Civil Resolution Tribunal

Date Issued: July 24, 2019

File: SC-2019-000211

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Franssen v. Wilkinson*, 2019 BCCRT 903

B E T W E E N :

DON FRANSSEN

APPLICANT

A N D :

SUSAN GWEN WILKINSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This is a dispute over payment for renovation services.

2. The applicant, DON FRANSSEN, claims that the respondent, SUSAN GWEN WILKINSON, owes him $1,220 in labour costs for renovating the respondent's basement suite.

3. The respondent says she does not owe the applicant any payment for his labour costs. She says the parties were dating at the time of the renovations and the applicant agreed to work for free, plus the cost of materials. She says he delayed finishing the suite and as a result, she lost $3,000 in potential rental income. She says she also had to pay another contractor to re-install a dryer that the applicant had installed incorrectly. The respondent did not file a counter-claim.

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. In the circumstances here, I find that I am properly able to assess and weigh the documentary 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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 $1,220 for his labour costs.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove his claims 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. In September 2017, the parties entered into a verbal agreement for the applicant to renovate the respondent's basement suite.

12. It is undisputed that the applicant told the respondent he could "do it" by December 2017. However, at some point before December 2017, the applicant suffered a stroke that affected his ability to work. The respondent says the applicant also prioritized his other, paying jobs causing delay to her renovation. The work was not completed until February 28, 2018. When it was done, the respondent asked the applicant to perform some extra work, which he started on March 1, 2018 and finished on May 1, 2018 (the extra work).

13. The applicant invoiced the respondent separately for the initial work and the extra work. The parties agree that the respondent paid part of the invoiced amount. She paid $791.34 for the materials associated with the initial work and $3,598.29 in

material and labour costs for the extra work. The respondent did not pay the $1,800 in labour costs for the initial work that was completed February 28, 2018. These initial labour costs are the only outstanding costs at issue in this dispute.

14. As mentioned, the respondent says the applicant had agreed his initial labour would be free. She says the applicant only decided to charge his labour because "his feelings were hurt" after she refused to go on a date with him.

15. The applicant says he gave the respondent a "break" on several of the jobs but could not have afforded to work for free. The applicant's invoice shows that he had not charged the respondent for his initial labour on several of the bigger jobs. For example, he installed new laminate floors at no charge, which he says would have cost $540. He also removed and installed cupboards at no charge, which he says would have cost $315.

16. I have insufficient evidence to find the applicant had agreed to perform all the initial labour for free. Even had I found the parties originally made such an agreement, I would have found that they later changed the agreement and agreed that the applicant would be paid for his labour. The courts have said there is no need for "fresh consideration" to enforce a change in an agreement (*Rosas v. Toca,* 2018 BCCA 191).

17. According to the respondent's submissions, she met the applicant on June 4, 2018 to discuss the outstanding $1,800 invoice. She says the applicant told her that he charged her a discounted hourly rate of $45/hour because of the delay and because she was a friend. The respondent says she offered to pay the applicant two-thirds of the $1,800, because the invoice did not properly itemize his work. I note that two-thirds equals $1,200, which is very close to the claimed amount.

18. On June 20, 2018, the respondent wrote to the applicant to ask if he received her cheques. She also asked what she still owed after he had "taken $400 off plus 4 hours off". The applicant confirmed that the respondent had paid the $791.34 (materials) and $3,598.29 (extra work). He told her that he subtracted $400 and

$180 (4hrs at $45/hr) from his initial labour of $1,800. This left a balance due of $1,220, which the respondent did not pay. It is the amount claimed in this dispute.

19. There is no dispute that the applicant performed the work and completed the renovation of the respondent's suite. The issue is the amount owing. At common law, where the parties do not agree to an amount, the applicant will still be entitled to reasonable payment for work performed. This is known in law as '*quantum meruit'*, or value for the work done. I find this principle applies here.

20. Based on the respondent's offer to pay the applicant two-thirds of his $1,800 invoice, I infer she considered $1,200 to be a reasonable value for his labour. Since it is only $20 less than the amount claimed by the applicant in this dispute, I have split the difference. I find $1,210 is reasonable payment for the applicant's initial labour. Subject to any set-off, I find that the respondent owes the applicant $1,210.

21. The parties agree that the respondent delayed the job. The applicant says the respondent had agreed to allow him time to recover from his stroke. The respondent says that had she known he would charge her for his labour and known the extent of his physical limitations, she would have hired someone else to finish the job sooner.

22. The respondent says that the delay cost her $3,000 in loss of rental income. The applicant disputes that he caused her any loss of income. He says the respondent never rented the suite immediately after it was finished. Nevertheless, it seems the applicant had applied some reduction to his invoice for delay by reducing his labour costs to $45/hour. I do not know the exact amount of the reduction because I have no evidence of his normal hourly rate.

23. To establish a set-off, the burden shifts to the respondent to establish her loss on a balance of probabilities (see for example *Nowak v. Scott Russel Watch (Doing Business As Van Green Flooring)*, 2018 BCCRT 704). I find she has not met this burden. Apart from stating that she potentially lost rent, the respondent provided no evidence to show she could have rented the suite, the market rental rate, or that the

respondent's delay caused her loss. Further, even if the respondent did not know the extent of the applicant's limitations, her submissions show she had some idea and yet, she still agreed to allow him to finish to job. Accordingly, I find the respondent has not established that she is entitled to any set-off for delay.

24. The respondent submitted receipts for expenses from hiring a different contractor to install a dryer with an outside vent. She says the applicant had installed the dryer improperly, venting it through the garage. The applicant says he hooked it up to the existing vent at the respondent's request only after he told her this would be incorrect. In any event, the applicant did not charge her for installing the dryer. Further, the respondent would have had to incur some cost to change the venting. She has not shown that she paid any more due to the applicant's work. Therefore, I find the respondent suffered no loss related to the dryer that would entitle her to a set-off.

25. I find the respondent owes the applicant $1,210, plus $23.19 in pre-judgment interest under the *Court Order Interest Act* calculated from May 29, 2018, the date the respondent received the invoice.

26. 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. I find the applicant is entitled to reimbursement of $125 in tribunal fees and $100 in dispute-related expenses for the cost of hiring a process server to serve the respondent.

ORDERS

27. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of $1458.19, broken down as follows:

    a. $1,210.00 as payment for the initial renovation work,

    b. $23.19 in pre-judgment interest under the *Court Order Interest Act*, and

c. $225.00, for $125 in tribunal fees and $100 for dispute-related expenses.

28. The applicant is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.

29. 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.

30. 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