



Civil Resolution Tribunal

Date of Original Decision: April 14, 2020

Date of Amended Decision: April 17, 2020

File: SC-2019-007672

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bartman v. Hulburd*, 2020 BCCRT 398

B E T W E E N :

GERRY BARTMAN

APPLICANT

A N D :

CHERYL HULBURD, BARRY HULBURD, and CHERYL HULBURD
(doing business as FERNIE COUNSELLING AND CONSULTING)

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a partially unpaid invoice for renovation work done between January 10 and March 3, 2019. The applicant, Gerry Bartman, says he is still owed

\$3,786.82 by the respondents, Cheryl Hulburd, Cheryl Hulburd (doing business as Fernie Counselling and Consulting), and Barry Hulburd.

2. The respondents disagree they should pay the balance owing. Mr. Hulburd says he never contracted with Mr. Bartman. Ms. Hulburd says the applicant overcharged her and exceeded their agreed-upon budget. She also says Mr. Bartman should have advised her as costs went above the initial budget.
3. Ms. Hulburd provided separate Dispute Responses for herself and for what I find is her sole proprietorship name of Cheryl Hulburd (doing business as Fernie Counselling and Consulting). I find they are the same legal entity and will simply refer to Ms. Hulburd in this decision. Although not binding, I note a number of tribunal decisions have made similar findings in similar situations. See, for example, *Richard Csepregi (dba Richards Fine Woodworking) v. Voss*, 2020 BCCRT 153 and *Sangha v. C&W Facility Services Canada Inc.*, 2020 BCCRT 302.
4. The 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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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 as follows:
 - a. Did Mr. Hulburd enter into an agreement with Mr. Bartman?
 - b. Did Mr. Bartman breach the contract by exceeding the agreed-upon budget?
 - c. Did Mr. Bartman overcharge for his work?
 - d. Must any of the respondents pay Mr. Bartman \$3,786.82?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
11. As I will explain below, the main conflict in this dispute is that Mr. Bartman estimated \$3,561.35 for renovation work the parties referred to as Phase 2. However, Mr. Bartman invoiced \$7,348.17. The parties provide different explanations for the difference between the estimate and the invoice.
12. Some background is necessary. The parties agree that Ms. Hulburd runs a home-based counselling practice. She hired Mr. Bartman to carry out renovations and maintenance at her property. The evidence shows Mr. Bartman initially renovated

her bathroom in work they referred to as Phase 1. Mr. Bartman was fully paid for this work and there were no reported issues. In a December 19, 2019 thank-you card Ms. Hulburd praised Mr. Bartman and his professionalism.

13. As referenced above, Ms. Hulburd hired Mr. Bartman for further renovation work known as Phase 2. They documented their agreement in a January 5, 2019 document titled "Rough Cost Estimate". The estimate identifies Ms. Hulburd as the only customer and signatory. Ms. Hulburd provided a copy of the estimate with her comments on it, but the copies did not otherwise differ. The estimate was for \$3,561.35.
14. Mr. Bartman worked on the Phase 2 renovations from January 10 to March 3, 2019. He wrote down what he did in a document titled "Phase 2 Project Timeline" and a detailed invoice for \$7,348.17. On the invoice, Mr. Bartman subtracted a deposit of \$1,780.67, for a total owing of \$5,567.50.
15. The parties agree that Mr. Bartman presented his invoice to Ms. Hulburd on April 7, 2019. He says the respondents made no objections to the amount owing and they advised they would pay him the balance when they returned from an overseas trip on May 19, 2019. I find this is likely what occurred, as it is consistent with Mr. Bartman's emails and Ms. Hulburd's correspondence.
16. On May 24, 2019, Mr. Bartman emailed Ms. Hulburd asking for payment of the balance owing. Ms. Hulburd replied on May 26, 2019. She agreed with Mr. Bartman that she "did promise to look after your bill on my return". She objected to the total amount of \$7,348.18 as it was twice the expected budget of \$3,561.35. She wrote that Mr. Barman was obligated to keep her posted on additional costs. She advised they would pay \$1,780.67, which was the amount still owing under the original budget.
17. A transaction record shows Mr. Hulburd paid \$1,780.68 to Mr. Bartman on May 26, 2019. This left the claimed amount of \$3,786.82 still owing under the April 7, 2019 invoice.

18. In this dispute, Ms. Hulburd says she should not pay any further amounts because Mr. Bartman exceeded the agreed-upon budget and overcharged for his work. Ms. Hulburd says the quality of the Mr. Bartman's work is otherwise not at issue.

Issue #1. Did Mr. Hulburd enter into an agreement with Mr. Bartman?

19. Mr. Bartman says that Mr. Hulburd is liable for the outstanding amount because he assisted in some of the renovation work, paid for a fireplace used in Phase 2 on December 21, 2018, and paid \$1,780.67 as a deposit for the Phase 2 work. I disagree, as none of these actions show Mr. Hulburd agreed to be liable for any of the amounts owing. I find it more likely Mr. Hulburd simply wished to assist Ms. Hulburd. Further, the January 5, 2019 estimate clearly identifies Ms. Hulburd as the sole customer and does not mention Mr. Hulburd at all. Finally, in the agreed statement of facts, the parties did not say that Mr. Bartman was a party to the agreement.

