



Civil Resolution Tribunal

Date Issued: September 14, 2020

File: SC-2020-004080

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keyhan Modaressi dba Gallery Keyhan v. Gilbert*,
2020 BCCRT 1028

B E T W E E N :

KEYHAN MODARESSI (Doing Business As GALLERY KEYHAN)

APPLICANT

A N D :

JEFFREY STEPHEN GILBERT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is a dispute over payment for constructing a deck. The applicant, Keyhan Modaressi, doing business as Gallery Keyhan, says that the respondent, Jeffrey Stephen Gilbert, hired him to finish building a deck. Mr. Modaressi claims Mr. Gilbert owes him \$3,406.07 for deck work he performed for Mr. Gilbert.

2. Mr. Gilbert says he hired a third party, Carrew Contracting Inc. (Carrew), to build the deck, and that Carrew hired Mr. Modaressi as a sub-trade for the job. Mr. Gilbert says he did not hire Mr. Modaressi, and that he paid Carrew for the deck that Carrew completed, so he owes Mr. Modaressi nothing.
3. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
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. 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. Gilbert hired Mr. Modaressi to complete the deck, and whether Mr. Gilbert owes Mr. Modaressi anything for deck work.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Modaressi, as the applicant, must prove his claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
10. A central question in this dispute is whether Mr. Modaressi and Mr. Gilbert agreed to a contract for completing the deck construction begun by Carrew.
11. Mr. Gilbert submitted a March 23, 2019 written quote from Carrew to Mr. Gilbert showing the estimated costs of building a deck. The parties agree Mr. Gilbert hired Carrew to build the deck, and that Carrew then hired Mr. Modaressi to perform work on the deck. This is supported by an e-transfer receipt in evidence, which I find shows Mr. Modaressi accepted a \$1,000 deck work deposit from Carrew on May 4, 2019. There is no evidence of any payment between Mr. Gilbert and Mr. Modaressi.
12. Mr. Modaressi says that he worked on the deck for Carrew for 4.5 hours on April 26, 2019, until Carrew told him to stop. Mr. Modaressi says he made a verbal agreement with Mr. Gilbert later that same day, where Mr. Modaressi would continue the deck work and would be paid by Mr. Gilbert.
13. While a contract does not have to be written down, it is more difficult to prove that parties agreed to verbal contract terms. As discussed below, I find the only evidence of a verbal contract between the parties is Mr. Modaressi's allegation that Mr. Gilbert agreed to one on April 26, 2019. Mr. Gilbert denies entering into any contract with Mr. Modaressi, verbal or otherwise.
14. Mr. Modaressi says that after allegedly entering into the verbal contract, he began working again from April 29, 2019 until May 9, 2019, taking only a couple of days off in that period. Mr. Modaressi does not explain why Carrew paid him a \$1,000 deck work deposit on May 4, 2019, several days after Mr. Modaressi says he began working directly for Mr. Gilbert. I find there is no corroborating evidence before me showing that Mr. Modaressi ceased to perform deck work for Carrew, or entered into a verbal contract with Mr. Gilbert.

15. Mr. Modaressi addressed a May 15, 2019 invoice to “Jeff Irelands” at Mr. Gilbert’s address. I infer the invoice was intended for Mr. Gilbert. The invoice was for 50 hours of labour at \$55 per hour, totalling \$2,750, and \$1,446.26 in materials, plus sales tax. “\$1,000 paid in trust” was subtracted from the invoice total. I find this \$1,000 subtraction was for the \$1,000 deposit Mr. Modaressi received from Carrew.
16. Mr. Modaressi does not explain why he applied the \$1,000 deposit from Carrew to the May 15, 2019 invoice for Mr. Gilbert. There is no evidence showing, and Mr. Modaressi does not allege, that Carrew assigned or transferred its deck contract with Mr. Gilbert to Mr. Modaressi. On the evidence before me, I find that the deposit was likely to pay Mr. Modaressi for deck work he performed for Carrew. Further, I find the evidence does not show that Mr. Modaressi was permitted to apply Carrew’s \$1,000 deposit to work Mr. Modaressi allegedly performed under a different, verbal contract with Mr. Gilbert.
17. Mr. Modaressi says that he stopped working after May 9, 2019 because Mr. Gilbert had not paid him. Mr. Modaressi says Mr. Gilbert repeatedly asked him to finish the deck, but he refused to do so before being paid. Mr. Modaressi says this is supported by a May 30, 2019 text message he received from Mr. Gilbert. The text message said that Mr. Gilbert was no longer “doing anything” with Carrew. In the message, Mr. Gilbert asked if Mr. Modaressi would be interested in doing the job and being paid in cash. Mr. Gilbert also offered to deduct anything Carrew owed Mr. Modaressi from what Mr. Gilbert owed Carrew.
18. I find this text message does not support that there was an earlier verbal agreement for deck work between Mr. Modaressi and Mr. Gilbert. I find the text message is a new offer by Mr. Gilbert to hire Mr. Modaressi to complete the deck work. I also find the offer about Carrew’s debt to Mr. Modaressi was part of the May 30, 2019 offer for Mr. Modaressi to complete the deck work. There is no evidence that Mr. Modaressi accepted this offer, and as noted above, Mr. Modaressi refused any further work after May 9, 2019.

