



Civil Resolution Tribunal

Date Issued: December 7, 2018

File: SC-2017-007273

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dyer v. Novarae Interiors Ltd.*, 2018 BCCRT 815

B E T W E E N :

Richard Dyer

APPLICANT

A N D :

Novarae Interiors Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. In this dispute, the applicant, Richard Dyer, seeks reimbursement of a deposit he paid to the respondent, Novarae Interiors Ltd., for renovations in his house. The applicant paid a \$5,000 deposit to the respondent and later decided not to proceed with the project. When the applicant demanded a return of the deposit, the

respondent provided an invoice of \$2,483.25 and only refunded the remaining \$2,516.75. The applicant claims the remaining amount.

2. The applicant is self-represented. The respondent is represented by one of its employees.

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. 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.
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. Did the parties enter into a contract?
 - b. If so, does the respondent owe the applicant the remaining refund?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The respondent provided some evidence but its only submission is that it has gone out of business. I note that the *Bankruptcy and Insolvency Act* states that person cannot maintain a claim against a bankrupt corporation. While the respondent states that it cannot pay its bills, there is no evidence that it is bankrupt. Because I have found against the respondent on the merits of this case, I find that I need not determine whether the respondent is, in fact, bankrupt.
10. The respondent first provided the applicant with a budget in October 16, 2017, for renovations to the applicant's home.
11. On November 3, 2017, the applicant emailed the respondent and advised that he had reviewed the respondent's contract and quote. The applicant required some changes. He asked if he needed to sign a contract and how to pay a deposit.
12. In an email November 7, 2017, the respondent agreed to remove the cost of design from the quote. The applicant states that he never received the revised quote.
13. Nevertheless, in separate email money transfers on November 15 and 16, 2017, the applicant paid a \$5,000 deposit.

14. The respondent provided several emails that show that the respondent was moving forward with the project. The respondent answered the applicant's questions, arranged for drawings from other contractors, ordered materials, and organized a trades meeting with an electrician and a plumber.
15. Ultimately, the timeline for completion was not acceptable to the applicant, so he cancelled the project before any physical work was completed in the home.
16. In response to the applicant's cancellation, the respondent rendered an invoice for \$2,483.25 and returned the balance of the deposit, \$2,516.75, to the applicant.
17. The applicant submits that the lack of a written contract and the fact that he never received the correct quote means that they did not have a contract at all.
18. The applicant's submissions and the emails between the parties make it clear that the respondent provided written quotes and a written contract. For example, the respondent states in an email on November 3, 2017, that he had a chance to review the contract and asked for changes to the scope of work. I asked the applicant to provide a copy of all of the written quotes he received from the respondent and a copy of the email in which he cancelled the contract. The applicant failed to provide the requested documents.
19. Despite the lack of objective evidence about the terms of the contract, I find that the parties had a contract. The applicant would not send a \$5,000 deposit unless he was confident that there was a contract for the respondent to do the renovation. Along the same lines, the respondent would not perform the work it did unless there was a contract.
20. However, the applicant failed to provide objective evidence about the contract's terms, some of which were in writing. The only evidence the applicant gave is his own statement, despite the existence of relevant emails and other documents, which the applicant refers to but did not provide.

21. I find that the applicant failed to prove that the respondent breached the contract. The applicant failed to prove that any of the fees that the respondent charged were unreasonable or contrary to the parties' contract. I find that the respondent's approach to the applicant's cancellation was reasonable. I find that the applicant has failed to prove that he is entitled to any further funds from the respondent.
22. I dismiss the applicant's claim for a refund of the remaining deposit.
23. 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 respondent is the successful party. I therefore dismiss the applicant's claim for reimbursement of his tribunal fees. The respondent has not claimed any dispute-related expenses.

ORDER

24. I order that the applicant's claims, and this dispute, are dismissed.

Eric Regehr, Tribunal Member