



Civil Resolution Tribunal

Date Issued: June 4, 2019

File: SC-2018-006723

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. JRS Engineering Ltd.*, 2019 BCCRT 678

B E T W E E N :

Zhen Wang

APPLICANT

A N D :

JRS Engineering Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a claim for reimbursement of a \$4,000 retainer the applicant, Zhen Wang, paid the respondent, JRS Engineering Ltd., to produce a building envelope study report. The applicant cancelled the contract and the respondent refused to refund the retainer on the basis that the funds were depleted by their preliminary work.

2. The applicant is self-represented. The respondent is represented Joel Schwartz, who works for the company. He is not a lawyer.

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. I decided to hear this dispute through because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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.

ISSUE

7. The issue in this dispute is whether the applicant is entitled to a refund of the \$4,000 retainer from the respondent.

EVIDENCE AND ANALYSIS

8. The applicant is an architect. On July 3, 2018 he hired the respondent, an engineering firm, to study and produce a report on building envelope products that he was proposing for a construction project.
9. The email evidence shows that the parties agreed to a price of \$9,500 and that the applicant would provide a \$4,000 retainer before the respondent would start the work. The respondent proposed a 2-3-week schedule to complete the project if they agreed to start within that week. The applicant agreed and paid the retainer on July 4, 2018. The respondent again confirmed the 2-3-week schedule and the applicant provided some technical information that the respondent requested to get started.
10. As of August 16, 2018, the report was still not finished. The applicant took the position that the respondent breached the contract and demanded a refund of the entire retainer. The respondent told the applicant they would not refund the retainer on the basis that the funds were depleted by their preliminary research and drafting. The respondent proposed that instead, they finish the report by another 8 working days. The applicant declined explaining that he had lost his client as a result of their delay and ended the contract.
11. The applicant submits that the respondent breached the contract for failure to produce the report within the specified timeline and that he is entitled to a full refund of the retainer. The respondent denies breaching the contract. They say there was no firm deadline, the scope of the work was complicated because it was based on pre-fabricated, off-shore products and any delay was caused by the applicant failing to send all the technical information they required.

12. In a civil action such as this, the applicant bears the burden of proof, on a balance of probabilities. To succeed on his claim, the applicant must establish that it is more likely than not the respondent breached the contract terms entitling him to a return of the retainer, or that he was entitled to cancel the contract and be refunded the retainer. Normally, when a party receives a benefit from a contract that was later cancelled, that benefit can be taken into account when resolving the claim (see for example, *Wisto Inc. v. Orianna Lacey (Doing Business As TheMarketingsmith)*, 2018 BCCRT 839 and *Hodgson v. Millions*, 2018 BCCRT 135, which are not binding on me but which I consider helpful guidance).
13. I have reviewed the content of the parties' emails, which I find form the basis of the contract. I find the contract did not contemplate cancellation and more specifically, what would occur with the retainer on cancellation before completion.
14. The evidence shows the parties had a mutual understanding that the timeline was important because they knew progress on the applicant's construction project was contingent on receipt of an engineering report. However, I find the contract did not initially bind the respondent to complete the project by a certain date. Instead, the contract made the completion date contingent on the respondent having received the required information from the applicant. The applicant did not immediately provide the required information but sent it in piece meal over a span of several weeks.
15. I find that the respondent had received all the required information from the applicant by July 26, 2018 at the earliest and August 2, 2018 at the latest, as confirmed by the emails. On August 2, 2018 the respondent told the applicant they would need a couple more weeks to finish the report, which I infer from the emails that the applicant allowed. While the parties did not agree to a specific day, I find there is sufficient evidence that they agreed at this point that the report would be completed in two weeks. I make this finding because I found the parties considered the timeline an important aspect of their contract and the respondent knew the applicant required the report to move forward with his project.

16. Apart from the express contractual terms, the law normally implies a term that the services will be performed in a professional manner (see for example *Wei v. Lang*, 2019 BCCRT 246, while not binding, I find is helpful). I find the contract also contained an implied term that the respondent would employ reasonable professionalism to produce the report within the agreed timeline.
17. The respondent argues that any delay in producing the report was the result of the applicant not producing the complete technical information in a timely and organized way to allow them to assess the off-shore product, complete the work and discharge their professional responsibilities. They argue that the work was complicated, and they were balancing other commitments; a constraint I agree they had told the applicant about at the outset.
18. However, the fact that it was complicated work or that they had other commitments does not negate their professional requirement to ensure they effectively managed their workload to meet an agreed timeline. As stated above, I found the respondent had the required information by August 2 and had agreed to complete the report in two weeks, which would be by about August 16. It is uncontested that the respondent did not complete the report by August 16 and had requested an additional eight working days to complete it, which I find falls outside the agreed timeline.
19. I find the applicant has established, on a balance of probabilities, that the respondent breached the contract by failing to complete the report within the agreed timeline.
20. Since the applicant received no draft or final report, I find he received no benefit from the contract and is entitled to a refund of the retainer subject to any set-off for preliminary work completed by the respondent.
21. The respondent did not produce evidence in the form of timesheets, hourly rates, drafts, or work in progress to allow me to determine whether, and in what amount, they depleted the retainer. The respondent carries the burden to prove a set-off. As

there is insufficient objective evidence for me to determine whether the respondent had depleted the retainer or by how much, I have not allowed any amount as a set-off.

22. I find the respondent must refund the applicant in the amount of \$4000.

23. In accordance with the tribunal's rules, I find the applicant is also entitled to reimbursement of the \$175 he paid in tribunal fees and dispute-related expenses for \$16 representing fees for delivering documents.

ORDERS

24. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$4,245.68, broken down as follows:

- a. \$4,000.00 as reimbursement for the retainer
- b. \$54.68 in pre-judgment interest under the *Court Order Interest Act*, calculated from August 16, 2018, and
- c. \$191, as \$175.00 in tribunal fees and \$16.00 for dispute-related expenses.

25. The applicant is entitled to post-judgment interest, as applicable.

26. 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.

27. 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.

Trisha Apland, Tribunal Member