



Civil Resolution Tribunal

Date Issued: May 28, 2020

File: SC-2020-003888

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mah v. Douglas Hipkiss (dba Chimney's, Masonry & Maintenance)*,
2020 BCCRT 586

B E T W E E N :

RICKY MAH

APPLICANT

A N D :

DOUGLAS HIPKISS (Doing Business As CHIMNEY'S, MASONRY &
MAINTENANCE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for labour and a work referral fee.
2. The applicant, Ricky Mah, performed masonry labour for the respondent, Douglas Hipkiss (Doing Business As Chimney's, Masonry & Maintenance). The applicant

says the respondent owes him for labour he performed, plus a finder's fee and payment for work he expected to perform for the respondent but did not. These claims total \$3,383.50 as described in the applicant's submissions.

3. The respondent acknowledges he owes the applicant \$1,656.00 for the unpaid labour. However, the respondent says the applicant refused payment of these amounts, and the respondent denies owing the applicant anything else.
4. The parties are both 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. This dispute involves a "he said, he said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the tribunal's mandate includes proportionality and a speedy resolution of disputes, I find I am able to assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to 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.

Preliminary Matter

9. The claims in this dispute were originally raised in a different tribunal dispute, file number SC-2019-009446 (original dispute). The original dispute also contained claims related to a personal injury the applicant says he sustained while working for the respondent (injury claims). I requested further submissions from the parties, and then issued a preliminary decision that was sent to the parties on May 14, 2020. In that preliminary decision, I found that the tribunal could not determine whether it had jurisdiction to hear the injury claims until the Workers' Compensation Appeal Tribunal (WCAT) first decides whether the applicant was a "worker" and whether his injury was work-related, under sections 127, 308, and 311 of the *Workers Compensation Act*. I also determined that the tribunal could hear the applicant's non-injury claims immediately, as they did not require a WCAT determination and were unrelated to the injury claims.
10. As a result, in the preliminary decision, I ordered the original dispute to be paused pending a WCAT determination. I also ordered the non-injury claims in that dispute to be transferred to a new tribunal dispute file so they could be heard immediately. This decision addresses the applicant's non-injury claims in that new tribunal dispute file.

ISSUES

11. The issues in this dispute are:

- a. How much does the respondent owe the applicant for unpaid labour?
- b. Did the parties agree to a finder's fee contract, and if so, does the respondent owe the applicant a finder's fee?
- c. Did the respondent agree to hire the applicant to perform work on a particular "J.C." job, and if so, does the respondent owe anything for that promised work?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities. I have read all of the evidence submitted, but I refer only to the evidence I find relevant to provide context for my decision.

How much does the respondent owe the applicant for unpaid labour?

13. The undisputed evidence is that the applicant performed masonry work for the respondent. There are no written contracts between the parties. Their arrangement was that the respondent would pay the applicant \$17 per hour worked. There is no evidence that the respondent promised any particular amount of work per week, and I find that the applicant's work hours were determined by the respondent's need and the availability of work.
14. The applicant says he kept track of the dates and hours he worked, and he submitted his handwritten records. The applicant says he asked the respondent to sign his work records, but the respondent did not. The respondent did not submit any of his own records of the hours the applicant worked, and it is not clear why he did not sign the applicant's records.
15. The applicant says that while he was paid for some of his work, he is still owed \$1,456.50, plus an additional \$197, for unpaid labour. This equals \$1,653.50. In his submissions, the respondent acknowledges that he still owes the applicant \$1,456 plus an additional \$200, which equals \$1,656.00. I infer that the respondent

rounded these amounts, so I find the respondent owes the applicant the \$1,653.50 claimed.

16. The respondent says he has already offered to pay the applicant for this unpaid labour on multiple occasions, but the applicant refused. The respondent does not state when he made each of these payment attempts or why they were allegedly refused. The respondent's submissions refer to the applicant being "non-negotiable" and that he had "no intention of negotiating the process." This suggests to me the respondent may have been attempting to negotiate a settlement rather than to simply pay the amount owed. On balance, I find the applicant did not refuse payment or do anything else that showed he abandoned this debt, which I find the respondent must pay.

Did the parties agree to a finder's fee contract, and is a finder's fee owed?

