



Civil Resolution Tribunal

Date Issued: April 2, 2019

File: SC-2018-000740

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pavlassek v. Freethy*, 2019 BCCRT 401

B E T W E E N :

Anne Pavlassek

APPLICANT

A N D :

Diana Freethy

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Diana Freethy, hired the applicant, Anne Pavlassek, to replace the chimney on the respondent's house. After the applicant started, the parties had a dispute about how much the job would cost and the respondent terminated the parties' contract. This dispute is about how much the respondent should pay for the

work the applicant did. The applicant says that \$2,000 is fair compensation for her work. The respondent offers \$996.87.

2. Each of the parties is self-represented.

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 issue in this dispute is how much the respondent owes the applicant for the partial rebuilding of the respondent's chimney.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove her 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 parties first discussed the rebuilding of the respondent's chimney in November 2015. Initially, the respondent wanted to see if the chimney could be remediated rather than entirely rebuilt. The applicant agreed to assess the possibility.
10. On December 15, 2015, the applicant started the work along with an assistant. According to the applicant, the parties had not discussed the cost of the project at this point. The respondent says that the applicant gave her a verbal estimate of \$1,000 to repair the chimney, if possible, or \$1,500 to rebuild the chimney. The applicant says that on December 17, 2015, she gave a verbal quote of \$1,500 to salvage the old chimney and \$3,000 to \$3,500 to rebuild the new chimney.
11. The first thing the applicant built was a temporary wood and plastic structure on the roof to protect the chimney from the elements. The applicant abandoned the attempt to salvage the old chimney on December 19, 2015. At this point, the applicant began demolishing the chimney so that she could rebuild it.
12. The respondent had wanted the applicant to finish the job by the end of December. The applicant did not work on the project after December 24, 2015, because she was visiting family for the holiday season. At this point, the applicant had torn down the old chimney to below the roof line and built the new chimney back up to 10 or 11 bricks above the roof line. There were 5 bricks left to be built. The applicant had purchased sufficient material to complete the job.

13. The respondent emailed the applicant on January 19, 2016, to see about getting the project finished.
14. On January 22, 2016, the applicant sent the respondent 2 quotes, one for remediating the old chimney and one for rebuilding the chimney. They were both dated December 15, 2015, but it is unclear when the applicant prepared them. The quote for rebuilding the chimney was for \$5,475.
15. On January 30, 2016, the respondent sent the applicant an email terminating the contract. The respondent says that she was concerned about the high written quote. She provided 2 quotes from other contractors to rebuild her chimney, one for \$1,950 and another for 2,200. The respondent asserted that the work was about half done and offered to pay the respondent \$1,200. On January 31, 2016, the applicant rejected the offer by sending an invoice for \$4,040.
16. The respondent hired the contractor who provided the \$2,200 quote to complete the job. The new contractor wrote a letter on March 3, 2016, outlining what he claimed were deficiencies that he observed when he began work on February 1, 2016. He considered the weatherproof structure unnecessary. He found that the flashing around the base of the chimney was improperly installed. He said that the workmanship in mortar spreading was poor.
17. On March 8, 2016, the respondent sent the applicant a 7 page letter acknowledging that the applicant had performed some work but reiterating that she believed that \$1,200 was fair compensation.
18. As mentioned above, the parties disagree about when the applicant provided a verbal quote and how much the verbal quote was for. I find that there was no agreement between the parties about how much the project would cost before the applicant started working. In any event, in this dispute both parties have based their arguments on the new contractor's quote. I therefore find that I do not need to resolve the issue about the applicant's verbal quote.

