



Civil Resolution Tribunal

Date Issued: May 31, 2019

File: SC-2018-005482

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kanzler v. O'Rourke*, 2019 BCCRT 663

B E T W E E N :

Thomas Kanzler

APPLICANT

A N D :

Dominic O'Rourke

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Dominic O'Rourke, is a general contractor who hired the applicant, Thomas Kanzler, to complete the painting portion of a residential renovation. The parties agreed that the applicant would be paid \$10,000, half up front and half on completion. The respondent paid the first \$5,000 as agreed but has refused to pay

any of the remaining \$5,000 because he says that the applicant did not complete the project. The applicant claims the remaining \$5,000.

2. The parties are each 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. In this dispute, both parties call into question the credibility of the other. In the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised because they are not relevant to the outcome of this dispute. I therefore decided to hear this dispute through written submissions.
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 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.

7. I note that the applicant's Dispute Notice refers to the respondent as the owner of a company, Renocraft Contracting Ltd. In general, an owner of a corporation is not liable for the corporation's debts. However, there is no other evidence to suggest that the respondent operates through a corporation. The respondent did not raise this issue in his Dispute Response or submissions. In addition, the respondent admits that there was a contract between him and the applicant. I therefore find that the applicant appropriately brought this dispute against the respondent.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to any further payment from the respondent and, if so, how much.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his 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 2018, the parties entered into an agreement that the applicant would complete the interior and exterior painting portion of a residential renovation in Maple Ridge. Neither party provided any evidence to clarify when exactly the respondent hired the applicant.
11. There is no written contract in evidence. However, the parties agree that they had a contract and do not dispute its essential terms. The parties agreed that the applicant would complete the painting project for \$10,000, with half paid up-front and half paid on completion. I infer from the fact that the respondent paid the applicant \$5,000 up-front that the \$10,000 contract price was inclusive of taxes and materials. Both parties refer to the \$5,000 payment as the first half of the total contract price.
12. The relationship between the parties broke down in late June 2018. The applicant says that he was close to completing the project, so he told the respondent that he

expected to be paid soon. The applicant offered the respondent a holdback of 10% because he admitted that he was not quite finished. The respondent refused. The applicant does not explain why he felt entitled to be paid prior to completing the project despite his admission that the second half of the contract price was to be paid on completion.

13. On June 25, 2018, after the respondent refused to pay the applicant, the applicant sent an invoice directly to the homeowner for \$6,151.16. The invoice included the work that the applicant had done up to that point and the work that the applicant anticipated doing to complete the project. He does not explain why the invoice is for more than \$5,000, which was the amount owing based on the parties' contract.
14. On June 26, 2018, the respondent fired the applicant. Later that day, the applicant sent a revised invoice to the homeowner for \$5,284.91. The applicant says that this invoice removed the work that he had been unable to complete and represents the value of the work he did. Again, he does not explain why his invoice was for more than \$5,000.
15. The respondent hired a new painter to complete the project. The new painter provided an itemized invoice, which describes the work they did to complete the project. The new painter charged \$2,200.
16. Both parties provided evidence and submissions about the reasons why their relationship broke down, their assessment of the other party's character, and the details of a physical altercation between them. I find that these matters are not relevant to the outcome of this dispute.
17. The applicant does not deny that the project was incomplete when he was fired. I find that the applicant is entitled to be paid a reasonable total sum for the work he performed because of the legal principle called "*quantum meruit*" (which means "value for work performed"), which allows me to determine a reasonable sum for the applicant's work.

18. The respondent's position is that the \$5,000 that he has already paid the applicant is a reasonable sum based on the quality and quantity of the applicant's work. The respondent says that there were deficiencies in the applicant's work and provided photographs of some of them. The applicant says that these were not deficiencies but aspects of the job that he was unable to complete because he was fired. I find that whether the applicant's work was deficient or incomplete is not a meaningful distinction. Based on the new painter's invoice, I find that the new painter's work completing the job included correcting any "deficiencies" that the applicant left behind.
19. I find that there are 2 pieces of evidence that, together, provide convincing evidence about the value of the applicant's work. First, the parties agreed before the applicant started working that \$10,000 was a reasonable price for the entire project. I find that this is reliable evidence of the value of the entire project because the parties were not in conflict when the project started. Second, the new painter's invoice shows the value the work that was left to be done after the applicant was fired.
20. I find that it is reasonable for the respondent to pay a total of \$10,000 for the entire painting project, split between the 2 painters. I find that deducting the amount of the new painter's invoice from the project's total cost is a reasonable way to assess the value of the applicant's work. I therefore find that the applicant is entitled to a total of \$7,800 from the respondent as reasonable compensation for the work he performed. Because the respondent has already paid \$5,000, I award the applicant \$2,800.
21. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act*, which I have calculated from June 26, 2018, the day he was fired.
22. 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 so I find that he is entitled to reimbursement of half of his \$175 in tribunal fees for a total of \$87.50. The applicant did not claim any dispute-related expenses.

ORDERS

23. Within 28 days of the date of this order, I order the respondent to pay the applicant a total of \$2,930.66, broken down as follows:
- a. \$2,800 as reimbursement for the applicant's work,
 - b. \$43.16 in pre-judgment interest, and
 - c. \$87.50 in tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable.
25. 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.
26. 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