



Civil Resolution Tribunal

Date Issued: July 15, 2019

File: SC-2018-009196

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *JRE Hardware Inc. v. Connolly*, 2019 BCCRT 850

B E T W E E N :

JRE Hardware Inc.

APPLICANT

A N D :

Thomas Connolly

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, JRE Hardware Inc., sold a railing system to the respondent, Thomas Connolly. The applicant says it was later required to make minor changes to the design, but the respondent refused to pay the final amount owing on his invoice. The respondent says he received an estimate and was never informed that he would be required to pay anything above the amount quoted.

2. The applicant wants the respondent to pay \$879 for the outstanding amount of the invoice plus \$192.50 in contractual interest.
3. The respondent is self-represented, and the applicant is represented by an employee or principal.

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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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.

ISSUE

8. The issue in this dispute is whether the respondent is required to pay the applicant \$879 for the outstanding amount of his invoice plus \$192.50 in contractual interest.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
11. On January 23, 2018 the applicant made its initial site visit to the respondent's property, and on January 25, 2018 it provided the respondent with an estimate of \$12,000.76 for the materials to install a frameless glass railing system in his home. At some point soon after, the applicant provided the respondent with a revised estimate for the project, which included materials and labour, for a total of \$15,030.71. It is undisputed that the respondent agreed to this revised estimate. Both versions of the estimate state that the purchaser is responsible for all engineering required.
12. On January 26, 2018 the respondent paid the applicant \$7,515.35, which was 50 percent of the total revised estimate.

13. It is undisputed that once the railing system was installed, some minor changes to the design were required, in part because the municipality required the respondent to obtain structural engineering approval for the railings. The respondent says he agreed to the changes, but says he was never notified that the changes would result in additional costs. The applicant's evidence shows that the changes increased the total cost of the project by \$863.79 (\$812.90 plus tax), bringing the project total to \$15,894.50.
14. In April 2018 the respondent paid the applicant \$4,500 by cheque.
15. The applicant's final invoice to the respondent is not in evidence, but its uncontested evidence is that it completed the project in May 2018 and billed the respondent the remaining amount of the project at that time.
16. On August 14, 2018 the respondent paid the applicant \$3,000 by e-transfer. This brought the respondent's total payment to date to \$15,015.35.
17. The respondent says he is satisfied with the final product, but he disputes the additional costs. He acknowledges that the required engineering approval cost approximately an additional \$800, but he says he paid this additional amount, in addition to the "full amount" for the glass project, which I take to mean the full amount of the revised estimate. The respondent says he refused to pay for other additional costs because the applicant never told him about them, either verbally or in writing. However, for the following reasons I find the respondent's explanation is not supported by the evidence, and it is unclear exactly what "additional costs" he refers to.
18. It is undisputed that the revised estimate the respondent agreed upon in January 2018 was for \$15,030.71 and that he has paid the applicant a total of \$15,015.35 to date. This means the respondent still owes the applicant \$15.36 for the revised estimate amount, and this does not include the additional engineering costs. Despite the respondent's assertion, the evidence does not show that he paid the applicant any additional amount for the required engineering approval. Given this

discrepancy in the respondent's evidence, and the fact that he acknowledges he is responsible for the additional costs associated with the engineering approval, I prefer the applicant's evidence. The applicant's evidence indicates that the respondent owes the applicant the remaining \$15.36 on the revised estimate from January 2018 and the additional \$863.79 in costs associated with the engineering approval, for a total of \$879.15. However, I note the applicant has claimed only \$879 in this dispute. Therefore, I find the respondent must pay the applicant \$879.

19. The applicant claims \$192.50 in contractual interest on the outstanding amount of the invoice, plus contractual interest from the date of the Dispute Notice to the date of this decision, at a rate of 2 percent per month. However, I find there is no evidence to support this claim. None of the applicant's estimates state any rate of contractual interest, nor do they state a date on which payment is due. I find there is no evidence the parties agreed to any amount of contractual interest, and I dismiss this claim.
20. The applicant is entitled to pre-judgment interest on the amount owing under the *Court Order Interest Act* calculated from August 14, 2018, which is the last day the respondent paid the applicant for the project.
21. 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. I see no reason in this case not to follow that general rule. Since the applicant was generally successful I find it is entitled to reimbursement of \$125 in tribunal fees. The applicant has not claimed any dispute-related expenses.

ORDERS

22. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,018.09, broken down as follows:
 - a. \$879 for the outstanding amount of the invoice,

- b. \$14.09 in pre-judgment interest under the Court Order Interest Act, and
 - c. \$125 in tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. I dismiss the applicant's claim for contractual interest.
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.

Sarah Orr, Tribunal Member