



Civil Resolution Tribunal

Date Issued: May 7, 2019

File: SC-2018-001092

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keenan Todd dba Todd Masonry v. James*, 2019 BCCRT 542

B E T W E E N :

Keenan Todd Doing Business As Todd Masonry

APPLICANT

A N D :

Cody James

RESPONDENT

A N D :

Keenan Todd Doing Business As Todd Masonry

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for masonry work. The applicant (and respondent by counterclaim), Keenan Todd Doing Business As Todd Masonry, says he is owed \$1,890 for hourly masonry work he did in December 2017. The respondent (and applicant by counterclaim), Cody James, hired Mr. Todd to help with a job Mr. James was performing for a business called Skill-Tech Builders (Skill-Tech).
2. Mr. James says Mr. Todd left deficiencies and failed to complete the work and so Mr. James had to finish it. In his counterclaim, Mr. James also alleges Mr. Todd stole equipment that caused him to lose another contract, although Mr. James filed no evidence. Mr. James claims \$2,925 for the “lost contract”.
3. The parties are each self-represented. For the reasons that follow, I dismiss both Mr. Todd’s and Mr. James’ claims.

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 “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.

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 9.3(2), 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.

ISSUES

8. The issues are whether each of the parties are entitled to compensation related to the masonry job Mr. James hired Mr. Todd to do in December 2017.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Mr. Todd must prove his claim and Mr. James must prove his counterclaim. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. Mr. Todd claims \$1,890 for the December 2017 masonry job. In particular, he says the parties agreed he would be paid \$15 per square foot for pillars work. He says each of the 3 pillars was 40 square feet, and so this equals \$1,800 plus GST. He did not work on the 4th pillar because he says Mr. James finished it himself.

11. Mr. James provided no evidence despite being given the opportunity to do so. Mr. Todd provided 1 piece of relevant evidence: an August 21, 2018 email from the contractor Skill-Tech, which as noted above had hired Mr. James.
12. Skill-Tech stated that on December 21, 2017 it learned that Mr. James hired Mr. Todd to help with the masonry job. Skill-Tech stated that Mr. James was paid in full for the job on January 15, 2018, but later identified deficiencies that had not been fixed, such as missing rocks and stone applied incorrectly on 6 brackets. Skill-Tech stated that Mr. James did not respond to the message and did not return to fix the deficiencies. Skill-Tech stated that Mr. Todd's share of the work was to have been paid out of what was paid to Mr. James. However, Skill-Tech also stated that Mr. James had said Mr. Todd had "disappeared for the installation of the caps". Skill-Tech concluded their statement, "despite the pay conflict, [Mr. Todd] returned to the jobsite and took care of the outstanding items".
13. It is not clear to me from Skill-Tech's statement that Mr. Todd's taking "care of the outstanding items" was installing the missing caps, or, also fixing the deficiencies. Mr. James submits he was the one who installed the caps. In his reply submission, Mr. Todd says the addition of the caps was in addition to his "quoted price" for the work on the "pillars", which was to be \$15 per square foot. Mr. Todd expressly states that the only work he completed was the pillars, because he says Mr. James would not let him install the caps. Given this, I find I cannot rely on Skill-Tech's statement that Mr. Todd "took care of the outstanding items". I do accept there were deficiencies, given Skill-Tech's and Mr. James' evidence.
14. In addition, Mr. Todd has not provided any evidence to support the amount claimed. He provided no time sheets, no quote, and no invoice. There are no photos of the work done. As referenced above, I have only the statement from Skill-Tech, and an irrelevant hostile text exchange between the parties around the time this tribunal proceeding started. I find Mr. Todd has not proved he is entitled to payment for work where the evidence indicates there were some unrepaired deficiencies, and for which he has not proved the value of the work done. I dismiss Mr. Todd's claims.

15. What about Mr. James' counterclaim?

16. From the Dispute Notice for Mr. James' counterclaim, it appears the \$2,925 claimed relates to a separate job he says he lost because Mr. Todd allegedly stole his equipment. Yet, as noted above, Mr. James provided no evidence and no substantive submissions. In particular, Mr. James provided no documentation about the other job and how it was lost due to his having to call the police and dealing with Mr. Todd's concerns about the job he worked on. I find Mr. James has not established he lost the other job due to any improper contractual interference by Mr. Todd. I dismiss Mr. James' counterclaim.

17. Neither party was successful in their claim. In accordance with the Act and the tribunal's rules, I therefore dismiss their respective claims for reimbursement of tribunal fees.

ORDERS

18. I dismiss Mr. Todd's claims. I also dismiss Mr. James' counterclaim.

Shelley Lopez, Vice Chair