



Civil Resolution Tribunal

Date Issued: March 12, 2019

File: SC-2018-007202

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *4-S Consulting Services Ltd. v. Dhatt*, 2019 BCCRT 303

B E T W E E N :

4-S Consulting Services Ltd.

APPLICANT

A N D :

Mehar Dhatt

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for consulting services. The applicant, 4-S Consulting Services Ltd., says the respondent, Mehar Dhatt, failed to pay for its work designing and preparing house plans for a municipal variance permit. The applicant seeks payment of \$1,575.

2. The respondent denies the applicant's claim. He says the applicant told him the work was a free estimate, and he never agreed to pay for it.
3. The applicant is represented by its principal, Gurpreet Saini. . The respondent is self-represented.

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. Some of the evidence in this dispute amounts to a "they said, he said" scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue. 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: 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

7. The issue in this dispute is whether the respondent must pay the applicant \$1,575 for house design services, including GST.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. In a March 21, 2017 email to the respondent, Mr. Saini wrote as follows:
 - a. The respondent came to his office 2 months previous to discuss the planning of his home, and to get a building permit.
 - b. After the first meeting, the respondent took some plans for review and did not pay. Mr. Saini normally does not give out plans for review without payment, but he agreed because the respondent had referred some other clients.
 - c. The respondent came to Mr. Saini's office again on March 13 and March 16, 2017. They discussed the requirements for the respondent to proceed with a variance permit for the setbacks on his house.
 - d. At the March 16 meeting, Mr. Saini told the respondent he would need almost full plans for the application. Mr. Saini asked for a \$1,500 deposit to proceed with the variance application, and said he would charge a total of \$2,500 for the final project once the setbacks were approved by the municipality.

- e. The respondent said the deadline for variance approval was 8:30 am on Monday March 20, otherwise the application would be delayed 1 month. The respondent pressured to Mr. Saini to complete the plans by Friday March 17, so Mr. Saini agreed to start work immediately.
- f. The respondent came to Mr. Saini's office on March 17. He had not yet paid the deposit. Mr. Saini said if the city agreed to the variance permit based on the site plan with the setbacks, he would give the respondent those for free and would charge after the variance permit was issued.
- g. The respondent called Mr. Saini from City Hall at 3:36 pm on March 17, and said the City did not agree to proceed with only the site plan, and needed all floor plans, elevations by March 20 at 8:30 am. Mr. Saini said he needed more time to complete those plans, and asked the respondent to arrange an extension with the City.
- h. The respondent called back 22 minutes later and told Mr. Saini to finish the plans over the weekend in order to submit them on Monday. Mr. Saini told the respondent he would provide all the plans for the variance permit and they would change the interior later, based on the respondent's requirements. The respondent agreed.
- i. Mr. Saini and his employees worked over the weekend and completed the plans. He emailed the plans to the respondent for review on Sunday.
- j. The respondent called on the morning of Monday March 20, stating that he needed to change some of the plans. Mr. Saini said to apply for the variance permit, and they would make changes later.
- k. While working on other business later on Monday March 20, Mr. Saini saw the respondent at City Hall, applying for the variance permit based on the plans he had been provided for review. The parties spoke, and disagreed.

10. The details of the parties' argument on March 20 is not in evidence. Mr. Saini's email included an attached copy of the plans, and his invoice. He requested payment within 15 days.
11. The evidence confirms that Mr. Saini emailed house plans to the respondent on March 20, 2017. The house plans showed interior layouts for 3 floors a house, plus views of all 4 outside walls. Each page of the plans includes measurements.
12. The applicant's invoice shows a charge of \$1,500 plus GST for "Consulting services for designing and preparing of drawing for Variance permit". The total bill was \$1,575.
13. The respondent says he never agreed to pay for the plans. The respondent says the parties agreed that Mr. Saini would provide a free estimate which would allow the respondent to view his work and see if he could design the house to his standards. The respondent says the parties agreed that if Mr. Saini's plans could be submitted to the City and help him acquire a variance permit, they would "work on a payment agreement".
14. The respondent says he did not like Mr. Saini's designs, so he engaged another company, N Drafting. The respondent says he did not submit Mr. Saini's plans to the City, and submitted other plans prepared by N Drafting.
15. The respondent also says he paid Mr. Saini \$1,575 in cash on March 21, 2017. Mr. Saini denies this, and says the respondent refused to pay.
16. Mr. Saini says the respondent instructed him on March 16 and March 17 to go ahead with the plans for the variance permit, to meet the March 20 deadline. Mr. Saini says they had an oral agreement that the respondent would pay for the work afterwards. Mr. Saini says he and his employees would never have created such detailed design plans just for a free consultation, and that the respondent is obligated to pay for the work.

17. Based on the evidence before me in this dispute, I find that the respondent must pay the applicant \$1,575 for design services and GST.
18. The respondent did not provide any evidence to support his claim that he paid \$1,575 in cash, so I do not accept it. I note that he did not mention any payment in his initial response to the claim, as set out in the Dispute Response Form. Also, the respondent says he has bank receipts showing the cash withdrawal, and that his son accompanied him while he made the cash payment. The respondent did not provide any receipts or bank records, and he did not provide a statement from his son. This alleged payment is also inconsistent with the respondent's statement that he never agreed to pay anything to the applicant. For these reasons, I find the respondent did not pay any part of the applicant's invoice.
19. The respondent says he used plans from H Drafting to apply for the variance permit. However, the respondent did not provide any evidence to support that assertion, such as a copy of the H Drafting's plans or invoice, or a copy of the variance permit application. The respondent says he has copies of email correspondence between him, the City, and N Drafting about the variance permit, but he did not provide it in evidence. As he has provided no supporting evidence, even though such evidence is available, I do not accept the respondent's submission that it did not use the applicant's plans to apply for the variance permit.
20. Based on the evidence provided by the applicant, I find the applicant has met the burden of proving its claim for \$1,575. I am persuaded by the summary of events set out in Mr. Saini's March 21 email, as it is clear and specific, and was written down at the time of the events in question. I accept Mr. Saini's submission that he and his employees would not have completed such detailed design plans for a free consultation. I find that the charge of \$1,575 is reasonable in the circumstances, and therefore order the respondent to pay it.
21. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), from April 20, 2017.

22. 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 find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

23. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of \$1,748.75, broken down as follows:

- a. \$1,575 for design services,
- b. \$48.74 in pre-judgment interest under the COIA, and
- c. \$125 for tribunal fees and dispute-related expenses.

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

25. 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.

26. 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.

Kate Campbell, Tribunal Member