



Civil Resolution Tribunal

Date Issued: August 14, 2020

File: SC-2019-010884

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Major v. Driedger*, 2020 BCCRT 905

BETWEEN:

CYNTHIA MAJOR

APPLICANT

AND:

TERRY DRIEDGER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a decking project. The applicant Cynthia Major hired the respondent Terry Driedger to rebuild the exterior stairs and deck on her house.
2. Mr. Driedger agreed to be paid \$9,975 for labour only, with Ms. Major supplying materials.

3. Ms. Major paid Mr. Driedger \$4,987.50 as a 50% deposit. The parties then fell out over whether a building permit was required and other issues. Ms. Major says Mr. Driedger left without supplying any plans or doing any work.
4. Ms. Major seeks an order that Mr. Driedger repay the \$4,987.50 deposit and compensation for 26 bags of concrete she says were ruined when Mr. Driedger walked off the job. Although the concrete is valued at \$182.00, Ms. Driedger claims, \$12.50 for it, so that her claim falls under the CRT's \$5,000 small claims monetary limit.
5. Mr. Driedger says he completed plans, as an extra to the contract, charged at \$80 per hour. Mr. Driedger says he dropped them off to Ms. Major's house. He also says he spent 10 hours loading materials and meeting at the building site. Taken together, Mr. Driedger says Ms. Major's claim for a refund of her deposit should be set-off against for the value of these services. Mr. Driedger says these values are \$4,680 for drawing plans, \$160 for meeting with Ms. Major, and \$960 for loading and transporting building materials. Mr. Driedger says his crew covered the concrete bags with a tarp, so the concrete should have remained usable.
6. The parties are each self-represented.

JURISDICTION AND PROCEDURE

7. 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.
8. The CRT 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.

9. 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.
10. Because the CRT's monetary jurisdiction limit is \$5,000 for small claims, I find that a set-off over \$5,000 would be outside my jurisdiction to order. However, I allow a set-off of less than \$5,000 below. I find that the allowable set-off falls within the CRT jurisdiction.
11. 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.

ISSUES

12. The issues in this dispute are:
 - a. Whether Ms. Major is entitled to a refund for work she says Mr. Driedger did not complete, and,
 - b. If so, whether Mr. Driedger is entitled to a set-off against that refund for extra work in preparing the plans.

EVIDENCE AND ANALYSIS

13. In this civil claim, Ms. Major bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

14. On September 27, 2019, the parties entered into a written contract in which Mr. Driedger, doing business as Blackthorn Contractors, agreed to provide “Labour ONLY” to build a front and back deck, with materials supplied by Ms. Major. Ms. Major agreed to pay \$9,975, made up of \$9,500 for labour, and \$475 in GST.
15. In the contract, the parties agreed that any extra work would be charged at \$80 per hours for the general contractor, \$40 for the framer and \$30 for the labourer.
16. The parties agreed that the work would start September 30, 2019. The contract had a projected timeline of 1-1.5 weeks for framing and 1.0 week for decks and railings.
17. The contract specified that a 50% deposit was due at signing. Ms. Major paid Mr. Driedger \$4,987.50 in late September 2019.
18. Having reviewed the parties’ text messages, I find that the contract was for labour only to build the decking, on the understanding that no permit was required because the job was to replace an existing deck, not to build a new one. Based on the texts and the contract, I find that the \$9,975 price did not include the cost to prepare plans or to obtain a permit.
19. I find that Ms. Major then decided she wanted to get a permit for the deck project. When Mr. Driedger made inquiries about the permit, he informed Ms. Major that the building inspectors were requiring preparation of a “site plan, floor plans, foundation plan and cross sections”.
20. I find that, on October 1, 2019, Mr. Driedger texted Ms. Major to explain what drawings were required, that they would cost extra, and that he estimated an “extra day of time” to prepare them. I find that Ms. Major agreed to proceed on this basis, after some further explanation from Mr. Driedger.
21. I find that when Mr. Driedger stopped work on the project, he had provided 8 hours of labour picking up and delivering materials, with his framer. I find that these 8 hours, charged at \$80 per hour for Mr. Driedger and \$40 per hour for his labourer, provide \$660 in value to Ms. Major that she will not have to duplicate.

22. Based on the documents filed in evidence, I also find that Mr. Driedger attended two meetings with Ms. Major, which I find were part of the agreed all included labour for the flat rate price. However, I find that Ms. Major did not receive value for this time because she would have to re-do these meetings with a subsequent contractor to get the job done. Because the contract did not provide for travel time to and from the site to be charged separately, I also have not included travelling time in this valuation.
23. Ms. Major claims for 26 bags of concrete she says were ruined when they absorbed moisture after Mr. Driedger left the job. Mr. Driedger says he covered the concrete in a tarp that should have kept the material usable. Ms. Major did not provide photographs or other evidence to prove the concrete was unusable, such as a letter from her replacement contractor. I accept that Mr. Driedger delivered the concrete and that it was usable. I dismiss Ms. Major's claim for \$12.50 for the concrete.
24. The parties agree that beyond the pick-up and delivery of materials and meetings with Ms. Major, Mr. Driedger did not complete any other parts of the fixed price contract job for decking. I find that Mr. Driedger must refund Ms. Major \$4,987.50 less \$660 for delivery of materials, less any set-off as discussed below.
25. I now turn to the question of set-off for Mr. Driedger's preparation of the site plan, floor plans, foundation plan and cross-sections, which were extras to the contract.
26. Mr. Driedger says that he delivered the plans to Ms. Major's home on December 6, 2019 and left them outside. Ms. Major denies receiving them.
27. Mr. Driedger filed the plans in evidence. In submissions, Ms. Major says that she hired a replacement contractor who has since prepared plans and otherwise completed the decking work. However, Ms. Major did not file any evidence that she had the work completed via plans generated by someone else. On the other hand, Mr. Driedger has proven that he prepared the plans.
28. I find that Mr. Driedger created the plans in late November 2019, when Ms. Major was texting him and asking for them to be dropped off at her home. I find that he

delivered the plans to her home on December 6, 2019, because he filed completed plans in evidence.

29. I must now value the plans. In submissions, Mr. Driedger says he spent 58.5 hours creating the plans. In a December 6, 2019 spreadsheet he filed in evidence, he lists spending 49.5 hours on the plans. Ms. Major says that, either way, this is an unreasonable amount of time for the plans relative to the scope of work. I agree. In the text messages discussed above, I found that Mr. Driedger committed to providing the needed plans for Ms. Major in one extra day's work. Given his commitment, I assess the time spent on the plans at 8 hours of time at \$80 per hour, or \$640, plus 1 hour for a meeting at the building department for a further \$80. Although Mr. Driedger did not file a counterclaim, I find the \$720 is an appropriate amount to apply as a set-off.
30. Taking the \$4,987.50 refund and deducting \$660 for materials delivery and \$720 for set-off, I find that Mr. Driedger must pay Ms. Major \$3,607.50.
31. The *Court Order Interest Act* applies to the CRT. Ms. Major is entitled to pre-judgment interest on the \$3,607.50 from September 30, 2019, the date by which she had paid the deposit, to the date of this decision. This equals \$55.00.
32. 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 Ms. Major is entitled to reimbursement of \$175 in CRT. Ms. Major did not claim dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Mr. Driedger to pay Ms. Major a total of \$3,837.50, broken down as follows:
 - a. \$3,607.50 as a refund,

- b. \$55.00 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 CRT fees.

34. Ms. Major is entitled to post-judgment interest, as applicable.
35. 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.
36. 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.

Julie K. Gibson, Tribunal Member