



Civil Resolution Tribunal

Date Issued: July 22, 2019

File: SC-2018-008637

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brushworks Painting Ltd. v. Singh*, 2019 BCCRT 891

B E T W E E N :

Brushworks Painting Ltd.

APPLICANT

A N D :

Inderjit Singh

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an agreement for painting services. The applicant, Brushworks Painting Ltd., says in November 2017 it agreed to provide the respondent, Inderjit Singh, with painting services, but the respondent breached the terms of the agreement by refusing to make payment for work completed. The applicant

requests \$4,350.00 as compensation for the painting services it provided. The applicant is represented by Jindvir Singh.

2. The respondent says he did not enter into a written agreement with the applicant, but he did verbally agree to a painting package quote of \$11,000.00, with the payment terms of 50% payment after the first coat and the balance on completion. He says he paid approximately 50% (\$5,000.00) but then became unhappy with the work and the applicant kept demanding part of the money that was only due to him on completion. He says he did not breach the agreement and it was the applicant who refused to complete the project to proper standards. The respondent is 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 some respects, this dispute amounts to a "it said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. 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.

ISSUE

7. Did the respondent breach the agreement for the painting services and if so to what extent, if any, does he owe the applicant \$4,350.00 for the painting work the applicant says was done?

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove its claim. It bears the burden of proof on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. It is undisputed that in November 2017 the respondent accepted the applicant's quotation for painting services totaling \$11,000.00 and that the payment terms were 50% payment after the first coat and the balance on completion. The respondent paid the applicant \$5,000.00 after it finished the first coat. I find that the parties' verbal agreement was a contract.
11. The applicant says that at the time of the \$5,000.00 payment the respondent told him he did not have any money and because the applicant did not want to harm the relations between them he did not push for the remaining amount and he started the

second coat. The respondent disputes that he ever told the applicant he did not have the money to pay him. The applicant says that after he finished the second coat he started to get worried that the respondent would not pay and noted that the respondent was not responding to him. The applicant said he finished about 85% of the project and wishes the work to be paid on a quantum meruit basis, which means value for the work done.

12. The respondent said that he was not satisfied with the quality of the work performed and that the applicant did not come and do the work at the times agreed upon. The respondent says when he started to point out the issues with the services provided the applicant started demanding more money. The respondent says he had to hire another company to fix and complete the work done by the applicant. He says that it has cost him more to go this route than it would have if he continued with the applicant.
13. The respondent submitted a copy of text messages between the parties. I first note that in the texts the respondent indicates that he is unclear on how much the quote agreed to was and is under the impression that he paid 50%. I find that the respondent paying \$5,000.00 and not \$5,500.00 was a simple error and not a breach of the agreement, nor was it accepted as a breach of the agreement by the applicant who carried on with the work.
14. The texts also show that in April 2018 the applicant said that the respondent could hold back \$2,000.00, but the remaining balance had to be paid. He said he wanted to come and finish the work, but that he had not been paid yet for the final coat. He indicated that it had been two months since he had heard from the respondent.
15. The majority of the texts relate to the applicant demanding money and the respondent pointing out that the job is unsatisfactory and that the applicant has not done the work he claims he did. The respondent tells the applicant that more than half of the work still has to be completed and details it in his texts. The applicant says in the texts that he did half of the outside work.

16. The respondent responds with a further detailed list of work that was not completed or was done improperly. The respondent points out that the inside work is “really bad” and it needs more than touch ups, he says that you can see the mark from the roller. The respondent says when the job is complete that the applicant will get the remaining money.
17. In the text messages, the respondent says that he never told the applicant he did not have money. He tells the applicant that he is asking for money for something he has not completed and mentions that he got the estimate from the second painting company who said it would cost \$8,000.00 to touch up and complete the work.
18. The applicant insists that it needs the payment for whatever is done, including the final coat. It asks when it can come to complete the remaining job. The respondent says he will not give the applicant money for work that is not done and for work that is unsatisfactory. He says the applicant should give him money back so he can hire someone to do the job properly.
19. The respondent has provided pictures and a video of the quality of the work which does show many unfinished portions and bulges in the paint. He has also provided the quote from another painting company which totals \$8,500.00 and a November 15, 2018 installment invoice showing the company is now performing the work.
20. Based on the weight of the evidence, I accept the respondent’s submission that the applicant refused to complete the work until it received \$9,000.00 (with the respondent holding back \$2,000.00). I find this was not in keeping with the terms of the agreement. Further, having looked at the photos, video, and quote from the second painting company, I find that the applicant’s work was unsatisfactory and the respondent reasonably had to pay another company to fix it.
21. I find on a balance of probabilities that the applicant has not proved that he performed the work agreed upon or that the work he did provide was satisfactory. Nor did he abide by the terms of the agreement. Therefore, the applicant has not

proved his claim and he is not entitled to further payment under the agreement for the painting services provided.

22. Even if I had not decided that the applicant breached the terms of the agreement, I also note that the *Business Practices and Consumer Protection Act* (BPCPA). BPCPA applies to the painting contract because the applicant meets the definition of “supplier”, as he is a person who in the course of business participated in a consumer transaction by supplying, or offering to supply, goods or services to a consumer, here, the respondent.
23. Section 23(5) of the BPCPA states that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract if the contract does not contain the information required under section 23(2) and section 19 of the BPCPA.
24. The BPCPA says that a “future performance contract” is a contract for the supply of goods of services between a supplier and a consumer for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Because the respondent was not required to pay (and did not pay) the entire cost of the painting service at the time he entered into the agreement in November 2017, and because the painting services were not going to be supplied until sometime in the future, I find that the painting service agreement was a future performance contract, as contemplated in the BPCPA.
25. Section 23(2) of the BPCPA says that a future performance contract must contain the supply date and the date on which the supply of goods or services will be complete. The 2017 contract, based on the verbal acceptance of the quotation, does not contain this information, and the texts between the parties show that no supply date had been agreed upon with each party stating that the other was unavailable when work was supposed to be done.

26. As the applicant did not specify the date on which the painting services would be supplied to the respondent, I find that the contract did not contain the information required under section 23(2) of the BPCPA. Section 23(5) of the BPCPA says a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract if the contract does not contain the supply date information required under section 23(2).
27. The applicant says that the respondent terminated the agreement by refusing to pay and that it issued a letter of demand on October 5, 2018. I find that this indicates that the applicant had notice that the respondent had cancelled the agreement within one year of the November 2017 agreement date.
28. Because of the law set out in the BPCPA, I find the respondent was entitled to cancel the agreement. As set out above, I also dismiss on the grounds unrelated to the BPCPA, specifically that the applicant has not proved that he performed the work agreed upon and that the work was satisfactory. It also did not abide by the terms of the agreement.
29. Therefore, I find the applicant's claim should be dismissed.
30. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. As the applicant was unsuccessful in this dispute I find it is not entitled to reimbursement.

DECISION AND ORDERS

31. I dismiss the applicant's claims and this dispute.

Kathleen Mell, Tribunal Member