



Civil Resolution Tribunal

Date Issued: April 15, 2020

File: SC-2019-009970

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Podolsky v. Johnathan Casey, dba IJA Developments*, 2020 BCCRT 402

B E T W E E N :

NICHOLAS PODOLSKY

APPLICANT

A N D :

JOHNATHAN CASEY (Doing Business As IJA Developments)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about an outstanding payment. The applicant, Nicholas Podolsky, says that he had a verbal agreement with the respondent, Johnathan Casey (Doing Business As IJA Developments) to perform some work on a construction project. The applicant says that he invoiced the respondent a total of \$8,531.04, but only received payment of \$5,400. He seeks the outstanding amount of \$3,131.04. The

respondent admits that he had an agreement with the applicant, but says that he does not owe the applicant any money.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.

ISSUE

7. The issue in this dispute is whether the respondent owes the applicant \$3,131.04 for work done under their verbal agreement.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The applicant provided evidence and submissions in support of his position. The respondent filed a Dispute Response, but did not submit any evidence or response arguments. While I have considered all of the information provided by the parties, I will refer to only what is necessary to provide context to my decision.
9. The applicant and respondent agree that they had a verbal contract and that the applicant performed the work contemplated by that contract. However, they disagree about the terms and the amount of compensation owing to the applicant. Specifically, the applicant says he is entitled to \$70 per hour, but the respondent says he agreed to pay only \$55 per hour.
10. The respondent says that, at some point after the applicant did the work, he learned that the applicant did not have workers' compensation coverage or a GST number. The respondent also took issue with the applicant's behaviour during and after a meeting they had to attempt to resolve this matter. While I acknowledge these concerns, I find that they are not relevant to the issue before me. I must determine whether the applicant has proven the terms of his contract with the respondent, and whether he is owed money under those terms.
11. As noted, there is no written record of the parties' agreement. The applicant says that the original agreement was for him to work for \$80 per hour. The applicant issued an invoice to the respondent for \$3,150 on September 17, 2019. In the accompanying email message, the applicant stated that he "knocked the rate down \$10" to \$70 per hour and took some hours off the total. The applicant wrote "in the future we can approach billing differently but let's cross that bridge next time as things progress". The second invoice is dated October 28, 2019 and charges for labour at \$70 per hour as well as materials, for a total of \$5,381.04.
12. The applicant says that in early November 2019 the respondent sent him 2 e-transfers totalling \$2,400. He also says that, at a November 12, 2019 meeting, the

respondent gave him a cheque for \$3,000. A text message sent by the respondent to the applicant on November 12, 2019 states “Nice work, anyways a cheque will be mailed”. The text message does not confirm the amount already paid, or the amount to be paid by cheque.

13. It is not clear why the applicant would reduce his hourly rate by \$10 if a higher rate had been agreed to by the parties, or why he did not invoice for all the hours he worked. Further, I find that the applicant’s suggestion that billing could be discussed shows that there was no firm agreement about payment terms.
14. The applicant did not provide evidence of the payments he says he received. It is not clear to me whether the \$3,000 cheque described by the applicant and the cheque referred to by the respondent are the same, or whether there were 2 cheques contemplated by the parties. While the applicant has established that he billed the respondent \$8,531.04, I find that he has not proven the amount he has been paid and therefore the amount that remains outstanding.
15. Although the applicant has proven the amount that he invoiced the respondent, I find that he has not proven the financial terms of the parties’ contract, the amount that he has received, or any amount that may be outstanding. Accordingly, I dismiss the applicant’s claims.
16. 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 applicant was not successful, I dismiss his claim for reimbursement of tribunal fees.
17. The applicant claimed \$600 in dispute-related expenses for his time spent on the dispute. The tribunal generally does not award a party expenses for their own time spent on a dispute, unless there are extraordinary circumstances. I do not find that the circumstances of this dispute are extraordinary, and would not have made this award in any event of the outcome.

ORDER

18. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member