



Civil Resolution Tribunal

Date Issued: August 19, 2020

File: SC-2019-010628

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marsters v. Saini*, 2020 BCCRT 923

BETWEEN:

DEAN MARSTERS

APPLICANT

AND:

ZORAWAR SAINI and GENERATOR ENTERTAINMENT SERVICES
LTD.

RESPONDENTS

AND:

DEAN MARSTERS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for renovation services. The applicant and respondent by counterclaim, Dean Marsters, says he was hired by the respondents, Generator Entertainment Services Ltd. (Generator) and Zorawar Saini, to perform some renovation work at the respondents' new restaurant and event space, Tandoori Nation.
2. Mr. Marsters says he performed the requested work, but was not paid for his services. He seeks \$4,950.13, the amount he says is owed for the work performed. The respondents say Mr. Marsters charged well beyond the quote he gave, and did not perform the work to a professional standard. Generator filed a counterclaim against Mr. Marsters seeking a total of \$4,997.72 for damage allegedly done while installing bathroom stalls, deficiencies in paint work, missing materials, and cancelled banquet bookings. Mr. Marsters denies he is responsible for any of those expenses.
3. Mr. Marsters is self-represented. Mr. Saini represents himself and Generator.

JURISDICTION AND PROCEDURE

4. 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 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.
5. The CRT 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, he said” scenario. The 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT’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 British Columbia Supreme Court recognized the CRT’s process and found that oral hearings are not necessarily required where credibility is an issue.

6. 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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. To what extent, if any, is Mr. Marsters entitled to \$4,950.13 for renovation work performed, and

- b. To what extent, if any, is Generator entitled to \$4,997.72 in damages for Mr. Marsters' allegedly deficient renovation work?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, in his claim, Mr. Marsters bears the burden of proof on a balance of probabilities. In its counterclaim, Generator bears this same burden. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that sometime in May 2019, the parties agreed Mr. Marsters would perform some renovation services for the respondents' new restaurant and event space. Initially, the work included installation and painting of new bathroom stall metal frame partitions, installation of custom-made stall partition walls (supplied by the respondents), and installation of toilet seats and bathroom countertops. The scope of work was later increased, which is discussed below. For the initial work, Mr. Saini says Mr. Marsters quoted \$1,500 for completion of the job. However, Mr. Marsters denies ever providing the respondents with a quote, and instead says he charges on an hourly basis for work performed.
11. Mr. Saini says it is his standard practice to first acquire written quotes for work before allowing work to start. He says although he asked Mr. Marsters for the \$1,500 quote in writing, it was not provided. It is undisputed that the work commenced without any written quote or contract.
12. In support of his submission that the parties agreed to a \$1,500 quote, Mr. Saini provided a witness statement from KK, Generator's Assistant Manager. KK said she was present on May 21, 2019 when Mr. Saini and Mr. Marsters met at Tandoori Nation and discussed the work required. KK said Mr. Marsters quoted \$1,500 for labour only, and the job was to be completed in one week. As noted above, Mr. Marsters specifically denies any quote was given, or that one was even requested.

13. Given the circumstances, I find there was no agreed upon quote for the above-noted work. Although KK's statement supports Mr. Saini's argument that there was a quote for \$1,500, as an employee of Generator, I find KK is not a disinterested witness. Therefore, I give her statement little weight. Additionally, Mr. Saini admitted it is his standard procedure to not allow work to start without a written quote, however he did not follow his standard procedure here. I find this is consistent with the fact the parties did not agree to a price for the work ahead of time. Therefore, I find Mr. Marsters is entitled to be reasonably paid for his services, subject to any deduction for deficiencies and Generator's counterclaim. Here, there is no indication the parties agreed to a set hourly rate, as the respondents argue it was a fixed price contract. However, under the legal principle of *quantum meruit*, a person can be entitled to compensation for the value of their work done. I find Mr. Marsters did perform work for the respondents and is entitled to be paid for that work. My reasons follow.

