



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Michelle Bernier (dba Michelle Dupré Design & Company) v. Hickey*, 2019
BCCRT 589

B E T W E E N :

Michelle Bernier (Doing Business As Michelle Dupré Design &
Company)

APPLICANT

A N D :

Carole Hickey

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Carole Hickey, hired the applicant, Michelle Bernier (Doing Business As Michelle Dupré Design & Company), to install light fixtures in her

home. The applicant claims \$2,154.30 for unpaid services, plus contractual interest of 24% per year.

2. The respondent says that the applicant installed kitchen lights without her authorization. She says that the kitchen lights were too expensive for her budget and that she did not like them. She also disputes the electrician charges in the applicant's invoice. She says that she has already paid a reasonable sum for the applicant's work.
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 about credibility, with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me and make findings about credibility when necessary. I 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 therefore decided to hear this dispute through written submissions.
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 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 have a contract? If so, what were its terms?
 - b. Did the respondent approve the installation of the kitchen lighting?
 - c. Did the applicant charge a reasonable amount for the work performed?
 - d. Is the applicant entitled to contractual interest?

EVIDENCE AND ANALYSIS

9. 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.
10. The respondent hired the applicant to install new light fixtures in the kitchen, dining room, hallways and living room of her home. This dispute is primarily about the kitchen lighting.
11. The parties met at the applicant's store on December 6, 2016, to review lighting options. Prior to the meeting, the applicant had emailed photographs of various

lighting options. The lighting for the dining room and hallways included a unit price, but the lighting for the kitchen did not.

12. The respondent says that at this meeting she gave the applicant a budget of \$3,000 for installing all of the lighting. The applicant denies that the parties came to an agreement capping the price at a certain amount and says that they did not discuss the respondent's budget. It is undisputed that the applicant did not give the respondent a quote or estimate. It is also undisputed that the parties did not enter into a written contract.
13. The respondent provided a statement from another contractor who worked on her renovation, DF. DF says that he was present when the parties met at the respondent's home on December 6, 2016. At that meeting, he says that the parties discussed budget, pricing and invoices. He does not say that he heard the parties agree to a price.
14. It is undisputed that the applicant's electricians attended the respondent's home on 4 occasions: December 19 and 20, 2016, and January 7 and 10, 2017. The parties dispute which of these days the kitchen lighting was installed. The applicant says it was December 20, 2016. The respondent says it was January 10, 2017.
15. DF says that on January 10, 2017, he was present when the electricians installed the kitchen lights. He says that he telephoned the respondent because he thought she might want to look at the kitchen lighting.
16. The applicant's booking sheet says that on January 5, 2017, the parties went shopping to choose lighting and approve purchase for the dining room, hallway and kitchen. The entry for December 20 says that additional fixtures will be chosen for the kitchen in the New Year. These entries are both inconsistent with the applicant's evidence that the kitchen lighting was installed on December 20. I find that the evidence is clear that the kitchen lights were installed on December 20. However, I find that nothing turns on the date that the kitchen lights were installed.

17. The applicant also installed hallway lighting on January 10, 2017. The respondent sent the applicant an email that evening saying that “the lights look wonderful”.
18. The respondent says that she telephoned the applicant to discuss the kitchen lighting on January 10, 2017. The respondent says that the applicant told her to let the kitchen lighting stay for a week to see if the applicant came to like it. The applicant denies that this conversation occurred.
19. I do not accept the respondent’s evidence that she telephoned the applicant on January 10, 2017, to complain about the kitchen lights because that same day she sent an email praising them. I do not accept the respondent’s explanation that she was only referring to the hallway lights because she had not seen the kitchen lights when she sent the email. It simply does not make sense that the respondent would return home in the evening, inspect some of the new lights and email the applicant before looking in her kitchen at the rest of the new lights.
20. The applicant emailed the respondent on February 7, 2017, which attached an invoice for \$2,428.91. When the respondent tried to view the invoice, the link did not work. The applicant says that this email was sent in error. On February 9, 2017, the applicant sent another email attaching an invoice for \$5,198.78. The invoice itemized the various items that the applicant purchased for the project, including the kitchen lighting, which was \$760.30.
21. The respondent emailed the applicant on February 14, 2017, to tell her to take out the kitchen lights because she did not like them.
22. On February 16, 2017, the respondent made a \$3,000 payment. The applicant emailed the respondent refusing to take the kitchen lighting back. The applicant said that the respondent had viewed and approved the kitchen lighting prior to its installation and that it could not be removed because it had been customized. The respondent insisted that she had not approved it and demanded that it be removed and that the applicant apply a partial refund. The applicant again refused.

23. On February 22, 2017, DF uninstalled the kitchen lighting and returned it to the applicant's place of business. The applicant emailed the respondent that she did not accept the return of the kitchen lights. She gave the respondent 5 days to return to pick them up, which the respondent did not do.

Did the parties have a contract? If so, what were its terms?

24. The respondent has consistently alleged that the parties had no contract. However, as I interpret the respondent's previous correspondence and submissions, she agrees that the parties had a contract but never agreed on the price.

25. The respondent says that the parties agreed that the applicant would provide the respondent with photographs and price quotes before installing anything so that the respondent could authorize it. The applicant does not dispute that the respondent had to approve of the light fixtures that she would install in the respondent's home. I accept the respondent's evidence that this was a term of the parties' contract.

26. However, I find that the parties did not agree on a firm price or on a cost for the applicant's role in the project.

27. 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. I will address this issue below.

Did the approve the installation of the kitchen lighting?

28. The respondent's main argument is that the applicant installed the kitchen lighting without her approval and without telling her the price.

