



# Civil Resolution Tribunal

Date Issued: January 30, 2019

File: SC-2018-002820

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Craig v. McCollum et al*, 2019 BCCRT 119

**B E T W E E N :**

Leonard Craig

**APPLICANT**

**A N D :**

Rick McCollum and Marianne McCollum

**RESPONDENTS**

**A N D :**

Leonard Craig

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. The respondents, Rick McCollum and Marianne McCollum (together, the McCollums) hired the applicant and respondent by counterclaim, Leonard Craig, to build a steel building. Mr. Craig says that they have paid \$7,056 of the \$10,620.75 it cost to build the shed. He claims the remaining \$3,564.75.
2. The McCollums say that Mr. Craig agreed to do the job for a fixed price of \$7,056. The McCollums counterclaim for \$1,380.51, which they say was the cost of completing the work that Mr. Craig agreed to do, the cost of extra scaffolding, and the cost of tools that Mr. Craig took.
3. The parties are each self-represented. Mr. McCollum made submissions on behalf of the McCollums.

## **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 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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. Was the contract hourly or a fixed price?
  - b. If the contract was hourly, what is a reasonable number of hours for Mr. Craig and his crew to have spent on the job?
  - c. Did the contract include construction of an overhead door and a pedestrian door?
  - d. Is Mr. Craig responsible for additional scaffolding charges?
  - e. Did Mr. Craig take the McCollums' tools when he left the jobsite?

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Craig must prove his case on a balance of probabilities. By the same token, the McCollums must prove their counterclaims 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. Mr. Craig says that the McCollums called him to hire him to erect a steel building on their property in Creston. Mr. Craig says that he told them that he had never erected a steel building before, but would do it for \$35 per worker hour.
11. The McCollums say that Mr. Craig initially approached them with an offer to erect the structure for \$35 per worker hour. However, they say that they refused this offer for 3 reasons. First, they knew that Mr. Craig was not experienced with building steel buildings and they did not want to pay him to learn. Second, they did not want to pay for mistakes. Third, they were not going to be present for much of the construction and therefore would be unable to monitor Mr. Craig's hours.
12. On January 29, 2018, Mr. Craig provided an estimate that he says confirms that the McCollums agreed to hire him on an hourly basis. The estimate says under "Description" that the McCollums would supply materials and rental of specialty tools, including scaffolding. The description also says "\$35.00 per hour per man" and "Estimate 5 - 6 days to completion". The estimate is for \$6,720 plus \$336 of GST for a total of \$7,056.
13. Mr. Craig says that the contract is different than his typical contract because he normally uses the word "quote" instead of "estimate". He says that he changed the wording of the contract to make it clear that he was not committing to a fixed price. In the email attaching the estimate, Mr. Craig said that he was confident he could complete the project and stay within the estimate.
14. Mr. McCollum says that he was concerned that Mr. Craig sent him an estimate, so he discussed it with Mr. Craig in person. He says that Mr. Craig verbally confirmed

that it was a fixed quote, based on the expected number of hours it would take. With that assurance, Mr. McCollum says that he signed the contract. Mr. McCollum says that his email response to Mr. Craig confirms his evidence, because Mr. Craig refers to the estimate as his “quote” for the job, not the “estimate”.

15. Mr. Craig and his workers began work on the project on March 19, 2018. Mr. Craig says that shortly after beginning, he told Mr. McCollum that it would take about twice as long as he initially estimated to erect the arches of the building, and Mr. McCollum agreed to this new time estimate. The McCollums say that the additional time was because Mr. Craig put the arches together wrong and that they would never have agreed to pay Mr. Craig for a mistake.
16. On March 29, 2018, the McCollums gave Mr. Craig a \$4,000 advance.
17. On April 13, 2018, Mr. Craig says that he asked for another \$4,000 advance and that Mr. McCollum became angry as that made him over budget. Mr. Craig says that they negotiated and agreed that Mr. Craig would complete the job for a total of \$10,000, including the installation of an overhead door and a regular door. The McCollums agree that Mr. Craig asked for \$10,000, but adamantly say that they never agreed to it. Mr. McCollum says that he threatened not to pay Mr. Craig any more money unless Ms. Craig finished the job. Mr. Craig agreed to keep working and the McCollums gave him another advance of \$2,000.
18. On April 28, 2018, Mr. Craig says that Mr. McCollum fired him and told him to leave. Ms. McCollum gave him a cheque for \$1,056, bringing their total payments to \$7,056, consistent with Mr. Craig’s January 29, 2018 estimate.

***Was the contract hourly or a fixed price?***

19. The primary dispute between the parties is whether the contract was at an hourly rate of \$35 per worker hour or a fixed price of \$7,056.
20. The McCollums rely primarily on 2 things to prove that, despite the use of the word “estimate” in the contract, the contract was for a fixed price. First, they say that they

verbally agreed with Mr. Craig that it would be a fixed price, not an estimate, when they met on the day Mr. McCollum signed the contract. Second, they sent an email in response intentionally using the word “quote” instead of “estimate” to confirm the discussion.

