



Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-006663

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Read Jones Christoffersen Ltd. v. Ugoric*, 2019 BCCRT 326

B E T W E E N :

Read Jones Christoffersen Ltd.

APPLICANT

A N D :

Irina Ugoric

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Read Jones Christoffersen Ltd. (RJC) says the respondent Irina Ugoric hired it to provide engineering site assessment services, including inspecting parts of a home, and providing a report summarizing its findings. RJC says it delivered the report, and Ms. Ugoric confirmed it was satisfactory, but did not pay its invoice. RJC claims the \$1,834.35 owing.

2. Ms. Ugoric says she hired RJC to prepare an expert report for her use in litigation against a construction company about the quality of their work. Ms. Ugoric says RJC failed to provide the report in the required form, by her May 18, 2018 deadline. Ms. Ugoric asks that I refuse to resolve the dispute because, after this Dispute Notice issued, she started a provincial court claim against RJC.
3. The applicant is represented by principal or employee Rasamay Tram. 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*. 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 "she said, they 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.
6. 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 decided to hear this dispute through written submissions.

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 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.

ISSUE

9. The issue in this dispute is whether Ms. Ugoric owes RJC the claimed \$1,834.35 for structural assessment services and report it provided to her.

EVIDENCE AND ANALYSIS

10. This is a civil claim where RJC, as the applicant, bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but only refer to them here to the extent necessary to explain my decision.
11. On May 3, 2018 RJC emailed Ms. Ugoric providing a quote of \$1,750 to provide a structural assessment of a deck and wall at her property, including a site visit and a report summarizing their findings.
12. On May 15, 2018 Mr. Ugoric accepted the quote and signed the terms of retainer, which included payment terms within 30 days of an invoice and 18 % contractual interest on overdue accounts.
13. RJC conducted an initial site visit on May 17, 2018.

14. The email correspondence between the parties shows that RJC confirmed that it could issue a report on or before May 25, 2018. Ms. Ugoric raised no objection to that deadline and I find that was the deadline agreed to by both parties.
15. RJC informed Ms. Ugoric that additional field review was needed to finalize the report. Ms. Ugoric agreed that the further field review could proceed on May 22, 2018.
16. On May 24, 2018, RJC sent Ms. Ugoric the report, by email. The report says that it was requested to “review the condition of the wall and deck that were recently replaced due to previous water damage. The intent of our review was to provide an opinion as to whether conditions observed represent a structural concern at this time and whether any repairs are warranted.”
17. The wall examined was found to exceed normal and industry-based construction tolerances. RJC indicated it did not have enough information to provide conclusive reasoning as to why the wall was “out of plumb” and that further invasive investigation would be needed to conclusively determine the cause, to verify whether the wall was load bearing, and to identify what repairs might be required.
18. Regarding the deck, RJC found it was not sufficiently sloped in order to drain. RJC recommended further examination to determine the source of the issue, and that the deck be repaired to allow for proper drainage.
19. On May 24, 2018, Ms. Ugoric acknowledged receipt of the report and wrote “The report is good. Please, send me the invoice .What kind of payment do you accept?”
20. On May 31, 2018 RJC issued Ms. Ugoric an invoice for \$1,834.35 for the report.
21. Ms. Ugoric did not pay the invoice.
22. Ms. Ugoric did not file any evidence in this proceeding.
23. In submissions, Ms. Ugoric asked that I refuse to resolve this dispute so that the matter could be heard with what she calls her court “counterclaim”. The proceeding

is not a counterclaim before the tribunal, but a BC Provincial Court Notice of Claim she filed on October 5, 2018, Registry File Number C85713 (PC Claim).

24. The PC Claim is brought by Ms. Ugoric against RJC about the same report being considered here. Ms. Ugoric claims \$35,000 for fraud and breach of contract. While Ms. Ugoric says the PC Claim is set for hearing May 6, 2019, the documents show it is set for a settlement conference that day.
25. Section 11 of the Act provides that the tribunal may refuse to resolve a dispute within its jurisdiction if the claim or dispute has been resolved through a legally binding process or other dispute resolution process. Here, there is no evidence that the dispute has been resolved through another legally binding process. As well, section 15 of the Act says that once a tribunal proceeding is started, a party may not commence a court proceeding against another party “in relation to an issue of claim that is to be resolved in the tribunal proceeding.”
26. The only evidence is that Ms. Ugoric started the PC Claim after this dispute was commenced, claiming an amount over the tribunal’s monetary limit. In the circumstances, keeping in mind the tribunal’s mandate to provide assessable and economical dispute resolution, I find it appropriate for the tribunal to resolve this dispute.
27. The Dispute Notice here was issued on September 10, 2018.
28. On October 15, 2018 Ms. Ugoric submitted a Dispute Response in which she says she hired RJC to provide an expert witness report for her “SCC case against a construction company”, that they missed the May 18, 2018 deadline, and that RJC failed to complete the report in the form she requested.
29. This dispute before me is a contract dispute about whether RJC provided the service agreed to under the agreement between the parties. Based on the emails filed in evidence, I find that it has.

30. On the evidence before me, I find that the May 2018 agreement between the parties was for a site assessment and report only. There is no evidence, aside from Ms. Ugoric's assertion, that RJC was retained to provide an expert report for her to rely on in court.
31. There is also no evidence that RJC was required to provide the report by a different deadline or in a different form than it did. I find that RJC met its obligations under the May 2018 agreement to provide site assessment and a report to Ms. Ugoric.
32. I find that Ms. Ugoric herself confirmed the report was satisfactory and asked how she could pay for it, the day she received it. I find this is a simple contractual debt matter where Ms. Ugoric is required to pay RJC invoiced amount.
33. I order Ms. Ugoric to pay the \$1,834.35 to RJC, within 30 days of this decision.
34. As well, because Ms. Ugoric signed an agreement to pay 18% annual interest on any overdue amounts, I find that she owes pre-judgement contractual interest from June 30, 2018, 30 days after the invoice was issued, to the date of this decision, totaling \$233.38.
35. 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 RJC is entitled to reimbursement of \$125 in tribunal fees and \$16.02 in dispute-related expenses for registered mail, which I find reasonable.

ORDERS

36. Within 30 days of the date of this order, I order Ms. Ugoric to pay RJC a total of \$2,208.75, broken down as follows:
 - a. \$1,834.35 in payment of RJC's invoice,
 - b. \$233.38 in pre-judgment interest at the 18% contractual rate, and

c. \$141.02, for \$125 in tribunal fees and \$16.02 for dispute-related expenses.

37. RJC is entitled to post-judgment interest under the Court Order Interest Act, as applicable.

38. 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.

39. 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.

Julie K. Gibson, Tribunal Member