



# Civil Resolution Tribunal

Date Issued: September 19, 2019

File: SC-2019-003724

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Naugler v. Collins*, 2019 BCCRT 1106

BETWEEN:

ROGER NAUGLER

**APPLICANT**

AND:

GLENN COLLINS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant, Roger Naugler, says the respondent, Glenn Collins, has failed to pay for boat renovations further to their verbal agreement. The applicant, who says he also does business as “M R Contracting”, claims \$2,929.78.

2. The respondent says the applicant misrepresented his skills, took too long, and damaged some of the boat's fiberglass panels with "below average workmanship".
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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 can fairly decide this dispute based on the written evidence and submissions before me.
6. 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.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is to what extent, if any, the respondent owes the applicant \$2,929.78 for labour and materials under a boat renovation agreement.

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove his claims on a balance of probabilities. However, as discussed below, the burden is on the respondent to prove the deficiencies he alleges. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
10. It is undisputed the parties' verbal agreement had the applicant start work on the respondent's boat on April 17, 2019. The applicant says his agreed rate was \$65 per hour plus materials. While at one point the respondent indicated he disagreed this was the rate, in his submissions he appears to accept the \$65 rate and instead disputes the amount of time billed and the workmanship. I accept the agreed rate was \$65 per hour plus materials.
11. The applicant says he told the respondent at the outset that he had never renovated a boat, but had some experience doing repairs on RV trailers. The applicant says the respondent mentioned twice during their initial meetings that other contractors he had contacted had not shown up. I infer the applicant says this to explain why the respondent nonetheless chose the applicant despite his lack of boat expertise. I accept the applicant's evidence on this point. While the respondent says the applicant misrepresented his qualifications, he does not say how. The respondent did not address the applicant's evidence about how their business relationship started, nor did he address the applicant's statement that he had never renovated a boat before. I reject the respondent's misrepresentation allegation.
12. The applicant says the agreement was for an estimated 80 hours of labour, and that after about 40 hours was spent he asked for a progress payment for work done to date. The applicant does not give the date of this original request. However, the applicant then says the "following Thursday April 25" the respondent's "investor" PH stopped by the job site and said he liked what the applicant was doing and he would bring cash the next day, but asked the applicant for his "worklog book" with a breakdown of what had been done so far. The applicant says after a series of text

exchanges with PH, PH then said the applicant should deal directly with the respondent for getting payment, which the applicant did in late April.

13. PH is not a party to this dispute. The applicant provided text messages between him and PH that are consistent with the applicant's position. The applicant also provided an affidavit from a bailiff RN he hired on May 3, 2019 to assist in getting payment. RN deposed that the respondent acknowledged the parties' contract was for 80 hours at \$65 per hour. RN also deposed that he spoke with PH who admitted owing the applicant money but that he would get back to RN about how much he and the respondent were willing to pay the applicant. I accept RN's evidence, as discussed further below.
14. As noted above, the respondent says the applicant was taking too long to do the job. Yet, the respondent provided no evidence about how long the job should reasonably have taken. The respondent says he repeatedly asked the applicant for proof of hours worked, but provided no texts or other evidence in support. The respondent says he finished the demolition work himself. Yet, there is no evidence that he said anything at the time to the applicant about the job progress being unsatisfactory. He permitted the applicant to continue working. On balance, I prefer the applicant's and RN's evidence that the respondent accepted at the outset the job would take about 80 hours. I find the weight of the evidence is that the applicant was not taking "too long" with the work.
15. The respondent submits he and PH had discussions about the lack of progress and apparent boat damage, but provided no evidence from PH. I draw an adverse inference against the respondent for not providing any evidence from his investor PH to contradict the applicant's account, or any explanation for why such evidence was not provided (see *Singh v. Reddy*, 2019 BCCA 79). On balance, I accept PH told the applicant the job looked good on April 25, 2019 and told the applicant he could expect the progress payment as requested. I find the job was reasonably done as of that date.

