



Civil Resolution Tribunal

Date Issued: June 3, 2019

File: SC-2019-001088

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ACME GLASS LTD. v. SIDHU*, 2019 BCCRT 671

B E T W E E N :

ACME GLASS LTD.

APPLICANT

A N D :

HARPAL SIDHU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. In this claim the applicant, ACME GLASS LTD., seeks to recover from the respondent, HARPAL SIDHU, the unpaid balance of \$4,452.00 on a contract for the supply and installation of shower doors, mirrors and closet organizers.

2. The respondent refuses to pay the outstanding balance because he alleges the work was incomplete and that he had to hire another company to finish it. He asks that the applicant reimburse him \$661.50 for the alleged cost to finish the work. The respondent did not file a counterclaim.
3. The applicant is represented by Maninder Sachdeva and the respondent is 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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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.

ISSUE

8. The issue in this dispute is to what extent, if any, does the respondent owe the applicant \$4,452.00 for work completed on the contract?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties agree that they entered into a contract for the applicant to supply and install shower doors, mirrors and closet organizers for \$8,452.00 inclusive of tax, and that the respondent paid the applicant a deposit of \$4,000.00. This left a \$4,452.00 balance, the amount claimed in this dispute.
11. The applicant says they completed the work as agreed. The respondent disagrees. He claims the applicant failed to complete the work in a timely way and at all. As a result, he says he had to hire another company, JSM Glass & Shower Doors Ltd. (JSM), to finish the job. The respondent submits an invoice from JSM that allegedly represents the cost to finish the job. There is no evidence the respondent says the applicant's work was poorly done, just incomplete.
12. On a balance of probabilities, I find it is more likely than not that the applicant had completed the work set out in the contract. While the applicant did not specify the date they completed the work, they provided copies of their invoices listing the materials they installed together with their supplier's invoices listing the purchased materials and a hand-written note from the respondent's designer confirming the scope of the material, which I find are all consistent.
13. The evidence I find most persuasive however, is that the applicant submitted a signed witness statement from a representative of JSM that in my view both refutes

the respondent's allegation that JSM completed the work and confirms that in all likelihood, the applicant had completed the work.

14. The JSM representative describes the work JSM performed at the respondent's house. Based on this statement, together with the other evidence before me, I find the materials and work performed by JSM were not included in the scope of the contract between the applicant and respondent. Further, the JSM representative stated that he viewed the respondent's home, and witnessed new closet organizers, mirrors, and shower doors with ACME stamps on the glass. The materials described by the witness are consistent with the invoices, project drawings and the designer's note, and with a finding that the work was completed by the applicant.
15. The respondent alleges that the JSM witness is untruthful. He says, with no objective evidence, that the JSM witness was influenced by the applicant to make false statements. He says the applicant should pay a fine for influencing the witness. I see no motive for the witness to be untruthful or any evidence the witness was influenced by the applicant to be untruthful. I accept the witness statement and dismiss the respondent's unsubstantiated allegations. As such, there is no basis to award a fine.
16. As I find the applicant performed the contract, I find the respondent is required to pay the applicant the outstanding invoiced amount of \$4,452.00. Since I found JSM did not finish or re-do the work, there is no basis for a set-off.
17. The applicant is entitled to \$52.44 in pre-judgment interest under the *Court Order Interest Act*, which I have calculated based on thirty days after the dates of the outstanding invoices. On the first invoice of \$4,232.00, I calculated pre-judgment interest as of September 30, 2018, in the amount of \$50.06, and on the second invoice of \$220.00, as of October 26, 2018, in the amount of \$2.38.
18. The applicant asks the tribunal to impose a fine of \$10,000 against the respondent under section 92 (1) of the Act. He says the respondent provided false and misleading evidence that JSM completed the work, when it had not.

19. Section 92 (1) of the Act is an extraordinary measure that should not be taken lightly. The party making the allegation must have very strong evidence of a person providing false or misleading evidence before suggesting that provision be invoked (see for example *Hales v. The Owners, Strata Plan NW 2924*, 2018 BCCRT 91). While I have found the applicant successful in his arguments and I accept the witness statement, there is insufficient evidence for me to make a finding under section 92 (1). In any event, the tribunal's small claims monetary jurisdiction is \$5,000.
20. In accordance with the tribunal's rules, I find the applicant is entitled to reimbursement of the \$175.00 he paid in tribunal fees. He is also entitled to dispute-related expenses in the amount of \$32.00 for fees related to a title search and registered mail, which I find were both reasonably incurred.

ORDERS

21. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$4,711.44, broken down as follows:
- a. \$4,452.00 for the outstanding invoice balance.
 - b. \$52.44 in pre-judgment interest under the *Court Order Interest*, and
 - c. \$175.00 in tribunal fees and \$32.00 in dispute-related expenses.
22. The applicant is entitled to post-judgment interest, as applicable.
23. 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.

24. 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