Civil Resolution Tribunal

Date Issued: February 13, 2019

File: SC-2018-000797

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pocys v. Sun Valley Painting and Decorating Corp*, 2019 BCCRT 181

B E T W E E N :

Andriejus Pocys

APPLICANT

A N D :

Sun Valley Painting and Decorating Corp.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for installation of vinyl wall covering at the Kelowna Airport. The applicant, Andriejus Pocys (who did business as Artisan Walls), says the respondent, Sun Valley Painting and Decorating Corp., has failed to pay him in

full for his work. The applicant claims $3,257.10 as the balance owing for work he says he did in May 2017.

2. The respondent denies liability, saying while the applicant completed the work, he overcharged the respondent.

3. The applicant is self-represented and the respondent is represented by its principal, John Osborne.

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* (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 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.

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: 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.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to payment of his vinyl installation invoices.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. It is undisputed the parties had a long history of working together before the Kelowna Airport job, and that in the past the applicant's invoices were paid without issue. As discussed below, the applicant's first 3 invoices for this job were also paid without issue.

11. The basic elements of offer, acceptance and consideration must be present for a contract to exist. In addition to the existence of an agreement, there must be what is known in law as a 'meeting of the minds' about the contract's subject matter.

12. It is also undisputed the parties' contract for the Kelowna Airport job was based on a verbal agreement. The job was to install vinyl wall coverings. Both parties acknowledge that the agreement was loose and informal, as had been the parties' practice in past jobs over the years. Unlike a written contract, a verbal one can be more difficult to prove. The challenge is that here the basis for payment is not clear: was it a fixed price contract or was it based on an hourly rate?

13. As referenced above, the respondent submits the parties' terms over the years "have always been flexible", informal and amicable. The respondent submits that depending on the size of the job and time taken to complete it, it would either pay

on square yardage or a set invoiced amount. The respondent submits that whatever the format of the applicant's invoices, it would always do in-house calculations towards the end of the job to check that the applicant's invoices "would always work out to an overall reasonable installation yardage rate". The applicant's final 2 invoices for the airport job was the first time the respondent ever made any objection.

14. As discussed further below, I find the parties' agreement was not based on square footage or yardage, as submitted by the respondent. The respondent's own evidence does not support a conclusion that this was the parties' understanding at the time the agreement was made. Rather, the respondent acknowledges that it paid the applicant's earlier invoices on a "draw down" basis without expressing any concern, and then at the end of this particular job did a routine in-house calculation to check if the billing was reasonable based on yardage and found it was not. However, there is no suggestion in the evidence before me that the applicant was aware or agreed to have his payment be based only on yardage or the respondent's in-house calculation.

15. In support of his position, the applicant points to the earlier invoices, all paid, that made no mention of square footage or rate per square foot. In other words, the applicant essentially submits that the agreement was that he would be paid for his time, period.

16. On balance, I find the applicant's invoices must be based on time reasonably spent, which amounts to what is known in law as a "*quantum meruit*" analysis: value for the work done. Payment for time reasonably spent is consistent with the respondent's submissions also, saves for its "in-house calculation" it did at the end, as referenced above. The agreement cannot be based on a flat rate or fixed price, because there was no price agreed upon in advance.

17. However, the difficulty is that the applicant's invoices are set out as a flat rate, with no number of hours billed or hourly rate, and only a brief explanation of how the time was spent. There are no time sheets. I find the best evidence as to whether the

applicant's outstanding invoices reflect reasonable time are the parties' history of this job, including the earlier paid invoices, and, the fact that the respondent does not challenge the veracity of the applicant's claim for time he says he spent on the job.

18. For the Kelowna Airport job, the applicant issued 5 invoices, as detailed below. All were paid in full, except the June 8 and 25, 2017 invoices that together total $5,880. Later, on November 17, 2017, the respondent paid only $2,622.90 towards the June 8 and 25 invoices, leaving a balance of $3,257.10, the amount claimed in this dispute.

19. The applicant's invoices for this job were as follows:

    a. #0103, February 27, 2016, for $472.50. This had only the general description of "baggage hall extension project".

    b. #0118, June 28, 2016, for $650. This was for "two office rooms".

    c. #0128 October 31, 2016, for $3,675. This was for "2 large luggage transport rooms, 2 office rooms".

    d. #0148, June 8, 2017, for $3,255. This was for office rooms 98, 100, 101, and corridor 93.

    e. #0150, June 25, 2017, for $2,625. This was for office rooms 109, 112, 176, and 177.

20. On balance, I find the last 2 invoices are not so different from the October 31, 2016 invoice in description. I find this supports a conclusion that the last 2 invoices are likely reasonable in terms of billing based on time spent.

21. The applicant further submits that some of his time billed reflected delays due to security processes at the airport, which the applicant had no choice but to comply with. The respondent does not deny the security issues at the airport, but submits the applicant knew that was the nature of the job when he took it, with the inference

that the applicant was working based on a fixed rate or flat fee. I find the applicant was entitled to bill for his time reasonably spent dealing with the airport's security processes.

22. On July 28, 2017, in response to the applicant's repeated requests to be paid, Mr. Osborne texted that he was waiting for some money but should be able to pay the applicant soon. There was a similar exchange in mid-October and mid-November, 2017, when the respondent wrote "Hey bud ... things are good. Your cheques will be going out Wednesday next week". The respondent never expressed any concern about the amount of the applicant's invoices in these messages.

23. The November 17, 2017 partial payment was the first time the respondent alleged the invoicing was to be based on square footage, with the respondent making deductions for alleged deficiencies. I find the earlier July through mid-November 2017 exchanges amounted to promises to pay by the respondent. This is further support for the conclusion that the applicant's invoices are reasonable and should be paid. I find it is unreasonable for the respondent to wait for 5 months to object to the applicant's invoices, having earlier repeatedly indicated without reservation that they would be paid.

24. The respondent further submits that after the applicant advised he could no longer work on the Kelowna Airport project, other installers took over and then they reported deficiencies in some areas of the applicant's work, which were rectified. However, the respondent submits that these deficiencies were not factored into its partial payment to the applicant. I place no weight on this as there is insufficient evidence before me about the alleged deficiencies and the respondent indicates it does not claim anything for them. There is also no counterclaim before me.

25. In summary, I find the respondent must pay the applicant for his invoices. As noted, the respondent does not dispute the amount of time the applicant spent on the project. Rather, the respondent's objection is that the amount of the invoices does not match the respondent's in-house calculation based on square footage, which I have above rejected.

26. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the $3,257.10, from June 25, 2017.

27. In accordance with the Act and the tribunal's rules, as the applicant was successful I find he is entitled to reimbursement of $175 in tribunal fees. The applicant also claims a total of $75.07 in dispute-related expenses, some of which are photocopying charges he paid to a lawyer. I find these photocopying charges are not reasonable, in part because the tribunal generally does not reimburse for lawyer's fees unless it is an extraordinary case. This is not an extraordinary case. Also, I am not satisfied the photocopying charges were necessary or reasonable. I do allow $24.68 in dispute-related expenses, for service of the Dispute Notice by registered mail and obtaining a corporate records search.

ORDERS

28. Within 14 days of this decision, I order the respondent to pay the applicant a total of $3,519.49, broken down as follows:

    a. $3,257.10 in debt,

    b. $62.71 in pre-judgment interest under the COIA, and

    c. $199.68, for $175 in tribunal fees and $24.68 in dispute-related expenses.

29. The applicant is entitled to post-judgment interest, as applicable.

30. 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.

31. 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.

Shelley Lopez, Vice Chair