



Civil Resolution Tribunal

Date Issued: July 19, 2019

File: SC-2019-000857

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dead Level Construction Ltd. v. Jose Jewellery Inc.*, 2019 BCCRT 872

B E T W E E N :

DEAD LEVEL CONSTRUCTION LTD.

APPLICANT

A N D :

JOSE JEWELLERY INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a dispute about renovation services.
2. The applicant Dead Level Construction Ltd. says it did renovation work for the respondent Jose Jewellery Inc.'s retail storefront but was not paid. The applicant claims \$4,266.15 in payment for that work.

3. The respondent says it has not paid the \$4,266.15 because the applicant has not explained what was covered by its two earlier payments of \$10,402.88. The respondent says the only explanation the applicant gave was that the first \$10,402.88 was a “25% job hold” and the second was a “25% job start”.
4. The applicant is represented by principal or employee Walter Anderson. The respondent is represented principal Jose Latchinian.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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

9. The issue in this dispute is whether the respondent must pay the applicant a \$4,266.15 balance it says is owing for renovation services provided.

EVIDENCE AND ANALYSIS

10. In this civil claim, the applicant bears the burden of proof on a balance of probabilities.
11. In January 2018, the applicant agreed to perform commercial renovation work for the respondent's retail jewellery store.
12. On January 18, 2018, the respondent paid \$5,842.07 to the applicant for its design process, an engineering budget and city blueprints.
13. On January 19, 2018 the applicant provided the respondent with an estimate of \$40,630 for the renovation project. The estimate says that a 50% deposit is required on job approval, made up of a 25% "job hold" and a 25% "job start". A 10% amount is noted to be due on completion. I find that the disputed \$4,266.15 is the 10% completion draw.
14. The estimate breaks down the total anticipated cost as follows:
 - a. Demolition and prep marked "unknown",
 - b. \$5000, flooring budget, levelling extra,
 - c. \$6,000 flooring installation,
 - d. \$8,100 t-bar installation and supply,
 - e. \$3,500 paint budget,

- f. \$5,680 electrical budget, with a notation “We have no idea what we are doing at this point”, plus materials,
 - g. \$5,600 construction costs budget
 - h. \$6,000 framing and drywall,
 - i. Windows and doors marked “unknown”, and
 - j. \$750 disposal.
15. I find that this estimate outlined the scope of work for the project in detail but left several items without a price. I find that Mr. Latchinian was at the work site most days, and that there was ongoing communication between the parties about scope of work. Based on the evidence, I find that the parties agreed that those aspects of the work would be determined as the project proceeded.
16. On April 29, 2018, the respondent paid the 25% “job hold”, \$10,402.88, as agreed in the estimate. The April 29, 2018 invoice also says that the job price will change because the estimate was done three months earlier. The invoice says change orders will need to be signed.
17. On August 25, 2018, the respondent paid the 25% “job start”, \$10,402.88, as agreed in the estimate. The August 25, 2018 invoice also says that the job price will change because the estimate was done six months earlier. The invoice says change orders will need to be signed.
18. I find that, taken together, the payments made in April and August 2018 are the 50% deposit that the applicant requires before it will start a job.
19. On September 18, 2018, the respondent paid \$723.29 for an asbestos change order, which I find was signed by Mr. Latchinian that day.
20. On September 23, 2018, the respondent paid \$8,532.30 for “drywall commencement.”

21. On October 22, 2018 the respondent paid \$1,315.74 for a “change order from Andy”. I find that this change order was signed by Mr. Latchinian on October 27, 2018, for electrical materials.
22. On October 25, 2018, the respondent paid \$1,225 for a painting change order, which I find was signed by Mr. Latchinian that day.
23. On October 30, 2018, the respondent paid \$8,532.30 for “flooring commencement.”
24. To this date, taken together, the respondent paid the applicant \$37,870.36 for work included in the original estimate (not including change orders). This amount is close to the initial estimate of \$40,630.
25. From October 31, 2018 to January 3, 2019, the respondent made a series of additional payments for change orders, totaling about \$21,600. I find that all of the change orders were reviewed and approved by the respondent, and that the change order documents detailed the additional work being charged.
26. On January 9, 2019, the applicant invoiced the respondent \$4,266.15 which it described as the “10% final completion payment.” The parties agree that this invoice has not been paid.
27. Looking at the whole of the evidence, considering that no defects in the quality of work were alleged, and that the respondent signed off on all but one of the change orders, I find that the change orders were understood to be documented increases for extras and unanticipated costs, over the initial estimate.
28. Based on the account print out filed by the applicant, I find that the job hold and job start deposits paid by the respondent were applied to his account in payment of the work detailed in the estimate, before accounting for change orders.
29. Based on the respondent’s own online review of the applicant’s work, which included calling it a “class act” that he would “most definitely recommend”, I find that the applicant completed the scope of work and the extras in a satisfactory way. I find that the respondent must pay the final invoice of \$4,266.15 to the applicant.

30. The applicant also claims contractual interest of 28.6% per year on the amount owing. The estimate says there is a 2% per month charge on overdue accounts. I find that this is 24%, not 28.6%, annually.
31. I order that the respondent pay contractual interest at 24% per year of \$58.90 from January 9, 2019 to the date of the Dispute Notice, January 30, 2019. As well, I order that the respondent pay contractual interest at 24% calculated from January 30, 2019 to the date of this decision, being \$476.87.
32. 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. Since the applicant succeeded, I find it is entitled to reimbursement of \$175 in tribunal fees and \$11.08 in dispute-related expenses for delivery of the Dispute Notice, which I find reasonable.

ORDERS

33. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$4,988.00, broken down as follows:
 - a. \$4,266.15 in payment of the applicant's final invoice for the renovations,
 - b. \$535.77 in pre-judgment interest at the contractual rate of 24% per year, and
 - c. \$186.08, for \$175 in tribunal fees and \$11.08 for dispute-related expenses.
34. The applicant is entitled to post-judgment interest, as applicable.
35. 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.

36. 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.

Julie K. Gibson, Tribunal Member