



Civil Resolution Tribunal

Date Issued: December 19, 2018

File: SC-2018-001871

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Johnston v. Greg Coleman (Doing Business As Quality Sundecks)*,
2018 BCCRT 879

B E T W E E N :

Ken Johnston

APPLICANT

A N D :

Greg Coleman (Doing Business As Quality Sundecks)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about the installation of glass railings on a deck. The applicant, Ken Johnston, says that the respondent's work was deficient and incomplete, and seeks almost \$3,000 in compensation for expenses to finish the job and repair

stucco damage. The respondent, Greg Coleman (Doing Business As Quality Sundecks), disagrees with the applicant's position.

2. The parties are 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. 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. whether the applicant is entitled to \$2,150.90 as compensation for amounts spent on completing the railing project;
 - b. whether the applicant is entitled to \$300 for stucco repairs; and
 - c. whether the applicant is entitled to \$600 for travel expenses to meet with the replacement contractor.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their positions. Although I have considered all of this information, I will reference only what is necessary to provide context to my decision.
9. The applicant and another individual, who is not a party to this dispute, entered into a contract with the respondent to replace a deck surface and install new glass railings. The respondent issued an invoice for \$8,275.05. The applicant paid \$6,500, leaving a balance owing of \$1,775.05.
10. The first stage of the job was completed on September 29, 2016, with the replacement of the deck surface and measurements being taken for the glass. The applicant says that the second stage of the job was not completed by the respondent, as the railings and privacy panels were cut incorrectly, and the privacy glass was too thin.
11. The applicant says he corresponded with the respondent for several months about completing the job and repairing deficiencies. The applicant says the respondent told him that the work had not been done correctly, but did not respond to his attempts to have the issue resolved. The applicant says he had to hire a new contractor to finish the job.

12. The respondent denies that the glass was cut incorrectly or was an inappropriate thickness. The respondent says that the project required adjustments and clip installation, which would have taken about two hours. However, the respondent says that he was unable to arrange a time with the applicants to attend to the jobsite to finish this work.
13. The applicant asks for compensation in the amount of \$2,956.40, broken down as follows: \$2,056.40 to complete the job (less the amount of the hold back from the initial job); \$94.50 for an additional custom bracket; \$300 for stucco repairs; and \$600 for expenses related to travel between Vancouver and Penticton to meet with the respondent and the replacement contractor.
14. The respondent says that he is not responsible for the costs associated with completing the job. He also says that the stucco repairs were not related to this project, and there was no need for travel. The respondent does not agree that he should pay any fees or expenses to the applicant.

Issue One: Reimbursement for Completion Costs

15. There is no dispute that the respondent did not complete the full extent of the work contemplated by his agreement with the applicant. There is also no dispute that the applicant hired a new contractor to complete the work. What I must determine is who was responsible for the failure to complete the job, and the scope of work that was necessary for completion.
16. The parties have differing views about whether there were communication issues and/or difficulties with accessing the applicant's property in order to complete the work. Email messages between the applicant and "Quality Sundecks" show that the parties were attempting to arrange times to complete the work in late 2016. Email messages sent by the applicant from January through May of 2017 do not appear to have received responses. The applicant sent the respondent a registered letter on June 6, 2017 to advise that he would consider the job abandoned by June 30, 2017, and would proceed to obtain quotes from other contractors to complete the work. It

does not appear that the respondent contacted the applicant in response to this letter.

17. Whatever efforts the respondent made to attempt to complete the job, he says in his own submissions that he eventually “gave up and moved on”. Given my observations set out above, I find that the respondent chose not to complete the job and, accordingly, that he is responsible for the costs associated with its completion.
18. The parties do not agree as to the extent of the work necessary to complete the job. The respondent says it was merely a matter of adjusting the glass panels and installing supports. The applicant says the glass panels were not cut properly and, the privacy glass was not the appropriate thickness. He states that adjustment, replacement, and the application of new materials was required. The respondent’s position is that the new contractor recommended new glass as it did not understand the products he installed, which he says resulted in increased costs.
19. The applicant and respondent both provided images of glass panels and fasteners. The applicant provided images of perpendicular glass panels that appear to be different heights, images showing gaps between glass panels of between 1 and 2 inches, images of a spirit level indicating that 2 panels are not level, and an image that he says demonstrates that a support block is missing. The applicant also provided video footage that shows two pieces of textured glass that appear to be moving, possibly as a result of strong winds.
20. The applicant’s description of the work required to complete the job is consistent with documentation from the new contractor. A March 8, 2018 email message from the new contractor explains that two men spent a full day adjusting the existing glass panels and measuring three panels that would not line up correctly. They also measured the privacy glass for new panels to build up the thickness “so the glass would not pose a safety issue”. Later, two men spent three quarters of a day installing the three new panels and building up the thickness of the privacy glass. The new contractor stated that the privacy glass was “too thin for the size of

opening” and that the “existing privacy glass presented a safety issue if someone was to lean against the glass or accidentally stumble into it”.

21. I find that it was reasonable for the applicant to hire a new contractor to complete the work. Further, it was reasonable for the applicant to rely on the advice of that new contractor about the extent of the work required to complete the job, including the installation of new glass panels. This is so despite the fact that the respondent may have approached the completion of the job in a different fashion had he lived up to his contractual obligations.
22. The new contractor provided an invoice for the new glass panels and adjusting the existing panels in the amount of \$3,831.45. As noted above, the applicant had not yet paid \$1,775.05 of the respondent’s invoice. I find that the applicant is entitled to keep this amount as the respondent abandoned the job. The applicant is also entitled to \$2,056.40, being the difference between the amount paid to complete the job and the amount held back from the respondent’s invoice, and \$94.50 for the supply and installation of an additional bracket.

Issue Two: Stucco Repairs

23. The applicant claims \$300 for repairs to stucco. According to the applicant, the respondent caused the damage when moving a post. The applicant submitted an image of what he says is stucco damage. The image shows inconsistent texture at the bottom of a bracket. The respondent says that it was not responsible for damage to stucco.
24. It is not clear whether the image provided by the applicant represents an area of damage, caused by the respondent or otherwise, that has been repaired. I am not satisfied that the evidence before me establishes this specific claim.
25. As I find that the claim for stucco damage has not been proven, I decline to award the \$300 claimed.

Issue Three: Reimbursement of Travel Expenses

26. The applicant also claims \$600 for expenses related to travel between Vancouver and Penticton to meet with the respondent and the replacement contractor. The applicant says the gas for this trip costs \$150 each way. The respondent denies that he is responsible for the applicant's travel expenses.
27. The applicant did not provide evidence to support the amounts paid for fuel, or the dates the travel was made. On the basis of the evidence before me, I find that the claim for travel expenses has not been established on a balance of probabilities.

Summary

28. I have determined that the applicant is entitled to the payment of \$2,150.90 for the cost of completing the work. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). Calculated from June 30, 2017, being the date it became clear the respondent would not finish the job, the applicant is entitled to \$35.13 in pre-judgment interest.
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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. There is no claim for dispute-related expenses.

ORDERS

30. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,311.03, broken down as follows:
- a. \$2,150.90 as reimbursement for job completion costs,
 - b. \$35.13 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.

31. The applicant is entitled to post-judgment interest, as applicable.
32. 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.
33. 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.

Lynn Scrivener, Tribunal Member