17. The applicant says the respondent agreed to pay a finder's fee for referring work to him. The applicant says he referred some work for a person, J.C., to the respondent, who agreed to pay a "15%" finder's fee. The applicant says the job was for \$7,000, so his 15% finder's fee was \$1,050, which the respondent did not pay.
18. The respondent says he was open to paying a finder's fee for the J.C. job, but he never agreed to 15% of the total charged. The respondent says he explained to the applicant that because of the significant material costs of the job, paying 15% of the total would leave the respondent with no income for the job. The respondent says he offered the applicant 15% of the profit from the job instead, but the applicant refused. The respondent says the parties agreed to discuss a finder's fee later, but on the evidence before me, I find they never did.
19. The parties did not sign a written finder's fee agreement. While a contract may be verbal, and does not need to be written and signed, a written contract creates certainty about the agreement. When there is no written contract, the party trying to prove that a contract exists must prove that the parties agreed on the essential terms of the agreement.

20. In this case, I find the applicant has not met the burden of proving that the parties came to an agreement about a finder's fee, which I find would be an essential term of the agreement. I find the respondent's evidence on this point, that no agreement was reached, to be more detailed and persuasive, and it was not specifically refuted by the applicant in his reply submissions. So, I find there was no finder's fee agreement.
21. I also considered whether the applicant was entitled to 15% of the profit from the J.C. job, which is what the respondent says he offered the applicant, on a *quantum meruit* basis, meaning "value for work done." However, there is no evidence of the profit or estimated profit from the J.C. job, so I cannot determine what 15% of the profit likely was. So, I find no finder's fee is owed. I dismiss the applicant's claim.

Did the respondent agree to hire the applicant to perform work on the J.C. job?

22. The applicant says the respondent owes him \$680 for 5 days of work he expected to perform on the J.C. job. This equals 5 days of work at 8 hours per day and \$17 per hour.
23. The applicant says he introduced the respondent to J.C. on October 17, 2019, and the respondent provided a work estimate to J.C. The parties agree their working relationship broke down in late October 2019. In an October 30, 2019 text message, the respondent told the applicant he did not feel comfortable working with him any longer. A November 3, 2019 email from J.C. to the applicant confirms that J.C. decided to hire the respondent for their job, and that "he's starting soon." I find the respondent did not hire the applicant to help with the J.C. job, and the applicant did not perform any work on that job.
24. The applicant can only recover the \$680 claimed if the parties made an agreement that the respondent would hire the applicant to help with the J.C. job. I find that the respondent hired the applicant as needed, and did not promise to provide any amount of work. I also found above there was no finder's fee agreement. On

balance, I find the respondent did not promise to hire the applicant as part of a finder's fee agreement or any other agreement. I also note the applicant failed to provide any evidence that he lost any work or income as a result of not working on the J.C. job. As a result, I dismiss the applicant's claim.

Tribunal Fees, Expenses, and Interest

25. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on \$1,653.50. In an October 30, 2019 text message, the respondent said he would pay the applicant within the next 7 days, and the applicant responded "Ok". Therefore, I find it appropriate to calculate pre-judgment interest from November 6, 2019, 7 days after October 30, 2019, to the date of this decision. This equals \$18.11.
26. 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. The applicant paid \$175 in tribunal fees for the original dispute. No additional fees were required for this new tribunal dispute file, which addressed some of the original dispute's claims.
27. This dispute addressed most of the amounts claimed by the applicant. So, I find that regardless of any future decision about the injury claims in the original dispute file, the outcome of this decision means the applicant was partially successful in his tribunal claims against the respondent overall. As a result, I find it appropriate to order reimbursement of tribunal fees under this new dispute file, rather than under the original dispute file.
28. I find the applicant is entitled to reimbursement for half the tribunal fees paid for his claims against the respondent, which equals \$87.50. No dispute-related expenses were claimed.

ORDERS

29. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,759.11, broken down as follows:
 - a. \$1,653.50 in debt;
 - b. \$18.11 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in tribunal fees.
30. The applicant is entitled to post-judgment interest, as applicable.
31. I dismiss the applicant's remaining claims in this dispute.
32. 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 a Ministerial Order 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.

33. 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.

Chad McCarthy, Tribunal Member