



Civil Resolution Tribunal

Date Issued: July 29, 2020

File: SC-2020-000815

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lechinsky v. Brackett*, 2020 BCCRT 838

BETWEEN:

DAVID LECHINSKY

APPLICANT

AND:

COLIN BRACKETT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a subcontract for drywall and painting services.
2. The respondent, Colin Brackett, was the general contractor for a home renovation project. Mr. Brackett hired the applicant, David Lechinsky, to do drywall repairs and

paint the interior of the home. Mr. Lechinsky says that Mr. Brackett did not pay him for all his services under their contract and claims \$4,360 is outstanding.

3. Mr. Brackett says that he already paid Mr. Lechinsky what he is owed. He also says that this matter has already been dealt with in a prior Civil Resolution Tribunal (CRT) dispute in which Mr. Lechinsky's claim was dismissed.
4. Mr. Lechinsky and Mr. Brackett are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. As noted above, Mr. Brackett says this claim has already been considered and dismissed in a previous CRT decision: *Lechinsky v. Kestenberg*, 2019 BCCRT 1393. In that dispute, Mr. Lechinsky brought a claim against the homeowner for payment of what he says Mr. Brackett owes him under their contract. The homeowner added Mr. Brackett as a third party to the dispute. The CRT member dismissed the claim against the homeowner because there was no contract between her and Mr. Lechinsky. As the homeowner was not ordered to pay Mr. Lechinsky anything, the CRT member found the homeowner had nothing to claim over from Mr. Brackett, so he dismissed her third party claim. However, the CRT member specifically found that the question of whether Mr. Brackett owes Mr. Lechinsky any money under their contract was not properly before him, so did not address that question. Therefore, I find this dispute has not been previously decided and it is properly before me.

ISSUE

10. The issue in this dispute is whether Mr. Brackett owes Mr. Lechinsky any money for painting or other work he performed on the home renovation, and if so, how much.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Mr. Lechinsky bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision. I note that Mr. Brackett did not submit any evidence in this dispute (despite having the opportunity to do so) other than the homeowner's Dispute Response in Mr. Lechinsky's previous claim against her, which I have not considered because I find it is not relevant to this dispute.

12. Mr. Lechinsky says that on November 1, 2018, he went to the renovation site with Mr. Brackett so he could view the drywall and painting work to be completed. Mr. Lechinsky then prepared a contract outlining the terms of his agreement with Mr. Brackett. The contract says that Mr. Lechinsky will complete the painting of the ceilings, walls, and trim for \$3,760. The contract also states that drywall repairs on the ceilings and walls, including priming of patches, is not included in the noted price because the extent of required repairs is unknown, and will be charged at a rate of \$50 per hour. The contract says that Mr. Brackett will supply all materials and that any other work not specifically included in the contract will be charged at a rate of \$50 per hour.
13. Mr. Brackett does not dispute that he signed the contract, which is dated November 2, 2018. Nevertheless, he says the extent of his agreement with Mr. Lechinsky was to pay him \$3,000 for painting. Mr. Brackett does not explain the discrepancy between the contract price and what he says was the agreed price. I find that the signed contract reflects the agreed price for the painting work.
14. It is undisputed that Mr. Brackett paid Mr. Lechinsky \$1,500 after his first week of work and another \$1,500 when Mr. Lechinsky completed his work on the renovation on December 1, 2018. There is no allegation that Mr. Lechinsky's work was substandard or defective.
15. Mr. Lechinsky claims he is owed for the balance of the \$3,760 that the contract provided for the painting work, plus the drywall repairs and other work he performed for Mr. Brackett during the renovation. Specifically, Mr. Lechinsky says he completed the following:
 - a. Ceiling drywall repairs: 12 hours,
 - b. Wall drywall repairs: 20 hours,
 - c. Miscellaneous tasks such as working on closets, painting a fireplace, repairing door casings: 10 hours, and