16. I also find that at no point until after April 30, 2019, the date the applicant picked up his tools from the job site, did the respondent express any concern about the applicant's work. The applicant says he picked up his tools because he was not getting any response from the respondent about payment. The texts about payment were exchanged after the demolition work phase and do not indicate any displeasure with the applicant's work.
17. I reject the respondent's argument that the applicant refused to provide an invoice, contract, or estimate, despite requests for them. The tenor of the parties' text messages in evidence do not support that. The respondent says the applicant only produced an "invoice" on April 30, 2019 after the respondent's "many requests" over 4 days. However, the document the respondent provided is the applicant's handwritten "quotation/proposal", which the applicant says was his worklog book that he prepared at PH's request. The applicant says he always intended to produce a typical invoice at the end of the job. Given my findings above about PH, I accept the applicant's evidence on this point.
18. The applicant's "quotation/proposal" document has a total balance owing of \$2,929.78, the amount claimed in this dispute. It has descriptions for work done on 7 days between April 17 and 26, 2019. It shows 43 hours at \$65 per hour, plus \$134.78 in supplies (which appears to be "edge trimming" and adhesive). It describes demolition of various areas on the boat, preparation work, and fitting new panels. For the purposes of this decision, nothing turns on the fact that this document did not set out GST information or the applicant's full name.
19. What about the alleged damage to 2 of the 5 new boat panels? Both parties provided photos of the boat's interior paneling. The applicant's photos show his renovation work underway. The respondent's photos show the boat's interior refitted with white fiberglass panels. The respondent says the fiberglass panels cost \$70 each and that the applicant had cracked 2 of them, and he provided photos showing cracks. The cracks appear to be relatively minor. The respondent says some new

panels were cut or placed incorrectly, but I cannot tell this from the photos provided. Another photo shows some interior panels with a gap at their joint line.

20. The applicant acknowledges two issues. First, a minor chip on an interior panel that could be easily repaired and was going to be covered anyway. Second, some panels had to be fitted together, given the limitations with the panels bought by the respondent, as referenced above. While the respondent says the applicant failed to work according to the specifications provided, the respondent did not provide those specifications. Text messages between the parties indicate the respondent accepted the 'fitted panels' solution. I find the scrape to be a minor issue that could be easily fixed, and it does not warrant any deduction from the applicant's claim.
21. The photos of the cracks are close-up photos. It appears the cracks are likely minor. While the respondent says the applicant failed to create an access hole, the applicant says the respondent said he had not decided where the hole would go and to leave it for the respondent to deal with later. The burden of proof rests on the party asserting a deficiency: see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91. I am mindful that it is undisputed that the fiberglass panels were provided by the respondent, and their pre-installation condition is not known. It is clear the fitting of the panels was a challenge and the parties worked on a solution. I find the respondent has not shown the applicant caused deficiencies that warrant a deduction from his claim.
22. In summary, I find it likely the applicant reasonably spent the time he claims dealing with demolition and preparation work in the boat's cramped interior space. I find the admitted deficiencies were minor and do not warrant any deduction. I find the applicant is entitled to payment of \$2,929.78 as claimed. The applicant is entitled to pre-judgment interest on the \$2,929.78 award, under the *Court Order Interest Act* (COIA), from April 30, 2019. This equals \$22.38.
23. Under the CRTA and the tribunal's rules, as the applicant was successful I find he is entitled to reimbursement of \$125 paid in tribunal fees. While the applicant argues

he should be entitled to reimbursement for RN's bailiff fees, the applicant provided no amount and no evidence in support. So, I make no order about RN's fees.

## **ORDERS**

24. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$3,077.16, broken down as follows:
  - a. \$2,929.78 in debt,
  - b. \$22.38 in pre-judgment interest under the COIA, and
  - c. \$125 in tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

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Shelley Lopez, Vice Chair