



Civil Resolution Tribunal

Date Issued: January 25, 2019

File: SC-2018-003246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marek Koroncz* (*Doing Business As Comaco Enterprises*) *v.* *Mikulic*,
2019 BCCRT 99

B E T W E E N :

Marek Koroncz (*Doing Business As Comaco Enterprises*)

APPLICANT

A N D :

Richard Mikulic

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This is a dispute about non-payment for exterior commercial glass and window caulking. The applicant, Marek Koroncz (*Doing Business as Comaco Enterprises*), says the respondent, Richard Mikulic, breached an agreement between the parties

by not paying the invoice for caulking. The applicant represented himself and claims \$2,950 in debt.

JURISDICTION AND PROCEDURE

2. 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* (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.
3. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because there are no significant issues of credibility or other reasons that might require an oral hearing.
4. 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.
5. 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

6. The issue in this dispute is whether the respondent owes the applicant \$2,950 for caulking services under the parties' contract.

EVIDENCE AND ANALYSIS

7. The applicant bears the burden of proof for the claim on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence necessary to give context to my decision.
8. This dispute proceeded unusually. The respondent and his son, both with the same name, were doing business as Interaz Enterprises. The applicant served the Dispute Notice on the respondent father; however, he did not file a Dispute Response, as required. Instead, the respondent's son filed a Dispute Response on his own behalf and proceeded through the facilitation process.
9. Failure to file a response means the respondent is in default and there is an assumption of liability. As well, in this case, the son admitted in his Dispute Response that he and his father, doing business as Interaz Enterprises, subcontracted with the applicant for caulking. And, that the applicant was owed \$3.50 per linear foot.
10. The applicant says he entered into and completed 2 agreements on a large project with the respondent before agreeing to a third, which is in issue in this dispute. The applicant says that he completed 2,824 linear feet of caulking for which a part of the invoice has been paid. The son does not deny the applicant's calculation.
11. I find the applicant is owed for the caulking completed. In reaching this conclusion I have placed significant weight on the failure of the respondent to file a Dispute Response, text messages showing a history of subcontracting arrangements between the parties and the usual way in which they conducted their agreements, text messages about the agreement in issue, the son's admission, and an email from an email address used by both the father and the son in which the applicant was told that he was not the only person waiting to be paid. If there was no agreement, such an email would be unnecessary.
12. The applicant says that he was not able to complete 120 linear feet of caulking initially and the respondent never let him know when to return. The applicant asks

for payment of that 120 linear feet as lost opportunity or further to the agreement for services. Specifically, he was not able to complete the project because he was not told when to return and he was unable to take on other projects. No evidence was provided to support the claim that other projects were lost or to enable me to value them. In any event, the applicant's own evidence is that his agreement was for a price per linear foot. As such, I find the applicant is not entitled to payment for linear feet he did not complete.

13. Given the above, I find the applicant is entitled to \$2,530 plus GST (\$2,950 less \$420 for the 120 linear feet not completed) from the respondent, totaling \$2,656.50. Even though the respondent's son filed a Dispute Response, the dispute is not against him. Given that, I make no findings against him.
14. 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 and award reimbursement of \$125.00 in tribunal fees, as claimed.
15. The applicant also claims reimbursement for time spent on this dispute and travel for this dispute, other than service of tribunal documents. I dismiss the claim for time spent and travel. The tribunal typically does not award expenses for a parties' time or travel in dealing with a dispute and I see no reason to award that here.
16. The applicant claimed \$10.50 in dispute-related expenses for service, which I award. The applicant also claimed \$60 for translation services for emails and text messages. Given that I relied on the emails and text messages, I find that dispute related expense reasonable and necessary, and I award it.

ORDERS

17. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,915.73, broken down as follows:
 - a. \$2,530 plus \$126.50 GST for caulking work done by the applicant,
 - b. \$63.73 in pre-judgment interest under the *Court Order Interest Act* calculated from June 21, 2017,
 - c. \$125 in tribunal fees, and
 - d. \$70.50 in dispute related expenses.
18. The applicant is entitled to post-judgment interest, as applicable.
19. The balance of the applicant's claims are dismissed.
20. 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.
21. 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.

Megan Volk, Tribunal Member