



Civil Resolution Tribunal

Date Issued: December 18, 2018

File: SC-2018-002330

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Paulson v. Bayko*, 2018 BCCRT 877

B E T W E E N :

Paul Paulson

APPLICANT

A N D :

Cynthia Bayko

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This is a dispute about non-payment for investigative services. The applicant, Paul Paulson, says the respondent, Cynthia Bayko, breached an agreement between the parties by failing to pay for the investigative services invoiced. The applicant claims \$4,975 in debt.
2. The parties each represented themselves.

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 relationships between parties that may continue after the dispute resolution process has ended.
4. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario as to how the agreement proceeded. 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. 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 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 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 applicant is entitled to payment for investigative services under the parties' contract.

EVIDENCE AND ANALYSIS

8. The applicant bears the burden of proof on a balance of probabilities. I have commented upon the relevant evidence and submissions only to the extent necessary to give context to these reasons.
9. In January 2018 the applicant and respondent entered into an agreement for investigative services. The applicant described the agreement as verbal. The respondent provided a copy of an unsigned written agreement from the applicant, which I infer she says is the agreement.
10. The parties agree that the applicant was charging the respondent for expenses and tax only. The applicant says he agreed to do this because the respondent was referred by a local pastor.
11. On January 10, 2018 the applicant sent the respondent an invoice. Neither party provided the invoice. The respondent says she paid the invoice when it was sent. The applicant did not deny the payment.
12. The applicant says that 6 weeks after he began investigating, in around mid February 2018, the costs began to rise and he tried to contact the respondent. When he could not reach the respondent, the applicant stopped working. The applicant says that later the respondent told him that she would not pay him.
13. It is undisputed that on March 22, March 30 and April 3, 2018 the applicant invoiced the respondent three times for the same work. The invoices reflect the following items: records check, 6 sub trade contracts for computer and vehicle specialists, telephone calls, general investigative work, investigative field work and consultation

all of which are less posted payments. The first invoice is for \$4,000 less than the later invoices.

14. The applicant says that he charged more in the two later invoices after consulting the pastor who referred the respondent. Together the applicant and pastor allegedly decided to include the full amount of service because the respondent had not yet paid. On the evidence, I infer that the applicant still applied some discount because of his relationship with the referring pastor.
15. I find the applicant is not entitled to charge the respondent for hourly investigative services. The applicant's own evidence is that he verbally agreed with the respondent to only charge disbursements plus tax. Despite that agreement, the applicant unilaterally charged fees when the respondent did not pay the disbursements invoice. The applicant may not alter the agreement without the respondent's consent.
16. Further, although the applicant did not admit that the written agreement was agreed to, it is consistent with the applicant's evidence itemizing \$0 hourly rate, with \$0 expected fees plus disbursements and tax.
17. On balance, I find the applicant is not entitled to the 6 charges for work done by third parties. No evidence was provided that would allow me to assess or substantiate the itemized third party charges. Additionally, it is undisputed that the respondent requested invoices for the fees paid to third parties and that the applicant did not provide them.
18. It is unclear on the evidence whether the charge for the records check was an investigative cost or a cost paid to a third party. Unlike other costs on the invoice it is not listed as investigative or sub-contract. The applicant said that it is standard practice to conduct records checks but provided insufficient details of this service to determine the scope of what was done and when. Given the burden on the applicant, I find the applicant is not entitled to this charge.

19. The respondent says the applicant did not provide the services she retained him to do. Given my findings above, I have not addressed that issue. There is no counterclaim before me.
20. The respondent says the applicant provided false or misleading evidence. That allegation is quite serious and there is no evidence before me to substantiate that allegation.
21. The respondent says that the applicant kept some of her personal possessions including using her vehicle for two months causing wear and tear and damage. The applicant agreed that for some time he had the respondent's electronics and vehicle to have them inspected. There was insufficient evidence for me to assess these claims and conclude whether there should be a set off. Further, given my conclusion above that the applicant has not proved his claim and that the respondent did not file a counter claim, I have not addressed these issues.
22. For the above reasons, I find the applicant is not entitled to payment of the invoice.
23. As the applicant was unsuccessful in his claim, following the Act and the tribunal's rules I find the applicant is not entitled to reimbursement of tribunal fees.

ORDER

24. I dismiss the applicant's claim and this dispute.

Megan Volk, Tribunal Member