Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Michael Getzlaf (Doing Business As Mike Getzlaf Renovations) v. Reynolds Cabinet Shop Ltd.*, 2019 BCCRT 73

B E T W E E N :

Michael Getzlaf (Doing Business As Mike Getzlaf Renovations)

APPLICANT

A N D :

Reynolds Cabinet Shop Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant, Michael Getzlaf (Doing Business As Mike Getzlaf Renovations), is a contractor. The respondent, Reynolds Cabinet Shop Ltd., is a kitchen design and renovation company. The respondent hired the applicant to install cabinets in a residential kitchen. The applicant invoiced the respondent $3,437.18, but the

respondent only paid $2,100. The applicant claims the remaining $1,337.18. The respondent says that the parties agreed to a fixed price contract and that the respondent has paid the applicant in full.

2. The applicant is self-represented. The respondent is represented by its owner, Jamie Reynolds.

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 118 of the *Civil Resolution Tribunal 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 reach an agreement about how much the respondent would pay the applicant to install the kitchen? If so, what was the agreement?

   b. If there was no agreement, what is a reasonable fee for the applicant's work?

EVIDENCE AND ANALYSIS

8. On October 23, 2017, a designer who worked for the respondent asked the applicant if he was available to install a kitchen. The applicant wanted to try a kitchen installation to see if it could become part of his business. The applicant asked if there was a standard fee for kitchen installation. In response, the designer provided the respondent's standard installation contract, which priced jobs based on what needed to be installed. The contract was for a fixed price of $1,645.

9. The applicant responded that he charged $65 per hour for his services and $45 per hour for a helper. The designer replied that the job would take most installers 24 hours total. The designer said that if the applicant wanted to charge hourly, to give an estimate. The applicant says that he called the designer on October 26, 2017, and confirmed that he would charge his normal hourly rates.

10. The applicant began work on October 27, 2017. The next written communication between the parties is on October 31, 2017, when the applicant emailed the designer to update how much work he had done to that point. The applicant stated that they had done $1,980 worth of work and anticipated another $1,000. The designer stated that the applicant should try to speed up the work. The designer stated that other installers would finish in 3 to 4 days with one person.

11. The applicant responded that he could not make money on kitchen installations, but he appreciated the opportunity to try out the line of work.

12. The respondent sent the applicant a text message after the project finished stating that the applicant should send a bill. The applicant says this is evidence that the respondent had agreed to pay their hourly rate, but there is nothing in the text message chain that refers to the terms of the agreement. I find that this evidence does not assist the applicant because the respondent would likely ask for a bill regardless of the price the parties agreed on.

13. On November 13, 2017, the applicant sent the respondent an invoice for $3,437.18, representing 28.75 hours each for the applicant and his helper, plus material and dumping costs.

14. On November 28, 2017, the designer said that the respondent would pay $2,000 plus GST as that was the most they could pay for the kitchen installation. The applicant thanked the designer for the opportunity and asked that the cheque be mailed to him. At that time, he did not dispute the amount.

15. In January 2018, the applicant re-sent the invoice and demanded to be paid his full hourly rate. The respondent refused.

16. The applicant submits that the parties agreed that the applicant would be paid at his normal hourly rate for as long as it took to complete the job. The respondent submits that the parties agreed that that the applicant would be paid at the respondent's normal fixed rate of $1,645, which was increased to $2,000 due to some change orders during installation. The respondent submits that the reason the applicant kept track of his hours was so that he could assess whether it would be profitable to continue doing kitchen installations.

17. I find that there was no agreement between the parties on how much the respondent would pay the applicant. Each party's emails during the project are consistent with their own understanding of how much the applicant would charge. In particular, the applicant's email telling the respondent about the amount of time he had spent on the project is consistent with his understanding that he was being paid hourly.

18. That said, none of the designer's emails suggest that he thought that the applicant would be charging his normal hourly rates. The emails confirm the respondent's perspective that the applicant was using the job as a learning opportunity. In that context, I find that the respondent would not agree to pay the applicant his full hourly rate instead of the respondent's usual fixed fee because the applicant was inexperienced at kitchen installation.

19. I do not accept the applicant's evidence that he confirmed verbally over the phone that he would charge his normal hourly rates. In the applicant's submissions, he characterizes several of the designer's emails as confirming that the respondent accepted the applicant's hourly rates. However, none of the designer's emails contain anything that could reasonably be interpreted as accepting the applicant's hourly rates. I therefore find that the applicant's evidence about whether the parties reached an agreement is not credible.

20. In circumstances where parties have entered into an agreement but have not agreed on the price, the applicant is entitled to a reasonable amount for the goods and services provided. This concept is known as "contractual quantum meruit". See, for example, *Laing v. Medix Holdings Ltd.*, 2018 BCPC 276, at paragraph 176.

21. The respondent's typical flat fee system is based on a detailed breakdown of what the contractor needs to install. The respondent assigns different components of the installation a unit value and each unit is worth $25. When the designer presented it to the applicant, the designer said that the respondent's usual contractors were able to make around $70 per hour. The respondent provided a letter from one of its contractors who has completed dozens of projects for the respondent. The contractor confirmed that they are happy with the way that the respondent determines the value of each job.

22. I therefore accept that the respondent's system for evaluating the value of the installation was reasonable. It is undisputed that there were changes to the project that required further work, which is why the respondent increased the value of the job. In fact, the respondent unilaterally increased the value of the job from $1,635 to

$2,000 before there was any dispute between the parties, which I find indicates that the respondent assessed the value of the job objectively and in good faith.

23. It is also undisputed that the applicant was inexperienced in kitchen installation, which explains why the job took him longer than it took the respondent's usual installers.

24. In its submissions, the respondent claims $144.92 for deficiencies in the applicant's work that it had to pay to repair. The respondent did not make a counterclaim, but I have considered this argument in determining a reasonable amount for the respondent to pay the applicant. I find that the respondent knew about the deficiencies when it paid the applicant $2,100. I find that the respondent already took them into account.

25. Therefore, I find that $2,100, which is $2,000 plus GST, was a reasonable sum for the respondent to pay the applicant for the kitchen installation. I dismiss the applicant's claim.

26. 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 decline to order the respondent to reimburse the applicant for his tribunal fees or dispute-related expenses. The respondent did not claim any dispute-related expenses.

ORDER

27. The applicant's claims, and this dispute, are dismissed.

Eric Regehr, Tribunal Member