



Civil Resolution Tribunal

Date Issued: February 27, 2019

File: SC-2018-004208

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Triple R Construction Inc. v. Victoria Hardwood Floors Inc.*, 2019 BCCRT
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B E T W E E N :

Triple R Construction Inc.

APPLICANT

A N D :

Victoria Hardwood Floors Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Victoria Hardwood Floors Inc., hired the applicant, Triple R Construction Inc., as part of a renovation of the respondent's customer's home. The applicant says that the respondent owes it \$3,870.39 in unpaid invoices. The

respondent says that the parties agreed to a final payment, which the respondent has paid. The respondent says that it does not owe the applicant any more money.

2. The applicant is represented by an employee, Byron Deziel. The respondent is represented by an employee, Catherine de Torres.

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 agree to a settlement of the amount that the respondent owed the applicant?
 - b. If not, how much, if anything, does the respondent owe the applicant?
 - c. Should the applicant reimburse the respondent for the respondent's legal fees?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove its case 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.
9. The respondent hired the applicant as part of a residential renovation that included the remediation of rot in the home's structure and the installation of a gas fireplace.
10. On February 21, 2018, the applicant sent the respondent an estimate for \$14,200 plus GST, for its portion of the project. The estimate said that it did not include additional labour and materials for unforeseen problems. Ms. De Torres signed the estimate on behalf of the respondent and provided a deposit of \$1,491.
11. Ms. De Torres also signed a "Guarantee" document that said, among other things, that the applicant would invoice the respondent in accordance with its general contracting rates. The applicant's general contracting rates were between \$50 and \$80 per hour, depending on the employee.
12. On March 2, 2018, Mr. Deziel emailed Ms. De Torres because he had discovered more rot than expected in the building envelope, the initial estimate would be too low. Mr. Deziel wanted to confirm that the respondent would pay for the additional hours. Ms. De Torres respondent replied that the respondent would pay for the job

to be completed. Ms. De Torres confirmed that she knew that the applicant would charge its general contracting rates.

13. On March 8, 2018, the applicant sent the respondent an invoice for \$11,545.56, which was dated March 7, 2018.
14. The same day, Ms. De Torres emailed Mr. Deziel concerned about the amount that the project had cost to that point. Mr. Deziel explained that the project was more work than the initial estimate contemplated. Mr. Deziel said that the overall budget would be around \$17,700, plus GST, and clarified what had been invoiced to that point. The applicant continued to work on the project.
15. On March 14, 2018, the respondent paid \$7,000 towards the March 7 invoice.
16. On March 29, 2018, the applicant sent the respondent a further invoice for \$11,547.52, which was dated March 26, 2018. After taking into account the amount outstanding from the previous invoice, the total amount owing under this invoice was \$14,602.08.
17. The same day, Ms. De Torres emailed Mr. Deziel to dispute the amount of the March 26 invoice. She alleged that the applicant had inflated the number of hours its employees had worked on the project. Ms. De Torres offered to pay a total of \$18,000, plus GST, for the entire job, and threatened legal action. Mr. Deziel said that he would accept \$11,900, which was \$18,900 less the previous \$7,000 payment, as long as the respondent paid that night.
18. Ms. De Torres asked Mr. Deziel to confirm that \$11,900 would be the applicant's final invoice. Mr. Deziel responded "yes". Ms. De Torres made the \$11,900 payment later that evening by providing a cheque to Mr. Deziel in person. The cheque included a note that said "Final Invoice Under Duress".
19. Ms. De Torres says that she verbally confirmed with Mr. Deziel that the \$11,900 was the final payment when she gave him the cheque.

20. The respondent provided a statement from one of its employees, who was present when Ms. De Torres gave Mr. Deziel the \$11,900 cheque. According to the witness, Ms. De Torres asked Mr. Deziel to confirm that it was the final payment before giving him the cheque. The witness says that Mr. Deziel agreed.
21. Mr. Deziel denies saying that he agreed that the \$11,900 would be the final payment.
22. On April 9, 2018, the applicant sent the respondent another invoice for \$1,168.31. After applying respondent's previous payments, the amount owing was \$3,870.39, which is the amount the applicant claims in this dispute. The respondent has refused to pay this final invoice.
23. The primary question in this dispute is the nature of the \$11,900 payment. The applicant says that it was a partial payment towards an outstanding invoice. The respondent says that the parties agreed that the \$11,900 would be the final payment for the applicant's work. Essentially, the respondent says that the parties had a settlement agreement that the applicant is trying to back out of.
24. For a contract to exist, there must be an offer, acceptance of the offer, and consideration, which is something of value given by each party. In this regard, an agreement to settle a dispute is no different than any other type of contract.
25. The email correspondence shows that the parties had a significant disagreement about the March 26 invoice. To resolve the dispute, the respondent offered to pay \$11,900 for the applicant's work. The applicant accepted the offer, stating that "he would be happy to accept \$11,900". Therefore, there was an offer and acceptance of the offer.
26. Both parties received something of value. The applicant received prompt payment that was more than the respondent thought it should have to pay. The respondent paid less than the applicant claimed it was owed. Therefore, there was consideration.

27. I find that the parties had a binding contract to settle their dispute about the applicant's invoice for its work.
28. Based on the language used in the email correspondence, I find that the agreement was a final agreement between the parties about how much the respondent would pay the applicant for the project. I find that the applicant gave up its right to collect any outstanding amounts on its invoice or to render any further invoices.
29. I also rely on the timesheets and invoices that the applicant provided. According to these documents, the applicant did not work on the project after March 29, 2018. In addition, in this dispute the applicant refers to its March 26 invoice as the invoice from "March 8 to completion".
30. Because I find that the email correspondence of March 29 is a written agreement between the parties settling their dispute over the final invoice, I find that I do not need to decide what the parties said to each other when Ms. De Torres gave Mr. Deziel the cheque. By that time, the parties already had a binding written agreement.
31. Because of my finding, I do not need to address the parties' submissions about whether the amount that the applicant charged the respondent was supported by the parties' contract.
32. I dismiss the applicant's claims.
33. 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 dismiss the applicant's claim for tribunal fees. The applicant did not claim any dispute-related expenses.
34. The respondent claims an unspecified amount in legal fees. Tribunal rule 132 says that except in extraordinary cases, the tribunal will not order one party to pay another party's legal fees. This follows from the general rule in section 20(1) of the

Act that parties represent themselves in tribunal proceedings. I find that there is nothing extraordinary in this dispute that would justify an award of legal fees. I dismiss the respondent's claim for legal fees.

ORDER

35. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member