



Civil Resolution Tribunal

Date Issued: May 11, 2020

File: SC-2019-009306

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *West v. Kalanj*, 2020 BCCRT 511

BETWEEN:

CHAD WEST

APPLICANT

AND:

ANA KALANJ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over payment for construction materials after a romantic relationship breakdown.
2. The applicant, Chad West, says the respondent, Ana Kalanj, owes him \$4,674.13 for construction materials he bought to partially renovate the respondent's home.

The applicant says the materials, “drywall and plumbing stuff”, cannot be removed or used at another location to recover his cost.

3. The respondent says the parties never agreed that she had to repay the materials’ costs. The respondent says she owes the applicant nothing. She also says some of the claimed expenses pre-date the renovation, were for the applicant’s rental property, or were for tools that the applicant kept. Also, the respondent says the applicant’s work was faulty, he caused damage to her home, and she needs to redo the work at her own cost. The respondent did not file a counterclaim.
4. The parties are each self-represented.
5. For the reasons that follow, I dismiss the applicant’s claim.

JURISDICTION AND PROCEDURE

6. 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a “he said, she said” scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

8. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily.
9. 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.
10. 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.
11. The uncontested evidence is that the parties did not live together for at least 2 years, and so they do not meet the definition of spouses in the *Family Law Act*. I find that the *Family Law Act* does not apply to this dispute.

ISSUE

12. The issue in this dispute is to what extent, if any, the respondent must pay the applicant the claimed \$4,674.13 for construction materials.

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
14. The parties agree that they lived together in a romantic relationship in the respondent's home from April 2018 until the applicant moved out in October 2019. They also agree the applicant began renovations in about May 2018 and the renovations were not complete when the applicant moved out. The renovations

included plumbing, drywall, and some other work in the basement and two bathrooms of the respondent's home.

15. The applicant states that the respondent agreed to reimburse the materials' costs once the respondent sold her home and they moved onto an acreage. In contrast, the respondent says they never discussed payment. The parties put nothing in writing and so, I do not know what was discussed or agreed on.
16. The respondent never sold her home. The applicant does not explain why he would be entitled to reimbursement, if payment was dependent on the house sale. I find on the applicant's own evidence that he is not entitled to reimbursement under the alleged agreement because the house was never sold.
17. The applicant argues that he is entitled to payment because the respondent kept the benefit of the materials and he cannot now recover his costs. I find the applicant's claim is what is referred to at law as a claim for damages in "unjust enrichment". The legal test for unjust enrichment is that the applicant must show: a) that the respondent was enriched, b) that the applicant suffered a corresponding deprivation or loss, and c) there is no valid basis for the enrichment (see *Kosaka v. Chan*, 2009 BCCA 467). Normally unjust enrichment is not found where an enforceable contract exists. However, as I explain next, I find the parties did not have an enforceable contract.
18. For a valid contract to exist, there must be an offer, acceptance, and consideration. The parties must also agree on all essential terms and express themselves so that their meaning can be determined with a reasonable degree of certainty (see discussion in *Babich v. Babich*, 2015 BCPC 0175 and *Redfern Resources Ltd. (Re)*, 2012 BCCA 189). In the circumstances, I find that payment was an essential term of the parties' agreement. I find on the evidence that the parties had no "meeting of the minds" on payment and so, no valid contract.
19. The applicant's position is that the respondent would be unjustly enriched, at the applicant's expense, if she does not reimburse him for the construction materials.

20. To start, I find it is unclear on the evidence how much the materials cost or their value in the respondent's home. The applicant submitted about two years' worth of receipts with no corresponding calculation or explanation of their relevance to his claim. Only a few of the receipts are obviously drywall and plumbing materials. On a rough calculation, it appears the applicant paid about \$1,400 for a new bathtub, shower surround, plumbing pipes, and drywall. I find many of the receipts are completely unrelated to the renovation at issue. Several receipts are dated well before the renovation work or were for purchases made in another city where the applicant owns a rental property. Further, many of the submitted receipts are indecipherable because the product abbreviations are not explained or they are illegible. Therefore, I cannot tell on the face of the receipts exactly how much the applicant paid for the construction materials in the respondent's home.
21. Although the applicant undisputedly paid for the materials, I find that he also benefitted from them because he lived for several months in the home. The evidence shows that the applicant performed the plumbing work so that they had functional bathrooms, which the applicant admittedly used. The applicant also admits to inadvertently staining the bathtub and having to purchase a replacement. Further, I accept the respondent's uncontested assertion that the applicant never asked her for payment for materials over the 18 months they lived together. I find on both parties' submissions that they shared household expenses informally and these were part of those expenses. The applicant has not shown that he contributed substantially more to the household expenses because he purchased the materials. On balance, I am not satisfied that the respondent was unfairly enriched to the applicant's detriment by the new materials.
22. Further, for reasons that are not explained, the evidence shows that the applicant unilaterally decided to move out without notice, leaving the respondent with unfinished renovations. I find the applicant did not demand reimbursement until after he left the relationship and then never gave a proper accounting of his expenses. In the circumstances, I find any benefit the respondent might have retained from the materials is justified.

23. Overall, I find that the applicant has not established on a balance of probabilities that he is entitled to damages for unjust enrichment or that he is otherwise owed reimbursement.

24. Since the respondent filed no counterclaim, I find no need to discuss the respondent's allegations about the quality of the applicant's work.

25. I dismiss the applicant's claim for \$4,674.13 in construction materials. As the applicant was unsuccessful, I also dismiss his claim for tribunal fees.

ORDER

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

Trisha Apland, Tribunal Member