



Civil Resolution Tribunal

Date Issued: December 4, 2018

File: SC-2018-000107

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Celestial Innovations v. Cunningham*, 2018 BCCRT 799

B E T W E E N :

Celestial Innovations

APPLICANT

A N D :

JASON CUNNINGHAM

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Celestial Innovations, claims payment of \$1,812.30 for labour, specifically caulking around installed windows at a “school” construction site. The respondent, JASON CUNNINGHAM, denies he owes this money, because of damage and extra expenses the applicant allegedly caused at the school job and at a separate “Richmond” job.
2. The applicant is represented by its principal, Kevin Scherk. 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. In the circumstances 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal’s process and found 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 order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issue in this dispute is whether the respondent owes the applicant \$1,812.30 for window caulking labour.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed it below as necessary to explain my decision.
9. Based on the evidence before me, the parties did not have a written contract. Apart from its brief submission, the applicant's evidence is limited to a series of email exchanges between Mr. Scherk and the respondent, which included the applicant's August 1, 2017 invoice for \$1,812.30 for the school job. This related to caulking labour between July 19 and 31, 2017 at the school job – 62 hours at \$25 per hour and 11 hours at \$16 per hour, plus GST.
10. The respondent submits he should not have to pay the applicant's claim, because the applicant broke windows on the separate "Richmond" job and promised to reimburse half that expense, plus the applicant's employees were negligent and inexperienced. There is no other evidence before me about a promise to repay the Richmond job, and I find that is a matter unrelated to this dispute. In particular, the respondent has expressly decided not to pursue a counterclaim, as he said his claims exceed the \$5,000 small claims limit of the Civil Resolution Tribunal (tribunal). Apart from his submissions and invoice for glass repair related to the separate Richmond job, the respondent did not provide any evidence.

11. I turn to the relevant chronology, which is based on the email thread before me. Based on the parties' email exchange, the respondent initially took the position that the "\$16 an hour guy" had become the respondent's employee, and therefore the applicant could not bill for his time. However, the parties' later emails indicate the respondent abandoned this position, as discussed below.
12. On August 1, 2017, the parties sent several emails back and forth, initially about whether the applicant's worker was the respondent's employee. Ultimately, the respondent said he did not want him and the applicant's "guys" were fired. Later that day, the respondent wrote "if everything with your company checks out I'll pay you". The respondent's focus was that no one gets paid the same day or immediately, and, whether the applicant was a legitimate business given it was unincorporated. It is apparent the parties' dispute at that point was about the fact that the applicant wanted the cheque made out to "Flavian Scherk", as the applicant did not then have a business bank account. To do that, the respondent wanted Mr. Scherk's SIN number and to deduct taxes. Nothing turns on that issue in this dispute, as the applicant in this proceeding is Celestial Innovations, not Mr. Scherk personally. There was no mention of breakage at the Richmond job or negligent work at the school job. The respondent in a separate email that day offered to pay the "full amount" to the applicant, or, to Mr. Scherk but deducting 1/3 for taxes. Again, there was no mention of any concerns about the quality of work or about the Richmond job
13. After further increasingly hostile emails between the parties, the respondent wrote on August 5, 2017 that he had given the applicant 3 options, and "now I'm going to bill you". The respondent's email referred for the first time to destroyed tools, "work that needs to be cutout and replaced" and the Richmond job where the applicant allegedly agreed to pay for half the replacement glazing. The respondent wrote "when I get a chance, I'll invoice you". Based on the evidence before me, to date no such invoice has been produced, although the respondent summarized expenses in his submission. In any event, as noted above, the respondent has expressly

advised he does not intend to pursue any counterclaim with the tribunal, given the tribunal's monetary limit.

14. Therefore, the issue before me is whether the applicant has proved it did the hourly caulking labour as agreed. Based on the email thread, I find it has done so. I find there is no dispute that the time was spent. I also find based on the email evidence that the respondent did not raise any concerns about the applicant's quality of work until August 5, 2017, after repeatedly saying the applicant would be paid in full, if the issue of the cheque payee was sorted out.
15. On balance, I find that in this dispute the applicant has proved it is entitled to payment of the \$1,812.30 claimed. Nothing in this decision precludes the respondent from pursuing a damages claim in court with respect to either the school job at issue in this dispute or the Richmond job.
16. The applicant is entitled to pre-judgment interest on the \$1,812.30 under the *Court Order Interest Act* (COIA), from August 2, 2017.
17. As the applicant was successful in its claim, in accordance with the Act and the tribunal's rules I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

18. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,964.67, broken down as follows:
 - a. \$1,812.30 in debt,
 - b. \$27.37 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
19. The applicant is entitled to post-judgment interest under the COIA, as applicable.

20. 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.
21. 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.

Shelley Lopez, Vice Chair