19. I find Mr. Modaresi has not met his burden of proving that he and Mr. Gilbert agreed to a contract for completing the deck work, either on April 26, 2019 or another date.
20. But did Mr. Modaresi perform deck work for Mr. Gilbert without a contract, for which he should be paid? I considered whether Mr. Modaresi was entitled to damages from Mr. Gilbert under the legal doctrine called “unjust enrichment.” To obtain such damages, Mr. Modaresi would have to show that a) Mr. Gilbert was enriched, b) Mr. Modaresi suffered a corresponding deprivation or loss, and c) there is no valid basis for the enrichment: *Kosaka v. Chan*, 2009 BCCA 467.
21. Mr. Gilbert says that because Mr. Modaresi refused his May 30, 2019 offer, he engaged Carrew to finish the deck, and paid Carrew for their work. Mr. Gilbert says if Mr. Modaresi was not paid for any deck work he performed for Carrew, that is between Mr. Modaresi and Carrew only. Although there is no evidence before me showing any payments between Mr. Gilbert and Carrew, Mr. Modaresi does not directly deny that Mr. Gilbert paid Carrew for the deck. On balance, I find that Mr. Modaresi only worked on the deck for Carrew, and that Mr. Gilbert paid Carrew for the deck. I find Mr. Gilbert was not enriched, because he paid Carrew in exchange for the deck work. So, I find Mr. Modaresi is not entitled to damages from Mr. Gilbert for unjust enrichment. I make no finding about whether Carrew was unjustly enriched by withholding payment to Mr. Modaresi, because Mr. Modaresi did not claim against Carrew for non-payment of his deck work.
22. Further, even if I had found there was a contract between the parties, I would have found that Mr. Modaresi failed to prove that he completed any deck work, or suffered any damage or loss, as described below.
23. Apart from Mr. Modaresi’s claim of working on the deck from April 29, 2019 to May 9, 2019, I find there is no evidence showing which individuals worked on the deck during that period or after. Mr. Modaresi’s May 15, 2019 invoice charged Mr. Gilbert for 50 hours of labour described as “finishing & installing lattice, pouring concrete, installing hardware.” Although Mr. Modaresi later submitted what he says

was the number of hours he worked each day from April 26, 2019 to May 9, 2019, there is no further breakdown or description of the alleged deck work he performed each day in evidence. Further, there are no photographs, witness statements, or other evidence showing that Mr. Modaresi completed any deck work.

24. Mr. Modaresi's invoice also charged Mr. Gilbert \$1,446.26 for "materials" without any further description. The evidence before me contains no breakdown or description of these materials, or receipts or other documentation showing what they cost or that Mr. Modaresi paid for them.

25. On the evidence before me, I find Mr. Modaresi has not proven, on a balance of probabilities, that he performed any labour or purchased any materials for the deck work after April 26, 2019. I dismiss Mr. Modaresi's claims.

CRT FEES AND EXPENSES

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. Mr. Gilbert was successful in this dispute but paid no fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursement.

ORDER

27. I dismiss Mr. Modaresi's claims, and this dispute.

Chad McCarthy, Tribunal Member