20. I therefore dismiss Mr. Bartman's claims against Mr. Hulburd.

Issue #2. Did Mr. Bartman breach the contract by exceeding the agreed-upon budget?

21. In order to determine if there was a breach of contract, I must first consider what the parties agreed to.

22. I find it clear from the January 5, 2019 estimate that Mr. Bartman and Ms. Hulburd agreed that Mr. Bartman would charge by the hour, and that if Phase 2 took longer than the estimated amount, Mr. Bartman would keep charging his hourly rate. The estimate explicitly stated it was not a firm price quotation but only an estimate of the cost of labour and materials. The agreement also stated that labour was charged at a rate of \$55 per hour plus GST, and materials were charged at cost, with no markup. The estimate also says that the price was based upon "educated guesses", but the price might be impacted by "unknowns".

23. Ms. Hulburd says the budget was fixed at \$3,561.35, which is the handwritten total on the estimate. I acknowledge that she crossed out several items on the estimate to reduce the price from the original printed quote of \$4,750.86. However, the parties did not put any language in the agreement to show the budget was fixed.
24. In summary, I find Mr. Bartman did not breach his contract with Ms. Hulburd by exceeding the estimate.

Issue #3. Did Mr. Bartman overcharge for his work?

25. The parties disagree on whether Mr. Bartman overcharged for his work or accurately recorded his time. Ultimately, I find the evidence supports Mr. Bartman's position.
26. First, the parties agree that Ms. Hulburd requested additional work that was not part of the January 5, 2019 estimate. The parties disagree on the scope of the extra work, but I am persuaded that the extra work was not trivial. Mr. Bartman submitted the work included electrical and repair work and assembling furniture. He referred to the extra work in his invoice and Phase 2 timeline. The work was described in detail. Mr. Batman also provided photos of some of the finished work and receipts for the materials used.
27. Mr. Bartman also says there were unexpected costs from installing the Murphy bed (namely reinforcing a wall, installing new flooring, and replacing the doors which arrived damaged). A second source of unexpected costs was installing a gas insert in the wood fireplace, which led to alterations of the chimney, manufacturing a custom fireplace cap, and cutting the existing stone surround. Mr. Bartman says these issues did not become clear until he started work as it involved areas that were initially hidden from view. I accept Mr. Bartman's submissions as this work was documented in his invoice and project timeline.
28. Ms. Hulburd says Mr. Bartman spent too much time on the Phase 2. However, she did not provide any evidence showing how many hours would have been appropriate. There is no statement from another professional on whether Mr.

Bartman's bill was reasonable. Ms. Hulburd also expressed satisfaction at Mr. Bartman's work on Phase 1. I find it likely he worked in a similarly professional manner during Phase 2.

29. Finally, Ms. Hulburd says Mr. Bartman should have advised her of the running total of renovation costs, particularly once they exceeded the initial estimate. She notes that Mr. Bartman provided such updates during Phase 1. While I acknowledge this submission, I disagree that providing such updates were a term of the parties' agreement, for 2 reasons. First, the January 5, 2019 estimate does not impose this obligation. I find that if Ms. Hulburd wanted this information, it was her necessary for her to ask, or take steps to make it a term of the parties' agreement. Second, I have found that in Phase 2 Ms. Hulburd asked Mr. Bartman to do extra work beyond the initial estimate. Given this, I find that Ms. Hulburd should have reasonably expected the initial estimate to be exceeded. I find this weakens Ms. Hulburd's argument that the expectations of updates from Phase 1 were applicable to Phase 2.
30. In summary, I conclude that Mr. Bartman did not overcharge for his work. This is because he was asked to do extra work and he encountered unexpected problems.

Issue #4. Must any of the respondents pay Mr. Bartman \$3,786.82?

31. I conclude that Mr. Bartman did not breach his agreement with Ms. Hulburd and billed for a reasonable number of hours. I find Ms. Hulburd must pay Mr. Bartman \$3,786.82 in debt.
32. The *Court Order Interest Act* applies to the tribunal. Mr. Bartman is entitled to pre-judgement interest on the \$3,786.82 debt from April 7, 2019 (when the invoice was presented) to the date of this decision. This equals \$75.66.
33. 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. I find Mr. Bartman is entitled to reimbursement of \$175 in tribunal fees. Mr. Bartman did not claim any dispute-related expenses, so I order none.

34. As noted earlier, Ms. Hulburd and Cheryl Hulburd (doing business as Fernie Counselling and Consulting) are the same legal entity. My order will be against the latter respondent, but I emphasize they are the same person.

ORDERS

35. Within 14 days of the date of this order, I order Cheryl Hulburd (doing business as Fernie Counselling and Consulting), to pay the applicant a total of \$4,037.48, broken down as follows:

- a. \$3,786.82 in debt,
- b. \$75.66 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in tribunal fees.

36. The applicant is entitled to post-judgment interest, as applicable.

37. I dismiss the applicant's claims against Mr. Hulburd.

38. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.¹

39. 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.

David Jiang, Tribunal Member

ⁱ Amendment Notes: I have amended paragraph 38 of this decision to correct an inadvertent omission in the original decision. I have made this amendment under the authority of CRTA section 64.