



Civil Resolution Tribunal

Date Issued: August 7, 2020

File: SC-2019-002865

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Olson v. Shandler*, 2020 BCCRT 880

BETWEEN:

JAMES OLSON

APPLICANT

AND:

KURTIS SHANDLER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is over payment for carpentry services. The applicant, James Olson, says the respondent, Kurtis Shandler, owes \$2,200 for carpentry services.
2. Mr. Shandler denies this claim. Mr. Shandler says he only agreed to pay \$250, which has already been paid. Mr. Shandler also says Mr. Olson did not complete

the project and Mr. Olson damaged his property. Mr. Shandler says Mr. Olson owes him \$536.40 for damaging his floor, window panels and front door lockset. Mr. Shandler did not file a counterclaim.

3. For the reasons set out below, I find Mr. Olson has not proved his claim.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions. 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.

7. 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.

ISSUE

8. The issue in this dispute is whether Mr. Shandler owes Mr. Olson a debt for unpaid carpentry services? If so, how much?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities.
10. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The parties provide very conflicting versions of the events surrounding this dispute. Mr. Olson says he agreed to install multiple doors at Mr. Shandler's residence for \$1,200 with Mr. Shandler providing the materials and supplies. However, Mr. Olson also says Mr. Shandler kept adding additional tasks such as drywalling and the construction of a bunk bed.
12. Mr. Olson also says that Mr. Shandler agreed to pay \$40 per hour. Mr. Olson says he worked 55 hours for a total of \$2,200. It is not clear from Mr. Olson's submissions whether Mr. Olson claims the \$40 hourly fee was an additional fee or whether their agreement changed from a \$1,200 flat fee to an hourly fee.
13. Mr. Olson says that Mr. Shandler displayed \$2,200 in cash and said he would give him this money when the work was completed. Mr. Olson does not explain how Mr. Shandler knew the final hourly fees would total \$2,200 before the project was completed. In the absence of an explanation, I find Mr. Olson's submission unlikely to be true and I do not give this evidence any weight in my decision.

14. Mr. Olson also provided the first page of a contract dated February 19, 2019. This document says that Mr. Shandler agrees to pay Mr. Olson \$2,200 and Mr. Shandler agrees to pay Mr. Olson \$40 per hour. The contract also says that Mr. Olson worked 55 hours.
15. In contrast, Mr. Shandler says he did not agree to the terms in this alleged contract and he never saw the document until this dispute started. Mr. Olson did not provide any other pages from the contract and the contract was not signed.
16. On balance, I am not satisfied that Mr. Olson's alleged contract is genuine. The document is inconsistent with itself and other evidence. The alleged contract says Mr. Olson's fee is both \$2,200 and \$40 hourly. I am unable to reconcile how it could be both, nor can I determine which one it should be. Further, Mr. Olson does not explain how he worked on the project for 55 hours before they entered the contract. Was the phrase "55 hours worked" an estimate of how many hours Mr. Olson expected to work? If so, how could Mr. Olson know the exact number of hours he would work before the project began? This seems especially unlikely since, according to his own submissions, Mr. Shandler increased the scope of the contract after the project started. This document is also inconsistent with Mr. Olson's submission that the parties initially agreed to a fee of \$1,200 and then additional services were added. I find, more likely than not, that this document is not a genuine copy of the parties' agreement. So, I do not give this evidence any weight in my decision.
17. Based on my findings that Mr. Olson has provided inaccurate submissions and evidence, I find that Mr. Olson is not a credible witness and, where there is no supporting documentation, I give Mr. Olson's version of events no weight. However, Mr. Olson did provide text messages which documented some of the parties' communications.
18. Mr. Shandler says Mr. Olson's text messages are not accurate. Rather, Mr. Shandler says this evidence was fabricated and altered by Mr. Olson.

