



Civil Resolution Tribunal

Date Issued: July 23, 2019

File: SC-2019-000627

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Caracciolo v. Debra A Kitchen (dba Sew-It Boat Tops & Upholstery)*,
2019 BCCRT 895

B E T W E E N :

NICK CARACCIOLO

APPLICANT

A N D :

DEBRA A KITCHEN (Doing Business As SEW-IT BOAT TOPS &
UPHOLSTERY)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a contract to reupholster chairs.
2. The applicant, NICK CARACCIOLO, says the respondent, DEBRA A KITCHEN (Doing Business As SEW-IT BOAT TOPS & UPHOLSTERY), failed to reupholster

the chairs within the agreed time frame. He claims \$757.52, which he says is for reimbursement of his deposit.

3. The respondent says the applicant ended the contract before the agreed deadline for completion. She says she would have finished the chairs on time had the applicant given her a chance to finish them. The respondent denies that she owes the applicant reimbursement of his deposit. She says the deposit was for the work she performed on the chairs before the applicant ended their contract.
4. The parties are each self-represented.

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 to what extent, if any, does the respondent owe the applicant the claimed amount of \$757.52.

EVIDENCE AND ANALYSIS

10. In this civil claim, the burden is on the applicant to prove his claim on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision
11. The parties agree that they entered into a verbal contract for the respondent to reupholster 40 chairs for a lump sum amount of \$1,456, inclusive of tax. The lump sum amount was calculated based on \$65 for 2 chairs per hour.
12. The respondent was to reupholster 10 chairs per week with pickup of the completed chairs each Tuesday. The first 10 chairs were due on February 7, 2017. On January 27, 2017, the applicant delivered 12 chairs to the respondent to allow her to start work. He delivered the remaining 28 chairs on February 3 and paid the respondent a deposit of \$700. The parties agree to these facts.
13. The respondent says the applicant called her on February 4, 2017. She says he told her that he was sending people to pick up the chairs and was not willing to wait for her to finish them. The applicant does not deny this phone call. He says he "could not trust" the respondent and he had others finish the chairs instead.
14. The respondent says the applicant picked up the unfinished chairs the same day as the phone call, February 4, 2017. The respondent submitted a copy of the relevant job order from her workbook. The notes say, "sent 2 guys – Picked up All "38"

Seat/Backs Feb 4th/17/12.10". I infer the "38" is in quotes because of 2 unaccounted chairs of the 40. While I have no explanation for the 2 chairs, I find it is not needed to resolve the applicant's claims.

15. The applicant does not specify the date he picked up the chairs or specifically deny that he picked them up on February 4, 2017. Instead, he says generally, that the respondent had not finished any of the chairs after "two weeks".
16. I accept the respondent's evidence that the respondent picked up the chairs on February 4, 2017. The respondent's evidence is specific, supported by her workbook, and not specifically refuted by the applicant.
17. The respondent's evidence shows she hired a worker to pull out staples and dismantle the chairs at a rate of \$65 per hour. The evidence also shows that the worker spent over 10 hours dismantling the chairs by the time the applicant picked them up. The respondent charged the applicant \$682.50, inclusive of tax for this work.
18. After the applicant picked up the chairs, the respondent refunded the applicant \$17.50, which is the difference between the \$700 deposit and the charged amount. The applicant does not explain the extra \$75.02 he is claiming in this dispute.
19. As mentioned, the applicant has the burden of proof. I find he has not established that the respondent failed to complete the chairs within the agreed time frame. Instead, I find the applicant unilaterally ended the contract before the respondent had a chance to finish the chairs. I find the applicant benefited from the respondent's work because some of the chairs were partially dismantled when he picked them up. I find the respondent is entitled to retain the payment for her work on the chairs. Accordingly, I find the applicant is not entitled to any reimbursement.
20. Under section 49 of the Act, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Since the applicant was unsuccessful in this dispute, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

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

Trisha Apland, Tribunal Member