14. I also note that, outside the alleged \$1,500 quote, Mr. Saini says additional work was requested of Mr. Marsters. However, the parties disagree as to the scope of that work. Mr. Marsters says he was asked to prepare the two front outside entrance areas for future tile installation, and to repair the front bar floor that had rotted. Mr. Marsters says this work was completed and billed for. In contrast, Mr. Saini says Mr. Marsters was supposed to completely redo the entrance tile flooring and the entirety of the bar floor, neither of which were done. Therefore, Mr. Saini says Mr. Marsters abandoned those parts of the job. In the case of defective work, the burden of proof is on the party alleging the work was defective (here, the respondents) (see: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). Other than the parties' own submissions, there is no evidence supporting either party's version of events. In this case, I find there is insufficient evidence Mr. Marsters agreed to do anything other than preparation work for the entrances and bar floor. I also find Mr. Marsters did not invoice for anything other than the work he says he completed, for a total of 3.5 hours of preparation. On balance, I find the respondents have not proven Mr. Marsters' "abandoned" the flooring jobs.

15. I turn then to Mr. Marsters' invoice for work done, which includes 28 hours for prepping and painting the washroom frames and doors, 26 hours to install toilet frames, door, toilets and flanges and remove and reinstall counters, 2 hours to repair bar floor, 1.5 hours to prepare two front entrances for tile, 30 hours of "miscellaneous labour", 24 hours of plumbing repairs, plus \$752.72 for materials, a 15% materials surcharge, and taxes.
16. Mr. Marsters generally says that he completed all the work as noted in the invoice himself, except that the 30 hours of miscellaneous labour was completed by one of his workers, at a lower rate (\$25/hr instead of \$40/hr). Therefore, Mr. Marsters charged for a total of 81.5 hours of his own time, plus 30 hours of his worker's time. It is undisputed that Mr. Marsters was on site for a maximum of 5 days. This means, according to the invoice, Mr. Marsters billed for approximately 16.3 hours per day for his own time, plus his worker's. Mr. Saini says the amount charged by Mr. Marsters is excessive. I agree. There is no evidence the jobs completed by Mr. Marsters were overly complicated or that more than a "normal" work day were required to complete the tasks. On a judgment basis, I find Mr. Marsters is entitled to be paid for 10 hours per day, for 5 days, at his rate of \$40 per hour (which I find a reasonable rate in the circumstances), plus his worker's 30 hours at \$25 per hour. This amounts to \$2,750 in labour charges.
17. So what about the materials charges? Mr. Saini says the \$752.72 charged by Mr. Marsters is unreasonable as Mr. Saini provided all materials required for the job, except for paint. The materials invoices in evidence total only \$492.52. Neither party explains this discrepancy. In any event, I find the invoices are generally reasonably connected to the work performed by Mr. Marsters. These include invoices for screws and bolts, tile trim, sink and plumbing connections (for installation of the sinks in the new countertops), and various washers and screws. However, I find the invoices for a drill bit (\$44.45) and for paint (\$93.18) are not recoverable by Mr. Marsters. Although Mr. Marsters says the drill bit was custom and necessary for the installation job, it is undisputed that he is still in possession of the drill bit and therefore has the benefit of its purchase. I find the respondents are not responsible

for that expense. Additionally, the \$93.18 paint invoice is dated June 25, 2019, nearly one month after Mr. Marsters completed his work at Tandoori Nation. I find Mr. Marsters has not shown this invoice was sufficiently related to the work he performed in May 2019, and therefore is not entitled to its recovery. In summary, I find Mr. Marsters has proven his entitlement to \$354.89 in materials costs, plus the 15% mark-up (which the respondents did not dispute), for a total of \$408.12.

18. In summary, I find the respondents must pay Mr. Marsters a total of \$3,316.03, including GST, for renovation work completed in May 2019.
19. Mr. Marsters is entitled to pre-judgment interest on this about, under the *Court Order Interest Act*. Calculated from September 5, 2019, the date of Mr. Marsters' invoice, this amounts to \$55.19.

Generator's counterclaim

20. As noted above, Generator claims \$4,997.72 against Mr. Marsters for deficient work that had to be repaired (\$3,600), materials costs (\$752.72), and for cancelled events (\$645).
21. First, Generator's claim for materials is a claim for the same amount Mr. Marsters charged in his invoice. Generator says it wants Mr. Marsters to "take responsibility" for the materials. As noted above, I found Mr. Marsters is reasonably entitled to the materials he paid for. I find there is no merit to Generator's claim for materials expenses, and I dismiss it.
22. Turning to the deficiencies and repair work for "unfinished jobs". Generator produced two invoices, one for \$2,092.74 for installation and set-up of four urinals, and a \$630 invoice for cabinet and countertop repair. As for the urinals, it is undisputed that when Mr. Marsters was installing the metal bathroom stall partitions, a toilet and a urinal in one of the washrooms were damaged. Mr. Marsters says he paid for the toilet to be repaired already, and that he agrees he owes for one urinal replacement and installation, which he says is \$500. Generator says all four urinals were damaged and needed to be replaced.

