



Civil Resolution Tribunal

Date Issued: December 3, 2018

File: SC-2017-007104

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Braun v. Peterson Custom Woodwork Ltd.*, 2018 BCCRT 790

B E T W E E N :

Mark Braun

APPLICANT

A N D :

Peterson Custom Woodwork Ltd.

RESPONDENT

A N D :

Mark Braun

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Peterson Custom Woodwork Ltd., hired the applicant, Mark Braun, to install and repair a door and two windows in a restaurant. The applicant alleges that he was never paid for his work and claims \$865 for his services. The respondent alleges that the applicant not only failed to complete the work, but caused damage to the restaurant that the respondent had to pay to correct. The respondent refuses to pay the applicant and counterclaims for \$1,000 in repair costs and lost revenue.
2. The applicant is self-represented. The respondent is represented by an employee.

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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not

necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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.

ISSUES

7. The issues in this dispute are:
 - a. Was there a contract between the parties?
 - b. If not, what is a reasonable sum for the applicant's work?
 - c. Is the respondent entitled to compensation for fixing or completing the applicant's work?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. For the counterclaim, the respondent bears the burden of proof on a balance of probabilities. I have only referred to the evidence and submissions to the extent necessary to explain and give context to my decision.

9. The respondent needed someone to install a door and 2 arched windows at a restaurant in Victoria and the applicant came recommended. On August 15, 2017, the parties met at the restaurant to discuss the job.
10. At that meeting, the parties agreed on a rate of \$50 per hour, per person, to be paid on completion.
11. The applicant says that he arrived on site with his son on August 22, 2017, to complete the installation. The applicant says that upon arrival, he noticed that the site was not ready for installation and that the windows and doors needed to be modified prior to installation. The applicant says that he told the respondent that he would complete the installation for \$800.
12. The applicant returned the following day, again with his son, and says that he completed the installation. The respondent says the job was not completed because the applicant did not do the stucco and drywall work. The respondent also says that the applicant damaged the windows and door.
13. On September 6, 2017, the respondent emailed the applicant confirming the \$800 quote but told the respondent that they would not pay the applicant until the applicant fixed the windows and door. The respondent gave the applicant the option to fix the job and get paid. Otherwise, the respondent would hire someone else and deduct the costs to fix the windows and door from the applicant's invoice.
14. The applicant does not explain why he claims \$865 instead of the \$800 quoted. There is no written invoice in evidence.
15. The applicant offered to attend the site on September 9 with the respondent, but the respondent was not available. The respondent offered to meet the following Monday, but the applicant was not available. At this point, it appears that both parties became inflexible and communication broke down.
16. Both parties provided photographs to support their positions.

17. The respondent's photographs show 2 things. First, the respondent provides several photographs showing gaps between the windows and the door and the stucco frame of the building. The respondent says that these photographs show that the applicant did not finish the job. The applicant says that he agreed to install the windows and door but never agreed to do drywall or stucco. The applicant says that the way he left the windows and door ready for the next contractor. He says that he would not have agreed to do any drywall or stucco because he does only does window installation, not drywall and stucco work.
18. The respondent says that it never would have hired the applicant if it had known that the applicant was not qualified to complete the job. I take the respondent to mean that it believed that the quote was for the applicant to complete the drywall and stucco work as well.
19. The respondent's photographs also show what I consider to be minor damage to the windows and door. For the most part, the photographs show small areas where the wood split and small areas where the paint chipped.
20. In order for there to be an enforceable contract between the parties, the applicant must prove that there was an agreement on the essential terms of the contract. I find that the parties never came to an agreement on the scope of work that the applicant was to perform, which is an essential part of a contract for services.
21. Even though there was no contract between the parties, it is not disputed that the applicant and his son attended the job site over 2 days and performed some work. By refusing to pay any amount of the applicant's invoice and counterclaiming for more than the applicant's invoice, I infer that the respondent does not believe that the applicant provided any work of value.
22. The respondent did not provide any objective evidence regarding the amount it spent to complete the work or to fix any of the damage it says the applicant caused, such as an invoice. The respondent also provided no explanation as to why it claimed \$1,000 even though it only claims to have spent \$700 on completing and

fixing the applicant's work, other than a vague point that the applicant delayed the project. In addition, the restaurant owner's written statement makes no mention of deducting from the respondent's earnings. I therefore place little weight on the respondent's counterclaim in determining a reasonable sum to pay the applicant.

23. There are 3 pieces of evidence I rely on to determine a reasonable sum for the applicant to be paid for his work on a *quantum meruit* basis. "Quantum meruit" means payment for work based on its value.
24. First, while the parties did not agree on the scope of the applicant's work, they did agree on a price. I infer that the applicant thought that \$800 was an acceptable sum just to install the windows and door and that the respondent thought that \$800 was an acceptable sum to also stucco and drywall the windows and door.
25. Second, I asked each party how many hours the applicant and his son spent working on the installation of the windows and door on August 22 and 23, 2017. The applicant said they spent 12 hours each. The respondent said they spent 5.5 hours each.
26. Finally, I agree with the respondent that there was some damage to the windows and door as a result of the applicant's work. However, as mentioned above, I consider this damage to be minor aesthetic damage that would not be costly or complicated to fix. That said, I have taken into account the damage that the applicant caused to the windows and door and that the respondent spent some money to fix the damage.
27. Taking the above 3 pieces of evidence into account, I award the applicant \$600 to the applicant as payment for the installation of the windows and door.
28. Because I considered the respondent's counterclaim in assessing the total amount owed, I dismiss the respondent's counterclaim.
29. 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. The applicant has been partially successful in this dispute. I find the applicant is entitled to reimbursement of half of the \$125 in tribunal fees. The applicant did not claim any dispute related expenses. I dismiss the respondent's claim for tribunal fees and dispute-related expenses.

ORDERS

30. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$676.25, broken down as follows:
 - a. \$600 as payment for the applicant's services.
 - b. \$8.75 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$67.50 in tribunal fees.
31. The respondent's counterclaim is dismissed.
32. The applicant is entitled to post-judgment interest, as applicable.
33. 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.
34. 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.

Eric Regehr, Tribunal Member