19. In circumstances where parties have entered into an agreement but have not agreed on the price, the applicant is entitled to a reasonable amount for the goods and services provided. This concept is known as “contractual quantum meruit”. See, for example, *Laing v. Medix Holdings Ltd.*, 2018 BCPC 276, at paragraph 176.
20. I find that in the absence of an agreement on price, using the new contractor’s quote is a reasonable way to value the applicant’s work.
21. Before turning to the value of the applicant’s work, the applicant claimed that she suffered carbon monoxide poisoning because the respondent refused to turn off her gas furnace. However, the applicant does not claim any damages for carbon monoxide poisoning. I find that I do not need to determine whether the applicant suffered carbon monoxide poisoning or, if she did, whether it was the respondent’s fault.
22. The applicant provided a chart to show how she came to a value of \$2,000 for her work. Because both parties provided detailed submissions based on the quote, I will address each aspect of the quote in turn.
23. The quote allocated \$650 to set up scaffolding and tear down the old chimney to the roof line. The applicant claims that she completed that task and claims the full \$650. The respondent does not dispute this claim.
24. The quote allocated \$1,150 to rebuild the chimney, which the applicant breaks down into \$475 for materials and \$675 for labour. With respect to materials, the applicant provided invoices for \$443. I find that some of the items claimed are overhead rather than expenses purchased specifically for the respondent’s chimney replacement. In particular, I have deducted the applicant’s claim for epoxy, screws, a brush and a nut driver. The respondent says that the applicant spent more than she needed to on materials due to her inexperience but provides no objective evidence to support this assertion. I find that the remaining claims for materials are reasonable, which total \$390.77.

25. With respect to labour, the applicant claims 2/3 of \$675 for \$450. I find that this is a reasonable claim because the applicant laid approximately 2/3 of the bricks above the roof line.
26. The quote allocated \$400 to clean up the job and tear down the scaffolding. The applicant claims \$250. The respondent says that she had to dispose of some materials that the applicant left on her property. The respondent argues that I should deduct \$335 but admits that she does not recall how much it actually cost. I note that the applicant provided an invoice that shows that it only cost \$14.70 to dispose of nearly half a ton of debris. In addition, because the applicant only claims \$250 of the \$400 in the quote, I find that she has reasonably taken into account the amount of clean-up that remained after the respondent terminated the contract.
27. In addition to the items in the invoice, the applicant claims \$100 to tear down the chimney below the roof line because the quote is only for demolition to the roof line. The respondent says that the other contractors said that this work was not necessary. However, the other contractors based their assessment on photographs, since the applicant had already started rebuilding the chimney when they prepared the quote. I find that the contractors' opinions are unreliable because they were not able to properly inspect the chimney's previous condition. I find that the applicant's claim is reasonable.
28. Finally, the applicant claims \$107 to build the temporary protective structure. I find that it was understandable for the applicant to want to shelter herself from the elements. It is undisputed that the applicant performed her portion of the work in cold, windy and wet conditions. However, I accept the new contractor's statement that it was not necessary. I find that the applicant has not proven that she should be compensated for building a temporary shelter.
29. The respondent also argues that I should deduct \$262.50, which she spent for a contractor to attend to inspect gas fittings. The respondent alleges that the applicant tampered with gas fittings. The invoice does not say that the contractor needed to fix anything. In addition, the report that the respondent relies on was not written by

the person who actually inspected the gas fittings. While the tribunal has discretion to admit hearsay evidence, I place little weight on this letter because it is a matter of expert opinion. I find that the respondent has failed to prove that this expense was reasonable and I decline to deduct it from the applicant's claim.

30. As for the remaining deficiencies outlined in the new contractor's letter, there is no evidence that the new contractor charged the respondent to fix these deficiencies. I find that there is no reason to deduct any further amounts from the applicant's claim.
31. Therefore, I find that \$1,840.70 is reasonable compensation for the applicant's work. I note that the applicant does not claim GST. Her invoices also do not show GST. I have not added GST to the applicant's claim.
32. 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. While not successful on every point, I find that the applicant was the successful party in this dispute. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.
33. The respondent claimed reimbursement for legal fees and other dispute-related expenses. Because the respondent was not successful in this dispute, I dismiss this claim.

ORDERS

34. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,141.70, broken down as follows:
 - a. \$1,840.77 as reimbursement for the applicant's work to rebuild the chimney,
 - b. \$85.93 in pre-judgment interest under the *Court Order Interest Act*, calculated from January 30, 2015, the day the respondent terminated the contract, and
 - c. \$125 for tribunal fees.

35. The applicant is entitled to post-judgment interest, as applicable.
36. The respondent's claim for legal fees and dispute-related expenses is dismissed.
37. 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.
38. 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.

Eric Regehr, Tribunal Member