Civil Resolution Tribunal

Date Issued: April 11, 2019

File: SC-2018-007110

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Byrd et al v. Harris*, 2019 BCCRT 448

B E T W E E N :

Colleen Byrd and Shane Byer

APPLICANTS

A N D :

Donald R. Harris

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. This is a dispute about the cost to repaint a 1979 Chevrolet Camaro (car). The applicants, Colleen Byrd and Shane Byer, hired the respondent, Donald R. Harris, to repaint the car. The applicants say that the respondent gave them a verbal quote of $7,000 to $10,000 but then charged them $17,000. They seek a refund of $5,000.

2. The respondent denies giving a verbal quote and says that he billed the applicants based on the amount of time it took to complete the repairs.

3. The parties are each 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 "he said, she said" scenario with both sides calling into question the credibility of the other. I decided to hear this dispute through written submissions, because I find that I do not need to resolve the credibility issues that the parties raised, as discussed in more detail below.

6. 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.

7. 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

8. The issues in this dispute are:

    a. Did the parties agree to modify the terms of the initial contract?

    b. Did the parties agree to a fixed-price contract or an hourly contract for the respondent to repaint the vehicle?

    c. Did the respondent fail to complete the paintjob to a reasonable standard?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their 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.

10. In May 2018, the applicants approached the respondent about having the car repainted. The parties attended the respondent's shop on June 3, 2018, so that the respondent could inspect the car. It is undisputed that during their discussion, the applicants advised the respondent that they had a budget of $7,000 to $10,000. It is also undisputed that the respondent said that he thought he would be able to complete the project within that budget. The parties agreed that the applicants would help the respondent when possible to keep the cost down.

11. The parties dispute whether that conversation included a commitment by the respondent to complete the project within the applicants' stated budget.

12. The applicants say that the respondent provided a quote of $7,000 to $10,000. The applicants say that the parties agreed that the cost would not exceed $10,000. The applicants say that they never would have hired the respondent if they had thought that their agreement would allow him to go over budget.

13. The respondent says that he does not give firm quotes or estimates, which he considers to be the same thing. He says that he gave them a "guesstimate" of

$7,000 to $10,000 because he says it is impossible to know how much work a paintjob will be until he starts working on it.

14. The parties did not enter into a written contract and there is no written correspondence to confirm the terms of their contract, such as emails or text messages.

15. The respondent says that once he started removing the paint, he could see that it was going to be a much more time consuming job than he had initially thought. He says that he contacted Ms. Byrd to inform her and she said to go ahead and proceed. Ms. Byrd acknowledges that they talked about the respondent doing more work than he initially thought but she says that the respondent did not tell her that it meant that he would go over budget.

16. The applicants paid a $1,500 down payment. They paid $5,000 on July 20, 2018 and a further $5,000 on August 26, 2018.

17. By the time of the August 26, 2018, payment, the applicants were worried about the cost of the project as it was already over budget. The parties arranged to meet at the respondent's house on September 5, 2018.

18. The parties' accounts of the September 5, 2018, meeting are largely the same. The respondent told the applicants that the car was not complete and that the cost of the work was up to $16,800. The respondent offered to complete the work for $17,000 as long as Ms. Byrd helped with painting the remaining stripes. Mr. Byer suggested $15,000 and the respondent said no, sticking to his $17,000 offer. The applicants reluctantly accepted. It is not disputed that the respondent had previously told them that he does not let people take their cars unless they have paid in full, so the applicants said that they felt like they had no choice but to agree.

19. On September 16, 2018, the car was finished. Mr. Byer attended and gave the respondent the remaining $5,500 and left with the car.

20. The applicants say that there are blemishes and defects with the paintjob. The respondent says there is nothing wrong with the paintjob, the car just needs to be buffed. He had offered to do this for the applicants but they refused.

Did the parties agree to modify the terms of the initial contract?

21. The respondent argues that the parties had 2 separate contracts. The first contract was for the respondent to complete the repainting project at his usual hourly rates. Then, after the applicants challenged how much it was going to cost under that contract, the parties negotiated a new contract that the respondent would finish the project for a flat fee of $17,000.

22. The applicants argue that they only gave the respondent what he asked for because they wanted the car back. The respondent had repeatedly said that he would not release the car unless he was paid in full, effectively threatening to assert a repairers lien under the *Repairers Lien Act*. A repairers lien allows a person who has provided value to a car, such as a new paintjob, to keep the car if they are not paid.

23. I do not agree with the respondent that it is correct to view the parties' September 5, 2018 agreement as a new contract. Rather, I find that the parties agreed to vary the terms of the initial contract to address their growing disagreement about the total cost. I find that whether the applicants are correct that the respondent originally agreed to stick to a $10,000 budget or the respondent is correct that the applicants originally agreed to pay his hourly rate is irrelevant. The September 5, 2018 agreement was different than what both parties expected when they started the contract. I find that the parties agreed to vary the contract by agreeing to a fixed price of $17,000.

24. The question is whether the variation is enforceable. In general, when parties to a contract agree to vary its terms, the variation is enforceable as long as there is no duress, unconscionability or other public policy reason not to enforce the contract. It is no longer necessary that there be "fresh consideration" for a variation to be

enforceable, although the existence of consideration is still a factor in determining enforceability of a variation of a contract. Consideration is something of value given by each party. See *Rosas v. Toca*, 2018 BCCA 191.

25. I find that both parties received consideration for the variation of the contract. While the applicants were upset that the project had gone significantly overbudget, they received certainty of the remaining cost and that they would be able to retrieve their car without any further dispute. They also received the benefit of the respondent completing the job. The respondent received the benefit of being paid for his work without a dispute.

26. While the applicants do not use this specific language, their submissions raise the issue of whether they entered into the variation agreement under duress. To establish duress, the applicants must prove that the respondent put them in a position where they had no realistic alternative but to accept the settlement offer. It is not sufficient to prove that the respondent put them under economic pressure. I find that the respondent's threat to keep their car does not rise to the level of duress because the respondent had a legal right to do so if the applicants refused to pay. I find that the applicants have not proven duress.

27. As for the other factors set out in *Rosas*, I find that there is no evidence to suggest that the variation was unconscionable or contrary to public policy.

28. Therefore, I find that the parties' variation of the contract is enforceable. I dismiss the applicants' claim for a partial refund because the respondent went over budget.

29. Because of my finding that the parties agreed to vary the initial contract, I do not need to resolve the parties' disagreement about the terms of the initial contract.

Did the respondent fail to complete the paintjob to a reasonable standard?

30. The applicants allege that the respondent's paintjob was not done to a reasonable standard. However, the applicants have provided no photographs of the completed paintjob or any expert evidence to prove that the respondent's work was below a

reasonable standard. In particular, they did not provide any objective evidence in response to the respondent's allegation that the paintjob just needed to be buffed out. In the absence of any objective evidence, I find that the applicants have failed to prove that they ought to be given a partial refund due to poor workmanship.

31. I dismiss the applicants' claim for a partial refund on the basis of poor workmanship.

32. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicants have not been successful so I dismiss their claim for tribunal fees and dispute-related expenses.

ORDER

33. I dismiss the applicants' claims, and this dispute.

Eric Regehr, Tribunal Member