- d. Four service calls: \$150 each.
16. Given the contract provides that Mr. Brackett will pay Mr. Lechinsky \$3,760 for the painting work and he paid only \$3,000, I find Mr. Brackett must pay Mr. Lechinsky the outstanding balance of \$760.
 17. Next, as noted, the contract provides that Mr. Lechinsky would complete the ceiling and drywall repairs at a rate of \$50 per hour. Mr. Lechinsky says he patched the ceiling damage himself and paid a helper, SG, \$400 at only \$25 per hour, to assist with the ceiling drywall repairs. Mr. Lechinsky reproduced an email from SG in his submissions, which says SG spent 2 days on the ceilings, including 8 hours of sanding plus priming on the first day and 2 coats of paint on the second day.
 18. Mr. Brackett provided no submissions about the drywall repair work or other work that Mr. Lechinsky says he completed, and as noted above, Mr. Brackett chose not to submit any relevant evidence in this dispute.
 19. I find that the 12 hours Mr. Lechinsky claimed for his own ceiling patch work is reasonable, based on the pictures of the ceiling in evidence. As for SG's work, I find the 8 hours of sanding and priming he performed on the first day at Mr. Lechinsky's claimed rate of \$25 per hour is reasonable because it is a lower rate than what Mr. Lechinsky would have charged under the contract. However, painting the ceilings was included in the \$3,760 flat rate for painting under the contract. Therefore, I order Mr. Brackett to pay Mr. Lechinsky \$800 for the ceiling drywall repairs.
 20. I find Mr. Lechinsky's claimed 20 hours for the wall drywall repairs is reasonable, based on SG's comments about the extensive work required to repair the existing poor workmanship on the walls. Therefore, I find Mr. Brackett must pay Mr. Lechinsky \$1,000 for the wall drywall repair work.
 21. Mr. Lechinsky did not provide any evidence such as photographs or statements from other workers to confirm that he performed the claimed miscellaneous work at the renovation site. Even though the contract contemplates that any additional work will be charged at \$50 per hour and Mr. Brackett did not specifically dispute that Mr.

Lechinsky did any odd jobs on the renovation, I find Mr. Lechinsky has not proven his claim for 10 hours of miscellaneous work.

22. Mr. Lechinsky says the service calls relate to being called to the renovation site to complete work, but each time he arrived, he says he was told to leave because the site was not ready. While there is no explicit provision in the contract for Mr. Lechinsky to charge \$150 for unnecessary attendances at the renovation site, I find there is an implied term in the contract that Mr. Lechinsky can charge for wasted time. However, Mr. Lechinsky did not provide any details about the 4 claimed incidents to prove his wasted time, and there is no independent evidence of these wasted attendances at the renovation site. Therefore, I find Mr. Lechinsky has not proven his claim for 4 service calls.
23. In addition to his claims for the unpaid work, Mr. Lechinsky provided receipts for materials that he bought, including primer, paint, and drywall mud, totaling \$378.47. I find that the contract says Mr. Brackett will supply all necessary materials and that he must reimburse Mr. Lechinsky for these expenses.
24. In summary, I find that Mr. Brackett must pay Mr. Lechinsky \$760 for painting work, \$800 for ceiling drywall repair work, \$1,000 for wall drywall repair work, and \$378.47 for materials. This totals \$2,938.47.
25. The *Court Order Interest Act* applies to the CRT. Mr. Lechinsky is entitled to pre-judgement interest on the \$2,938.47 from December 1, 2018, the date the work was complete, to the date of this decision. This equals \$90.54.
26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Lechinsky is the successful party and is entitled to reimbursement of \$175 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

27. Within 30 days of the date of this decision, I order the respondent, Colin Brackett to pay the applicant, David Lechinsky, a total of \$3,204.01, broken down as follows:
- a. \$2,938.47 for unpaid work,
 - b. \$90.54 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
28. The applicant is entitled to post-judgment interest, as applicable.
29. Under section 48 of the CRTA, the CRT 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 CRT'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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member