Civil Resolution Tribunal

Date Issued: April 17, 2019

File: SC-2018-007256

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hildebrand v. Dr. Robert Zak, Optometric Corporation,* 2019 BCCRT 472

B E T W E E N :

Axle Hildebrand

APPLICANT

A N D :

Dr. Robert Zak, Optometric Corporation

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for vehicle repairs and odd labour jobs. The applicant, Axle Hildebrand also known as Dennis Hildebrand, says he completed

the repairs for the respondent, Dr. Robert Zak, Optometric Corporation. The applicant claims a total of $422.50.

2. Mr. Hildebrand lives across the street from a house owned by Dr. Zak. The respondent denies liability, saying the limited work done was all part of an ongoing barter system with Dr. Zak, in exchange for various favours. The respondent denies any responsibility.

3. In the Dispute Notice that started this proceeding, the applicant named the respondent, "Dr. Robert Zak, Optometric Corporation Zak". Later, after the respondent's request, the applicant agreed that the respondent should be "Dr. Robert Zak, Optometric Corporation". I have amended the style of cause above accordingly. As discussed below, the applicant did not name Dr. Zak personally.

4. The applicant is self-represented. The respondent is represented by Jennifer Wagner, who is an employee.

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. Some of the evidence in this dispute amounts to a "he 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.

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 is to what extent, if any, the respondent owes the applicant $422.50 for various repairs and labour.

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. First, the evidence and the parties' submission show that the corporate respondent is not responsible for any of the applicant's claims. After the applicant agreed to the corporate respondent name change, the tribunal staff expressly asked the applicant about whether he agreed the proper respondent should be Dr. Zak personally, and

the applicant did not respond to that email. On the applicant's own evidence, his dealings were with Dr. Zak personally, as neighbours. There is no suggestion that Dr. Zak's optometry corporation, the only named respondent, had any role in the parties' dealings at issue in this dispute. For this reason alone, I dismiss the applicant's claims against the named respondent, which is Dr. Zak's optometry corporation.

12. Bearing in mind the tribunal's mandate that includes proportionality, even if Dr. Zak had been personally named (which might have been the applicant's original intention), I would dismiss the applicant's claims. My reasons follow.

13. The applicant's house is across the street from a vacant house owned by Dr. Zak. The thrust of the applicant's claims is that the parties had a verbal agreement he would be paid for the work he did.

14. In particular, the applicant says he: a) repaired Dr. Zak's Porsche (bodywork and replacing a fuel pump - $37.50 and $187.50 claimed respectively), b) repaired a lawnmower and trimmer ($47.50, including $10 for supplies), and c) installed a 100-amp main breaker ($150).

15. The respondent says the applicant is a "backyard mechanic" and has no formal training. The respondent says the small amount of labour done by the applicant was part of an ongoing barter system in exchange for favours, such as burgers and beer and letting the applicant store his vehicles on Dr. Zak's property. The respondent says there was never any agreement about payment for the applicant's work at issue. All of the labour in question was minimal in terms of time spent, ranging from a few minutes to 30 minutes for the fuel pump installation.

16. The applicant admits he and Dr. Zak bought burgers and beer for each other. He also admits that he stored his vehicles on Dr. Zak's property and that he was never asked for payment to do so. This is the same argument raised by the respondent in this dispute: the parties never agreed on payment and that the work done was part of an ongoing neighbourly exchange of favours.

17. On balance, I find there was no 'meeting of the minds' between the applicant and Dr. Zak about payment for the jobs in question. Agreement on price is a fundamental aspect of a contract. The applicant's witness statement shows only that the applicant offered similar help to another neighbour, with no reference to whether Dr. Zak agreed to pay anything (and no reference to the neighbour paying the applicant either). Further, the fact that the corporate respondent paid the applicant $307.47 for some unidentified expense in May 2016 is not determinative of the issues in this dispute. As such, in this dispute I find there was no contract formed with the respondent or Dr. Zak personally.

18. What about payment for the value of the work done, which in law is known as *quantum meruit*? I find the weight of the evidence shows the parties historically operated on a barter system for the relatively small favours and jobs at issue in this dispute. The applicant's quotes from dealers for similar repair work are unhelpful, given the context. On balance, I find the applicant has not proved Dr. Zak owes anything for the jobs in question.

19. As the applicant was unsuccessful in this dispute, in accordance with the Act and the tribunal's rules I dismiss his claim for reimbursement of tribunal fees.

ORDER

20. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair