



Civil Resolution Tribunal

Date Issued: September 4, 2019

File: SC-2019-002134

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Francis v. Adoo*, 2019 BCCRT 1045

BETWEEN:

CHRISTOPHER FRANCIS

APPLICANT

AND:

GRACIE ADOO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is a dispute about a contract for custom draperies.
2. The applicant Christopher Francis hired the respondent Gracie Adoo to supply custom window treatments for several rooms in the applicant's home. The parties

agree that the respondent supplied the window treatments for the dining room, living room and den. The applicant says the respondent failed to supply window treatments that met his specifications for the master bedroom and guest bedroom. He therefore claims a refund of \$3,504.84.

3. The respondent says the applicant wanted modifications of some items and sourced other items from a different company. She says the applicant's claims are fraudulent and should be dismissed.
4. Both parties are self-represented. For the reasons that follow, I find that the applicant is entitled to a partial refund.

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 some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

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 whether the applicant is entitled to any refund for custom drapes.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
11. The parties agreed to an initial March 14, 2017 "proposal/contract" and a further March 26, 2017 "proposal/contract". The contracts are under the names "GRACIE'S INTERIORS LTD" and "GRACIE'S INTERIOR LTD" and were signed by the respondent Gracie Adoo. The evidence submitted does not include any BC Corporate Registry records for any companies. However, given that Gracie Adoo participated in the dispute and did not suggest that she did not have a contract with the applicant, I accept that Grace Adoo is properly named as the respondent in this dispute.

12. The initial contract was for \$6,220. It itemized the costs for each window treatment for the living room, dining room, guest bedroom and den.
13. The March 26, 2017 contract incorporated the initial contract and also addressed the master bedroom. It included a large motorized blind, manual blinds for 2 small windows, and an Austrian valance, totaling \$2,272. The revised contract brought the total price to \$8,492, including tax. The contract said that a 50% deposit was required to order the material, and the balance was due upon receipt of goods.
14. The respondent has not disputed, and I find, that the applicant paid the respondent the following payments:
 - a. The required 50% deposit (\$4,246) on March 26, 2017.
 - b. 50% of the balance (\$2,123) on May 26, 2017.
 - c. \$2,000 on July 18, 2017.
15. In total, the applicant paid the respondent \$8,369.00. This left \$123 owing on the contract. The applicant says he withheld \$123 because the respondent had not finished sewing a valance, which I address below.
16. There is no dispute that the applicant was satisfied with the window treatments in the living room, dining room and den. The applicant said in an October 2, 2018 email to the respondent that he was willing to pay for that work.
17. The applicant wants a refund for window treatments in the guest bedroom and master bedroom.
18. Although the applicant did not refer to the *Best Practices and Consumer Protection Act* (BPCPA), I have considered whether it applies to this situation. The BPCPA requires suppliers to give refunds when a consumer cancels certain types of contracts. However, the consumer must cancel the contract in writing within a year of the date the consumer receives the contract. That was not the case here. Accordingly, regular principles of contract law apply.

Guest bedroom

19. The parties' contract specified that the window treatment for the guest bedroom was "pinched pleated drapes with a valance", at a cost of \$1,212.
20. The applicant says the respondent installed guest bedroom drapes, but they were not pleated as specified in the contract. He says that at his request on July 20, 2017 the respondent removed the drapes and promised to remake them pleated. However, she failed to return and reinstall the drapes. He says July 20, 2017 was the parties' last face-to-face contact.
21. The respondent says there was nothing wrong with the drapes and they were made to the applicant's specifications. She says the drapes are in her workroom. She submitted a photo of the drapes.
22. On balance, I prefer the applicant's version of events with respect to the guest bedroom drapes. The respondent did not explain why she took the drapes back if they were pleated to the applicant's specifications. Moreover, she did not explain why the drapes are still in her workroom and were not reinstalled. She said that the applicant sent her an email full of insults and said not to set foot in their home again, but there is no such email in the evidence. I find that by failing to provide the finished pleated drapes, the respondent breached the parties' contract.
23. The applicant says that although the guest bedroom valance was acceptable, the two items (drapes and valance) were priced as one unit because they are a coordinated set and one cannot be used without the other. The applicant says he has carefully stored the valance and brackets and advised the respondent to collect them. The respondent did not dispute this. In the circumstances, I find that the drapes and valances were sold as a set and the valance was of little use without matching drapes. I find that the applicant is entitled to a refund of the full price of the guest bedroom drapes and valance, which was \$1,212 plus taxes for a total of \$1,357.44.

Master bedroom

24. Turning to the master bedroom, the contract specified 3 line items: a motorized “middle big blind”, “2 small windows” which I understand to be manually operated roller blinds to match the motorized larger blind, and an Austrian valance.
25. The installation date for the master bedroom items was July 17, 2017. On that date, only the Austrian valance was installed. The applicant says he asked the respondent about the roller blinds and was told they were on back order. The applicant says he had been told the blinds were on back order since May 25, 2017 and was frustrated by the delay. He suggested they cancel the order and he would obtain them from another supplier. He says the respondent agreed.
26. The respondent says that as they were awaiting arrival of the blinds, the applicant’s spouse cancelled the order and instead bought from a local retailer. She says that the applicant asked her why he was able to obtain blinds, but she was not. The respondent says that she explained that she cannot buy retail and make a profit, and the markup on the blinds is factored into the total price of the job. The respondent says that she told the applicant that she could not accept a cancellation.
27. The applicant says that he had another contractor take measurements on July 24, 2017, and the following day his spouse informed the respondent that they had ordered from a different supplier. On balance, I prefer the respondent’s evidence about the blinds. If the parties had agreed on July 17 to cancel the order for the blinds, it is unlikely that the applicant would have paid the respondent \$2,000 that day. As well, the applicant’s spouse would not have needed, on July 24, to tell the respondent that they had found a different supplier. I find that the respondent did not agree to cancel the roller blinds order.
28. The applicant says cancelling the roller blinds order was reasonable given the delay. He says the respondent gave an initial estimate of 6-8 weeks for the project to complete, and they were still waiting for the blinds 4 months in. The respondent

denies providing a time estimate, and says the process of fabricating custom draperies is contingent on delivery times from various suppliers.

29. The written contract does not mention a time frame, and the applicant does not say why the window treatments needed to be done quickly. I find that the delay in supplying the roller blinds did not give the applicant a right to cancel the order and find his own supplier. I find that the applicant breached the contract by unilaterally obtaining his own roller blinds.
30. When one party breaches a contract, the other party is supposed to be put in the position they would be had the contract been carried out.
31. I accept that the markup on the roller blinds was factored into the contract's total price, and that the respondent was going to make a profit on the blinds. The respondent did not provide evidence about her profit margin on the blinds. I therefore find that the best available evidence is the difference between the price the respondent charged for the blinds (\$1,561.28) and the price the applicant paid for similar blinds from another supplier (\$921.90). Because the applicant has already paid for the blinds, he is entitled to a refund of \$921.90.
32. What about the Austrian valance in the master bedroom? It was invoiced at \$750 plus tax. The applicant says that upon installation the Austrian valance was not complete and required pins, so he withheld \$123 to encourage the respondent to finish the job.
33. The respondent says the valance was completely sewn and installed. She says that Austrian valances are made in a special way with folds that are secured with sewing pins prior to installation. She says the pins were removed right after installation, and the Austrian valance was perfect. The applicant acknowledged that the respondent had 21 years of experience and had proven herself capable with the other window treatments. Given the respondent's experience, I prefer her evidence that the pins did not mean the valance was incomplete.

34. The applicant also takes issue with the installation of the valance. He submitted photos showing that different sizes and qualities of screws were used. He also says that the valance was inappropriately installed less than three inches from the wall.
35. The applicant says the roller blinds project 3.5 inches from the wall and must operate freely underneath the valance. He says the “current valance” is installed 5.5 inches from the wall. I infer that the applicant’s current valance is the valance supplied by the respondent, but correctly installed. The applicant provided no evidence of any costs incurred to reinstall the valance. Alternatively, the applicant still has the valance and could have used it if he wished. In any event, I find that the valance was complete and was what the applicant ordered, despite its poor installation. I note that the respondent did not charge for installation of anything in the master bedroom. I find the applicant is not entitled to any refund for the valance and was not entitled to keep the \$123 he retained.

Conclusion

36. In summary, I have found that the applicant is entitled to a refund of the price of the guest bedroom drapes and valance (\$1,357.44) and a partial refund for the master bedroom blinds (\$921.90). I found that he must pay the respondent the \$123 he withheld. In sum, I find the respondent must pay the applicant \$2,156.34.
37. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on \$2,156.34 from October 2, 2018, the first date he demanded a refund, to the date of this decision.
38. 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. The applicant was largely successful, so I find that he is entitled to reimbursement of \$175 in tribunal fees. He did not claim any dispute-related expenses.

ORDERS

39. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,367.39 broken down as follows:
- a. \$2,156.34 as damages for breach of contract,
 - b. \$36.05 in pre-judgment interest under the Court Order Interest Act, and
 - c. \$175.00 in tribunal fees.
40. The applicant is entitled to post-judgment interest, as applicable.
41. 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.
42. 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.

Micah Carmody, Tribunal Member