covers.
16. From the applicant's perspective, the modifications were performed in addition to the work contemplated by the initial agreement and involved another payment. The

respondent was under the impression that the further work amounted to the correction of an error in the production process. The exchange of text messages mention a holdback from the initial amount pending modifications to the covers. It is apparent that the respondent was of the view that the additional work was included in the initial contract amount. I also note that there is no evidence of a specific agreement about the price of any additional work.

17. I am not satisfied that the parties had a meeting of the minds as to whether there would be additional costs payable for the modifications to the covers. Accordingly, I am unable to find that they formed a contract in this regard.
18. The respondent agreed to pay \$1,800 for the production of the radiator covers, and she is responsible for that amount. Given that she has paid \$1,300 already, the respondent must pay the applicant the outstanding amount of \$500. The applicant is also entitled to pre-judgment interest pursuant to the *Court Order Interest Act* (COIA) calculated from December 1, 2017.
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. In this case, as there was divided success, I find the applicant is entitled to reimbursement of \$87.50, being half of the \$175 paid in tribunal fees.

ORDERS

20. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$593.87, broken down as follows:
 - a. \$500 pursuant to the contract between the parties
 - b. \$6.37 in pre-judgment interest under the COIA, and
 - c. \$87.50 in tribunal fees.
21. The applicant is entitled to post-judgment interest, as applicable.

22. 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.

23. 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.

Lynn Scrivener, Tribunal Member