19. The courts have said that an adverse inference can be drawn against a party where, without sufficient explanation, they fail to produce evidence or call a witness expected to provide supporting evidence (see *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd.*, 2018 BCSC 2146). In this matter, I would expect Mr. Shandler to provide his own copy of the parties' text messages when alleging that Mr. Olson's text records are inaccurate. Since Mr. Shandler has not provided his own text records, and since these text records would likely be readily available to Mr. Shandler on his own texting device, I find that it is appropriate to draw an adverse inference against Mr. Shandler. Based on this adverse inference, I find that Mr. Olson's text messages are an accurate record of the parties' communications.
20. Mr. Olson texted Mr. Shandler on February 20, 2019 saying that he quoted Mr. Shandler fees of \$1,200 to install 6 doors. The text also refers to a cost of \$250.84 for the cost of doors. Mr. Olson asked Mr. Shandler to provide the money for door costs or Mr. Shandler could purchase the doors himself. Mr. Shandler responded on February 21, 2019, saying his money was ready.
21. In contrast, Mr. Shandler says the parties agreed to a flat fee of \$250 for all of Mr. Olson's carpentry services. Mr. Shandler provided a handwritten agreement dated February 22, 2019, which says that Mr. Olson will provide carpentry services for \$250 which was paid in cash, in advance. The document was signed by both parties.
22. Mr. Olson says this document is not genuine and it does not accurately reflect their agreement. Mr. Olson says he never agreed to fees of \$250 and he did not sign Mr. Shandler's alleged agreement.
23. Comparing Mr. Olson's purported signature on Mr. Shandler's alleged agreement to Mr. Olson's signature on a March 11, 2019, handwritten note, I find that these signatures look somewhat similar. However, without additional signature samples or expert handwriting analysis evidence, I am unable to determine whether Mr. Olson's purported signature on Mr. Shandler's alleged agreement is genuine or not.

24. In my assessment of the genuineness of Mr. Shandler's alleged agreement, I also considered the surrounding context. I note that the alleged agreement is inconsistent with the parties' text messages. As stated above, Mr. Olson referred to a \$1,200 fee quote in his February 20, 2019 text message. Why would Mr. Olson agree to accept only \$250 on February 22, 2019, after quoting \$1,200 on February 20, 2019? I find that this is unlikely to be accurate.
25. In my consideration of Mr. Shandler's alleged agreement and the conflicting parties' text messages, I find the text messages to be more reliable evidence and more likely to be accurate. As such, I am satisfied that Mr. Olson has presented sufficient evidence to establish that Mr. Shandler agreed to pay \$1,200 for carpentry services on February 21, 2019. However, in the absence of corroborating evidence, I find that Mr. Olson has not proved that Mr. Shandler also owed Mr. Olson an hourly fee.
26. Based on my finding that Mr. Shandler has provided inaccurate evidence, I find that Mr. Shandler is also not a credible witness and, where there is no supporting documentation, I give Mr. Shandler's version of events no weight.
27. Although I find that the parties had a contract, I am not satisfied that Mr. Olson actually performed his contractual services. Mr. Shandler says that Mr. Olson did not complete the project. This is corroborated by Mr. Olson's own March 11, 2019 note that says he would not continue working on the project without payment.
28. Mr. Olson has not provided any evidence showing how much of the project he completed. Mr. Olson says he originally agreed to install 6 doors but he did not provide evidence saying that he did so. Further, Mr. Olson has not provided any timesheets or logs to corroborate his claim that he worked 55 hours. Mr. Olson has not provided any breakdown showing which days he worked or the hours he spent each day. I am not satisfied with a simple declaration that Mr. Olson's services totaled 55 hours.

29. I find Mr. Olson has not proved the amount of unpaid services he is owed compensation for. So, I find that Mr. Olson has not established that he is owed unpaid fees from his contract with Mr. Shandler.
30. I have also considered whether Mr. Olson is entitled to compensation under the legal principle of quantum meruit. A person can be entitled to compensation under quantum meruit for the value of work performed. However, in this matter I find that Mr. Olson has not sufficiently proved that he has provided any value to Mr. Shandler because the evidence is unclear what work he performed. So, I am not satisfied that Mr. Olson is entitled to compensation under quantum meruit.
31. For the above reasons, I dismiss Mr. Olson's claim.
32. Since I have dismissed Mr. Olson's claim, in the absence of a counterclaim there is no set-off to consider for Mr. Shandler's assertion he is entitled to \$536.40.
33. 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. Since Mr. Olson was not successful in this dispute, I find he is not entitled to reimbursement of his CRT fees. Mr. Olson did not request reimbursement of dispute-related expenses so none are ordered.
34. Mr. Shandler requested reimbursement of \$30 of dispute-related expenses for postage stamps and photocopies. However, without providing any itemization of these expenses, or evidence corroborating these expenses, I find that Mr. Shandler has failed to prove these expenses. So, I deny Mr. Shandler's request for reimbursement of dispute-related expenses.

ORDER

35. I dismiss Mr. Olson's claims, and this dispute.

Richard McAndrew, Tribunal Member