Civil Resolution Tribunal

Date Issued: December 17, 2018

File: SC-2018-003104

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *brandys et al v. sorensen*, 2018 BCCRT 866

B E T W E E N :

terryll brandys and richard brandys

APPLICANTS

A N D :

tony sorensen

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicants, terryll brandys and richard brandys, hired the respondent, tony sorensen, to shape and pour a sidewalk.[1] The respondent does business as YNot Concrete. The applicants claim a refund of $4,050, which is the amount they paid to the respondent, because they say the respondent did substandard work.

[1] I have reproduced the names exactly as they appear in the Dispute Notice, all in lower case.

2. The respondent says that the applicants breached the contract by terminating it without any cause and without giving him a chance to fix any problems. The respondent says that the applicants owe him money, but has not made a counterclaim.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

6. 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.

7. 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

8. The issues in this dispute are:

    a. Did the respondent install the concrete sidewalk that was below a reasonable standard?

    b. Did the applicants breach the parties' agreement by giving the respondent an unreasonable schedule?

    c. How much, if anything, should the respondent refund the applicants?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their 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.

10. On March 25, 2018, the respondent provided a quote to the applicants to build a sidewalk. The quote was for $7,780 in labour and materials. After some negotiation, the respondent provided a second quote for $6,900, which the applicants accepted.

11. The applicants paid a deposit of $2,050 on March 30, 2018. The applicants paid a further $2,000 on April 4, 2018. These 2 payments total the $4,050 claimed in this dispute. The respondent started work shortly thereafter.

12. On April 15, 2018, the applicants told the respondent that they no longer wanted the respondent to work on the project. The applicants told the respondent that he had done a number of things wrong and that they would need to hire someone else to fix the mistakes.

13. The applicants provided an email from their new contractor, who outlined the mistakes the applicants say the respondent made. The new contractor said that the respondent was going to pour concrete on top of an old retaining wall. The new contractor said that the old wall would have crumbled. The applicants showed

photographs of where the respondent planned to pour concrete and the photographs show that parts of the old concrete retaining wall were already crumbling. The photographs also show that parts of the new concrete wall would have rested up directly against an old fence.

14. The new contractor also said that the respondent placed the rebar directly on the underlying dirt rather than in the middle of the concrete pour, which is also supported by the applicants' photographs. Finally, the new contractor said that the sidewalk that the respondent did pour was only 3 inches deep, rather than the required 4 inches.

15. The respondent says that everything was to code but did not otherwise address most of the complaints the applicant and the applicants' contractor made. The only specific response was that 4 inches of concrete is required for driveways but not sidewalks. The respondent also said that he planned to pour concrete directly on the old retaining wall so that the applicants would still have a driveway.

16. In the respondent's submissions, he says that he could provide evidence from other contractors about his work if given the chance. Parties are told during the tribunal process that they must provide all relevant evidence to the tribunal for this decision to be made. It is not sufficient for the respondent to say that he has evidence or can get it if requested. The respondent had the opportunity to provide evidence from other contractors to prove that his work was to industry standards, but failed to do so.

17. I find that it was an implied term of the agreement that the respondent would install the concrete sidewalk in accordance with industry standards. I accept the new contractor's evidence that the respondent's work was below industry standards. I accept that this means the respondent breached the parties' agreement.

18. The respondent says that the applicant had an unreasonable schedule and that the respondent was not able to complete the work. On April 11, 2018, the applicants

asked the respondent not to do any concrete work because they were getting some plumbing work done.

19. The respondent provided no other evidence that the applicants placed restrictions on his ability to work on the job. I therefore reject this argument.

20. The respondent submits that the applicants failed to provide a default notice before terminating the parties' contract. The respondent relies on a newsletter from an international law firm that describes the importance of properly issuing default notices in many construction contracts. The caselaw that the respondent relies on interprets a term commonly found in standard construction agreements that requires a party to issue default notices before terminating a contract. The parties did not have a written contract with such a term. I find that the law that the respondent relies on does not apply to this dispute.

21. The legal principle called "*quantum meruit*" means that despite the fact that the respondent breached the agreement, I can award a reasonable sum for the work the respondent did. Having reviewed the evidence, I find that the applicants received a modest benefit from the respondent's work in excavating and preparing the site. However, I also accept the evidence of the applicants' new contractor that most of the work the respondent did had to be torn up.

22. Taking everything into account, I find that a reasonable sum for the respondent's work was $500. I order that the respondent refund the applicants $3,550, being the remaining amount they paid the respondent.

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. I see no reason in this case not to follow that general rule. The applicant was substantially successful so I find the applicant is entitled to reimbursement of $175 in tribunal fees. The applicants did not claim any in dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $3,757.70, broken down as follows:

    a. $3,550 as a partial refund

    b. $32.70 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in tribunal fees.

25. The applicant is entitled to post-judgment interest, as applicable.

26. The applicant's remaining claims are dismissed.

27. 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.

28. 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