



Civil Resolution Tribunal

Date Issued: March 4, 2019

File: SC-2018-004934

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Luis Bello (dba ProTouch Painting) v. Low*, 2019 BCCRT 248

B E T W E E N :

Luis Bello (Doing Business As ProTouch Painting)

APPLICANT

A N D :

Dan Low

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for painting and drywall work. The applicant, Luis Bello (Doing Business As ProTouch Painting), says a contractor named CH and the

respondent's realtor contacted him to paint and repair drywall in the strata unit belonging to the respondent Dan Low. CH is not a party to this dispute.

2. The applicant says he completed the job and sent a \$650 invoice to the respondent, but the respondent refused to pay. The applicant says the respondent's strata corporation (strata) reimbursed the respondent for the job but he has not paid the applicant. The applicant claims \$650 plus GST for a total of \$682, plus 1% monthly interest.
3. The respondent says with the strata's approval he asked CH to do the paint and drywall repair. The respondent says CH's \$650 quoted price was to be offset from a debt CH owed him previously. The respondent says CH needs to issue an invoice to the strata and then CH must pay the applicant. The respondent says that when that never happened, he ultimately asked the strata to pay him what CH owed from the prior debt, and the strata paid the respondent \$450.
4. The parties are each self-represented. For the reasons that follow, I dismiss the applicant's claims against the respondent.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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.
8. 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

9. The issue in this dispute is whether the applicant is entitled to payment of \$682 from the respondent, plus 1% monthly interest, for painting and drywall repair work.

EVIDENCE AND ANALYSIS

10. 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.
11. In his submission, the applicant says he was hired by the respondent together with CH and the respondent's real estate agent. However, in the Dispute Notice that started this proceeding, the applicant stated:

I was asked to paint and repair drywall in the unit belonging to Dan Low. I was contacted by a real estate agent and a contractor [CH] to do the job. I completed the job and sent an invoice to Dan for the work ...

12. The applicant has not provided any evidence to support his assertion that he contracted with the respondent directly. As noted, the respondent says his agreement was with CH, and that in paying CH the respondent would deduct money CH owed the respondent.
13. As noted above, the respondent admits he received money from the strata, "in the amount that [CH] owed me" because the work in the respondent's unit was the strata's responsibility to repair. For the purposes of this decision, the messages in evidence show the strata accepted responsibility for the repair to the respondent's unit, although the respondent made the arrangements with CH and obtained the strata's approval for that accordingly.
14. This leaves the question of whether the respondent should pay the applicant directly for the outstanding balance owed for the work done, given he has received from the strata the amount he says CH owed him. I find the answer is no. As detailed below, this is because the respondent was not responsible for paying for the job and because the respondent had no contractual relationship with the applicant.
15. First, on February 23 the respondent's realtor asked CH by text to do the job and obtained a \$650 quote. The respondent did not hire the applicant. Second, the evidence shows CH owed the respondent's wife \$217 and the respondent agreed to CH doing the job to work off that debt. It appears the \$217 was not CH's total debt to the respondent, as in his Dispute Response the respondent stated he asked the strata to pay him what CH owed him, and later on April 11 the strata paid the respondent \$450 by cheque.
16. On March 2, CH told the realtor that the applicant "is my painter". I agree with the respondent that he reasonably understood the applicant was employed by CH and that the respondent's agreement was only with CH. The respondent's communications with the realtor on March 4 confirm this was the respondent's reasonable understanding at the time. CH's message to the respondent on May 29, 2018 also confirmed that the applicant was CH's "guy", "the one that did the work". The respondent asked CH for his invoice, but says CH never responded.

17. On March 23, the realtor texted CH and asked for an invoice, noting the work was done and the strata “has a cheque with your name on it”. This supports the respondent’s position that he tried to get CH to issue the invoice to the strata so that the strata could pay CH. In other words, it was up to CH to pay the applicant, unless the strata chose to pay the applicant directly in the circumstances. However, there is no basis in the evidence before me to support a claim that the respondent owes the applicant money.
18. I acknowledge CH’s November 16, 2018 email to the respondent stating that he passed the job on to the applicant. The email reads: “There was no understanding or agreement between myself and Mr. Low that I would complete the work, or send him an invoice for the job. The job was done by Mr. Bello on his own accord and was properly billed by Mr. Bello directly to Mr. Low.” I find this is not consistent with the agreement between CH and the respondent, as set out above. I prefer the contemporaneous messages that show the agreement was between CH and the respondent, and that CH sub-contracted the work out to the applicant.
19. Given my conclusions above, I find the applicant’s claims cannot succeed against the respondent.
20. In accordance with the Act and the tribunal’s rules, as the applicant was not successful in this dispute he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

21. I order the applicant’s claims and this dispute dismissed.

Shelley Lopez, Vice Chair