



Civil Resolution Tribunal

Date Issued: February 26, 2020

File: SC-2019-007735

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Turgeon v. Bond*, 2020 BCCRT 221

B E T W E E N :

RICHARD TURGEON

APPLICANT

A N D :

WAYNE BOND

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Butch Bagabuyo

INTRODUCTION

1. This dispute is about payment for drywall related services, specifically the ‘mudding’ coating applied over drywall and sanding, in preparation for painting.
2. The applicant, Richard Turgeon, seeks \$498 from the respondent, Wayne Bond, for hourly-rate services he says he provided to the respondent.

3. The respondent admits the applicant performed some drywall related services at his house but challenges the dates, amount, and length of time claimed. He also says that he ended up doing most of the work.
4. All parties are 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. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly 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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may: order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are whether the applicant completed the work promptly and if so, whether the respondent must pay the applicant \$498 for drywall related services?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove his claim, on a balance of probabilities.
11. While I have read and considered all of the parties' evidence and submissions, I have only referenced the evidence and submissions to the extent necessary to explain and give context to my decision.
12. It is undisputed that on May 25, 2019 the respondent asked the applicant to do some 'mudding' and 'sanding' over drywall in his house. Upon review of the photos, I agree with the respondent that the area is small covering about 4 ½ sheets of drywall.
13. The applicant says he went to the respondent's house and performed the following: mudding and sanding of the walls and spackling of the ceiling. He also prepared the area by laying tarp and installing scaffolding to access hard to reach areas. The applicant says he cleaned up after each visit.
14. The applicant says he worked for 5 days, working a few hours at a time for a total of 12.5 hours. His invoice of \$498 included \$63 in travel. He broke down the time as follows: 1.5 hours on July 8th, 5.5 hours on July 10th, 1.5 hours on July 15th, 1.5 hours on July 17th, and 2.5 hours on July 19th. Other than on July 10th where he says he worked by himself for 5.5 hours, the applicant says he worked with his son,

CT, the rest of the time. The applicant did not provide any explanation why a second worker was needed for the task. Given the size of the area to be mudded and sanded, I agree with the respondent and find that the job was a one-person job. The respondent also says the invoice claimed that the applicant worked on days he did not, and the hours were too high.

15. In response, the applicant says that due to clerical mistakes the dates were wrong, but not the hours. The applicant supplied a revised statement that says he worked 1.5 hours on June 11th, 1.5 hours on June 13, 1.5 hours on June 18th, 1.5 hours on June 20th, and 2.5 hours on June 25th which comes to 8.5 hours. The applicant did not supply any explanation about the discrepancy between his 12.5 hours invoice and his 8.5 hours revised statement. The applicant's son, CT, supplied witness account claiming that he worked alongside the applicant for a total of 7 hours in 4 days. CT did not include any hours for June 13th. I find the applicant's invoice and accounting of time to be unreliable due to mistakes. Even after the dates were corrected, the hours did not add up with the applicant's revised statement. As such, I find that I cannot rely on the applicant's invoice.
16. I agree with the respondent that he asked the applicant to do the second coat and the finishing coat to get it ready for painting. The applicant explained that drywall needs 3 coats to do it properly. The first is to cover the nails, screws, and joints. The second coat is after the taping and the third is to finish. He worked for a few hours at a time to allow for the mudding to dry. The applicant says that when he arrived at the respondent's house, he needed to sand the first coat that was already applied by the respondent before he could put his first coat on. The applicant did not supply any explanation why he needed to do another first coat. I also find that while the applicant explained the 3-stage process of mudding and sanding drywalls, he did not provide any explanation why he needed to attend on five different occasions to complete what he described as a 3-stage process.
17. I also find that the parties did not agree on an end date to complete the task. Given that the area is small, I find 1 week would have been ideal, but two weeks is within a

reasonable period given that one cannot predict the required drying time of drywalls. Based on his revised statement, the applicant started on June 11th and finished on June 25th, which is exactly two weeks. I also accept the applicant's explanation that he was ill at some point which prevented him from returning right away to his task.

18. The respondent says that the job was never completed to the point that he could start painting. The respondent says he ended up finishing the job and it took him 90 minutes to apply a coat of mud and 40 minutes to sand the area. The respondent did not provide any evidence about what he did to complete the work other than he mudded and sanded the area for about two hours. The respondent also says the applicant was at his house only on two occasions and he had text messages to support that, but he did not provide them. On his message of August 21, 2019, the respondent told the applicant that he was only entitled to 4 hours of work at \$30 per hour. I find that \$30 an hour is reasonable.
19. On review of the photo evidence, I agree with the respondent that two hours was enough to mud and sand the drywall but drywall mudding, and sanding is also not a one-time event. There are several repeated applications of mudding and sanding which the applicant explained as a 3-stage process. I find that each steps of the 3-stage process would need about 2 hours to complete given the size of the area. As such, I find that 6 hours is reasonable time for this task.
20. Even though I am not able to rely on the applicant's invoice due to accounting and clerical mistakes, I find the applicant provided some value to the respondent. As such, I find the applicant is entitled to compensation based on the principle of *quantum meruit*, which means a reasonable sum of money paid for work done.
21. On a judgment basis, I find the respondent must pay the applicant \$180 for his services which is based on 6 hours of work at \$30 per hour. I find this amount covers the applicant's time spent at the respondent's house for 2 hours at a time mudding, sanding, spackling, setting up and taking down of scaffolding, and clean up.

22. The applicant also seeks \$63 for travel to and from the respondent's house, but the applicant did not supply mileage or any other evidence to support such a claim. I find there is no evidence the respondent agreed to pay for travel costs. The applicant cannot unilaterally impose such an item into the parties' agreement by including it on an invoice. The applicant bears the burden of proof and I find he did not meet that burden. As such, I dismiss this part of the applicant's claim.
23. The applicant says that 2% interest accumulates on his invoice because it was not paid within 30 days. I disagree because the applicant cannot unilaterally impose interest without prior agreement of the parties which is the case here.
24. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the amount owing calculated from August 8, 2019, which is the date of his invoice, to the date of this decision. This equal \$1.94.
25. 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. I see no reason in this case not to follow that general rule. Since the applicant was partially successful, I find he is entitled to reimbursement of half his \$125 tribunal fees, so \$62.50. The applicant did not claim any dispute-related expenses.

ORDERS

26. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$244.44, broken down as follows:
 - a. \$180.00 in debt,
 - b. \$1.94 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 for in tribunal fees.
27. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.

28. 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.

29. 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.

Butch Bagabuyo, Tribunal Member