23. The urinal replacement invoice states it was for supply and installation of four urinals, and that it had to supply the urinals with water, which required having to go back and thaw the frozen water line. The invoice does not describe what was wrong with the urinals such that they needed to be replaced, and is not broken down between urinal replacement and installation, and performing the water supply repairs. As noted above, the burden of proof is on Generator to show that Mr. Marsters damaged all four urinals, as opposed to the one he admits to damaging. I find Generator has not proven this. Photographs in evidence show the previous urinals were not in good condition prior to any damage allegedly caused by Mr. Marsters. Additionally, I find Mr. Marsters is not responsible for the cost of repairing the water line and configuring the water supply to the new urinals. That being said, given Mr. Marsters does admit to damaging one urinal, and I find he is responsible for the replacement of that urinal. Without further evidence, I find \$500 is a reasonable amount. I find Mr. Marsters must reimburse this amount to Generator.
24. For the \$630 invoice for cabinet and countertop repairs, the invoice merely states “repair of cabinets and countertops as requested by the customer”. It does not state what, if anything, was wrong with the cabinets or countertops, nor is it critical of any of the installation work done by Mr. Marsters. I find Generator has not met its burden of proving deficiencies in the countertop work or cabinets by Mr. Marsters.
25. Finally for deficiencies, Generator says the partitions were not installed correctly, that several screws are missing, and the old paint was not properly sanded off and primed before the new paint was applied. In support of its position, it provided a “report” from Service Pro’s Heating & Cooling (SPHC), which states that the paint is scratching off, some areas are not painted, one of the partition walls is sideways, and there is missing trim. SPHC’s qualifications are not before me, so I do not accept the report as expert evidence under the CRT rules. It is also unclear to me why a heating and cooling company would be qualified to comment on the quality of paint workmanship and bathroom partition installation. In any event, given the photos and video in evidence, I am satisfied the paint is chipping off in several

noticeable areas, and has been applied over old paint, creating a rough surface. On a judgment basis, I award Generator \$500 for the painting deficiencies.

26. I turn then to Generator's claim for damages for having to cancel booked events. Despite alleging it lost over \$10,000 in missed bookings, Generator claims \$645, presumably so its counterclaim would fall within the CRT's \$5,000 small claims monetary limit. In any event, Generator says that due to Mr. Marsters' deficient work, it had to cancel events it had previously booked for June 1 and 8, 2019. However, Mr. Marsters argues there was more work to be done in Tandoori Nation, besides the work Generator alleges Mr. Marsters should have done, before the venue could operate. Given the photographs and video evidence, as well as the fact the urinals and water supply were not repaired until March 2020, I agree with Mr. Marsters. On balance, I find Generator has not proven it had to cancel the June 2019 events as a result of Mr. Marsters' deficient work, and so I find Mr. Marsters is not responsible for the claimed \$645.
27. In total, I find Mr. Marsters must pay Generator a total of \$1,000 for repairs. Generator is entitled to pre-judgment interest on the \$500 it paid for urinal repairs, also under the *Court Order Interest Act*. Calculated from March 25, 2020, the date of the urinal replacement invoice, this amounts to \$2.92. Generator is not entitled to pre-judgment interest on the \$500 for paint deficiencies as there is no evidence it has yet paid any money to repair those deficiencies.
28. After deducting the \$1,002.92 Mr. Marsters' owes Generator, I find Mr. Saini and Generator owe Mr. Marsters a net amount of \$2,368.30 (\$3,371.22 for unpaid renovation work and pre-judgment interest minus \$1,002.92 for repair work and pre-judgment interest).
29. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As each party was partly successful, I find that each party should bear their own CRT fees. No dispute-related expenses were claimed.

ORDERS

30. Within 30 days of the date of this decision, I order the respondents, Generator Entertainment Services Ltd. (Generator) and Zorawar Saini, to pay the applicant, Dean Marsters, a net total of \$2,368.30, broken down as follows:
 - a. \$2,316.03 for unpaid renovation work, and
 - b. \$52.27 in pre-judgment interest under the *Court Order Interest Act*.
31. Mr. Marsters is also entitled to post-judgment interest, as applicable.
32. 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 tribunal 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.

33. 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.

Andrea Ritchie, Vice Chair