



Civil Resolution Tribunal

Date Issued: August 13, 2019

File: SC-2019-002401

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0799642 BC LTD v. Justin Leclerc (dba JL Construction)*, 2019 BCCRT 965

B E T W E E N :

0799642 BC LTD

APPLICANT

A N D :

JUSTIN LECLERC (Doing Business As JL CONSTRUCTION)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over a painting contract.
2. In January 2019, the applicant, 0799642 BC LTD, painted a basement suite for the respondent, Justin Leclerc (dba JL Construction). The respondent paid only ½ of

the applicant's \$4,795.88 invoice. The applicant seeks \$2,397.94 for the other ½ of its invoice.

3. The respondent says the applicant overbilled him for the work. He says that the applicant is not entitled to the full invoiced amount. However, he says he is willing to pay \$1,571.06 in addition to what he already paid.
4. The applicant is represented by David Campbell, whom I infer is its owner. The respondent is 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* (CRTA). 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. I 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 even 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, where permitted under section 118 of the CRTA:
 - 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, the respondent is required to pay the applicant the outstanding invoice amount of \$2,397.94 for work performed.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The parties entered into a verbal contract for the applicant to paint the basement suite of a house that the respondent was renovating. The applicant viewed the basement suite and the parties discussed the job before starting. The applicant provided no quote for the total cost of the job. Instead, the parties agreed the respondent would pay the applicant based on an hourly rate, which I find on the evidence was \$45 per hour, per worker. The respondent covered the cost of supplies.
12. The respondent says that the applicant had estimated the job would take “3.5 days” with a crew of 3 people. The respondent says he is not willing to pay the applicant any more than 3.5 days of work or 84 hours. The applicant says there was no agreement about the timeline of the job. The applicant says its crew worked about 6 days in January and expects to be paid. It says its crew worked January 7, 8, 9, 10,

11 and 14, 2019, though does not provide the number of hours worked each day. The invoice is not in evidence.

13. The applicant says it performed extra work that was not originally discussed. It says that when the crew arrived on the first day, the site was not prepared for painting. It says there were defects in the panels that required scraping and sanding. The applicant says the respondent had agreed to repair these defects before they started, but that the preparation work was not done. The respondent does not specifically dispute this. The applicant says it borrowed a scraping tool from the respondent, and its crew spent 1.5 days scraping and preparing the panels. The applicant says the respondent also added tasks to the scope of the job, including painting doors, window casing and trim, and priming over old oil paint.
14. The applicant says that the respondent required it to fix some deficiencies, which the applicant says it fixed. The respondent said in his Dispute Response that the applicant left some deficiencies unfinished, but he did not provide any evidence of unfinished deficiencies in his submissions. I accept the applicant's evidence that it corrected the deficiencies. I infer these were done within the 6 days mentioned above because the applicant does not say otherwise. The applicant said it added the cost of its time to fix the deficiencies. I find any work done to correct deficiencies was unbillable because the job was required to be done well in the first instance.
15. I find that the applicant completed the job. Accordingly, I find the applicant is entitled to reasonable payment for the work done. This is known in law as '*quantum meruit*', or value for work done.
16. As mentioned, the respondent already paid \$2,397.94 inclusive of GST. The respondent agrees to pay \$1,571.06 more, for a total of \$3,969.00. He says this is equal to what the parties initially agreed (84 hours at \$45/hour, plus GST). If based on what they initially agreed, the \$3,969 would not account for the applicant's extra labour in preparing the panels and completing extra tasks. I find that the applicant should be paid for this extra work.

17. As mentioned, the applicant carries the burden of proof. Since this was an hourly-rate contract, I would have expected the applicant to have produced a break-down of its crew's time. The applicant provided none. Without any accounting, I do not know the hours spent on billable work as compared to the non-billable deficiencies.
18. I find I have insufficient evidence to determine the exact value of the applicant's work. However, on a judgment basis, I will allow an award of \$2,148.00 for the remaining value of the applicant's work. This is about \$250 less than the amount sought by the applicant, which I find is a reasonable deduction to account for some non-billable time spent correcting deficiencies.
19. I find the respondent must pay the applicant a total of \$2,148.00, plus interest.
20. Under the *Court Order Interest Act* (COIA), unless the parties had agreed otherwise, interest is added to a monetary judgment at a rate set by the court. As there was no agreed interest rate, I have allowed COIA pre-judgment interest of \$20.43 calculated from February 17, 2019, which I infer from the Dispute Notice is when the invoice was due.
21. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the successful party, I find the applicant is entitled to reimbursement of \$125 in tribunal fees. It claimed no dispute-related expenses.

ORDERS

22. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$2,293.43, broken down as follows:
 - a. \$2,148.00 as payment for the painting job,
 - b. \$20.43 in pre-judgment interest under the COIA, and
 - c. \$125.00 in tribunal fees.

23. The applicant is entitled to post-judgment interest, as applicable under the COIA.
24. Under section 48 of the CRTA, 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.
25. Under section 58.1 of the CRTA, 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