21. There is a rule of evidence called the “parol evidence rule” that governs the admissibility of outside evidence in determining what a written contract means, such as oral conversations. In general, the parol evidence rule says that if the words in a contract are clear, then a party cannot use outside evidence to try support their interpretation of the contract. In those circumstances, the objective meaning of the words in the contract will be presumed to accurately reflect the parties’ intentions in entering into the contract. Outside evidence can only be used to clarify an ambiguity in the written contract. See *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107.
22. The purpose of the parol evidence rule is to provide certainty and finality about the meaning of written contracts. Although the tribunal has flexibility in receiving evidence, I have decided to follow the parol evidence rule in this dispute.
23. I find that the terms of the contract are clear. I find that the contract was for the McCollums to hire Mr. Craig on an hourly basis. I rely primarily on the fact that the contract explicitly says that the cost is \$35 per worker hour. If the contract was a fixed price contract, there would be no reason to include this information.
24. Because the terms of the contract are clear, I find that the McCollums’ evidence about the parties’ conversations prior to signing the contract cannot be used to determine what the contract meant.
25. Both parties accuse the other of being untruthful about what transpired between them when they agreed to the terms of the contract. In making my finding about the terms of the contract, I do not need to decide what the parties said to each other on the day Mr. McCollum signed the contract.

***If the contract was hourly, what is a reasonable number of hours to complete the project?***

26. Having determined that the contract was hourly, I must assess whether Mr. Craig's hourly charges were reasonable.
27. The McCollums main complaint about Mr. Craig's work is that he had to redo a significant amount of work because he made a mistake in assembling the parts. Mr. Craig does not dispute that he had to redo some work, and I find that he has not given an explanation about why the McCollums should have to pay the full hourly rate for redoing work.
28. In Mr. Craig's evidence, he says that he told the McCollums that it would take him twice as much time as he thought to erect the building. He does not dispute that he had to backtrack during the construction process. I find that the project took longer than expected because of Mr. Craig's crew's errors, rather than challenges inherent to the construction process that were outside Mr. Craig's control. I find that it is not reasonable for Mr. Craig to charge the McCollums for Mr. Craig's crew's errors.
29. There is not good evidence about how much time was wasted because of Mr. Craig's crew's mistake in the assembly of the building's arches. I agree with the McCollums that Mr. Craig's timesheets lack detail about what Mr. Craig and his crew did each day. The timesheets do not help me determine how much time Mr. Craig reasonably spent in construction.
30. I do not accept Mr. Craig's evidence that the McCollums agreed to pay him a total of \$10,000 to complete the job on April 13, 2018. I agree with the McCollums that Mr. Craig's behaviour prior to that day shows that he placed significant importance on ensuring that the parties' agreement was in writing. The McCollums say that it was Mr. Craig who insisted on a signed contract. In addition, Mr. Craig's evidence is that he carefully chose the words he used in the contract to make sure there was no misunderstanding. Changing the contract from hourly to a fixed price of \$10,000 is a

significant change, and I find that if the parties had agreed to an amendment, there would likely be written evidence of the change.

31. I find that the best evidence of a reasonable amount of time to spend on the project is Mr. Craig's own initial estimate, which was for 192 hours.
32. Therefore, I find that Mr. Craig is not entitled to any further payment beyond his initial estimate. I find that the McCollums have paid a reasonable amount for the time Mr. Craig and his crew spent on the job.
33. I dismiss Mr. Craig's claims.

***Did the initial contract include construction of the overhead door and the pedestrian door?***

34. The McCollums say that the installation of an overhead door was part of the fixed price in the contract. The McCollums counterclaim for \$427.25, the amount they paid another contractor to install the overhead door. McCollums rely on the manuals they say they gave to Mr. Craig to help Mr. Craig estimate how much time the job would take.
35. The parties each make similar arguments about the pedestrian door. The McCollums say that installation of the pedestrian door was included in the contract and claim \$279.98, the cost of another contractor to install the pedestrian door.
36. I have found that the McCollums have paid Mr. Craig a reasonable amount for the number of hours Mr. Craig and his crew spent on site. I did not find that the amount the McCollums paid to Mr. Craig was a fixed price to completion, including the doors.
37. Therefore, Mr. Craig has been paid for his and his crew's reasonable time, but there is no basis to deduct the costs of other contractors who came to complete the job.
38. I dismiss the counterclaims for the cost to complete the doors.



***Is Mr. Craig responsible for additional scaffolding charges?***

39. The McCollums also claim the cost of keeping the scaffolding longer than anticipated, which they say was Mr. Craig's fault because he took too long. The McCollums claim \$473.34.

40. I agree with Mr. Craig that the contract explicitly required the McCollums to supply scaffolding. The contract included an estimated timeline of 5 to 6 days, but there is nothing in the contract that put a deadline on completion. Accordingly, I find that Mr. Craig taking longer than expected was not a breach of the contract.

41. I dismiss this counterclaim.

***Did Mr. Craig take the McCollums tools when he left the jobsite?***

42. Finally, the McCollums claim \$199.94 for the cost of tools they believe Mr. Craig took. The McCollums readily admit that they have no evidence that Mr. Craig took the tools. Their only evidence is that the tools are missing and that they were used in building the shed. The McCollums have not proven on a balance of probabilities that Mr. Craig took any tools. For that reason, I dismiss this claim.

43. 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. Neither party was successful. I decline to order either party to reimburse the other for tribunal fees or dispute-related expenses.

## **ORDERS**

44. Mr. Craig's claims and the McCollums' counterclaims, and this dispute, are dismissed.

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Eric Regehr, Tribunal Member