29. The applicant says that the respondent viewed the light fixtures prior to their installation and approved them. The applicant relies on the notes from her appointment software that has an entry for January 5, 2017, that the respondent

chose the lighting for the kitchen while they were shopping together. The applicant says that she told the respondent that the electricians would need to modify the lights to make them compatible with the track lighting, so they could not be returned. The applicant also says that the respondent instructed the applicant on the light fixtures' height and placement, which is her common practice.

30. I find that the respondent authorized the installation of the kitchen lights. I rely, in part, on my finding that the respondent has misrepresented that she immediately complained about the lights in a January 10 telephone call. I find that this allegation is self-serving and inconsistent with the other evidence, and therefore it negatively affects the respondent's credibility.
31. I agree with the applicant that the respondent only came up with the explanation that she had not authorized the lights after she received the final bill, which was higher than the respondent expected. I find that if the respondent had not authorized the installation of the lights, she would likely have complained in writing before February 14, 2017.
32. I also find that the respondent uninstalled the kitchen island lights at her own expense. In the circumstances, I find that she could not have reasonably expected to unilaterally drop off the lights and receive a refund, especially after she had been told that they could not be reused in another project.

Did the applicant charge a reasonable amount for the work the applicant performed?

33. I will now turn to the issue of whether the applicant's invoice reflects a reasonable amount for the goods and services she provided. The respondent makes 3 allegations: that the electricians inflated their time, that there were deficiencies in the applicant's work, and that the applicant installed a damaged light fixture.
34. With respect to the electricians, the respondent alleges that the electrician's hours were inflated. The invoice charges for 2 electricians for a total of 36 hours at \$75 per hour for a total of \$2,700.

35. The respondent's notes from December 2016 say that the electricians quoted her \$75 per hour for an electrician and \$35 an hour for a helper, who I take to be the apprentice. In this dispute, she claims that the helper should cost \$45 per hour. She does not explain this discrepancy. The applicant does not specifically respond to the allegation that the apprentice would be charged at a lower hourly rate.
36. The applicant says that 3 subcontractors worked on the project, including 2 licensed electricians and an apprentice, and that she is only passing their cost along to the respondent. The respondent has demanded a copy of the invoice that the applicant received from the electricians but the applicant never supplied any supporting documentation for the electrician charges. Given that the applicant failed to provide any objective evidence about the electrician charges, I draw an adverse inference against her. This evidence should have been easily available and was specifically demanded by the applicant. If the evidence supported the applicant's position, I find that she likely would have provided it to the respondent when the respondent disputed the invoice and would likely have relied on it in this dispute.
37. In these circumstances, I find that the applicant has failed to prove the extent of her claim for electrician charges. The respondent claims that she should pay for 12 hours for an electrician and 12 hours for a helper for a total of 24 hours. However, the respondent admits that she was not always present to observe who was working or for how long.
38. I am left without good evidence to assess with precision the amount that the applicant spent on electricians. I am satisfied that the applicant did not charge for the apprentice's time because the invoice only refers to 2 electricians even though, at times, there were 3 workers on site. On a judgment basis and keeping in mind the adverse inference I drew against the applicant, I find that the applicant is entitled to 24 hours of electrician time at \$75 per hour, for a total of \$1,800, plus GST.
39. The respondent provided an invoice from another contractor for what she says were deficiencies. The contractor charged \$196.88 to uninstall the kitchen lights and

install new lights, reinstall 2 light fixtures because they were not flush with the ceiling, and install 2 lightbulbs.

40. The photographs in evidence show that 2 of the light fixtures were not perfectly flush with the ceiling. I find that it was reasonable for the respondent to hire someone else to fix the problem given the problems between the parties. However, I find that the bulk of the contractor's work was uninstalling the kitchen lights and installing new lights, which I find is not the applicant's responsibility. I find that \$75 is a reasonable deduction from the applicant's invoice for this minor deficiency.
41. The respondent also claims that the applicant installed a damaged dining room light. The photographs of the light do not show any visible damage. In any event, the respondent did not raise this issue until well after the light was installed. I find that she has not proven that the applicant caused any damage to the dining room light.
42. In summary, I find that it is appropriate to deduct \$945 in electrician charges and \$75 for fixing the ceiling lights. These amounts are inclusive of GST. Accordingly, I find that \$1,134.30 is a reasonable sum for the respondent to pay the applicant in full satisfaction of the outstanding invoice.

Is the applicant entitled to contractual interest?

43. The applicant also claims contractual interest of 24% per year, which on the date of this decision would amount to \$1,199.24. However, there is no evidence of any agreement between the parties that the applicant would charge interest on an overdue account. The applicant's invoices make no mention of interest. I therefore dismiss the applicant's claim for contractual interest.
44. The applicant is, however, entitled to pre-judgment interest under the *Court Order Interest Act* from February 9, 2017, which was the due date listed on invoice. While the respondent notes that the email attaching the invoice showed a due date of May

10, 2017, I find that the date on the invoice is the appropriate date to start calculating interest.

45. 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. The applicant has been partially successful. I order the respondent to reimburse the applicant for half of her tribunal fees of \$125, which is \$67.50. The applicant did not claim any dispute-related expenses.

ORDERS

46. Within 28 days of the date of this order, I order the respondent to pay the applicant a total of \$1,231.97, broken down as follows:
- a. \$1,134.30 as the balance owing on the applicant's invoice,
 - b. \$30.17 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$67.50 in tribunal fees.
47. The applicant's remaining claims are dismissed.
48. The applicant is entitled to post-judgment interest, as applicable.
49. 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.

50. 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