



Civil Resolution Tribunal

Date Issued: September 14, 2020

File: SC-2020-002910

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Good v. Glen*, 2020 BCCRT 1031

BETWEEN:

JOAN GOOD

APPLICANT

AND:

GORDON ARNOLD GLEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about payment for services. Joan Marie Glen, died in January 2018. The applicant, Joan Good, is Ms. Glen's daughter. The respondent, Gordon Arnold Glen, is the executor of Ms. Glen's estate and Ms. Glen's second husband. Ms. Good says after Ms. Glen died Mr. Glen agreed to pay her to clean Ms. Glen's

trailer and also Mr. Glen's house. She says even though she did the work, Mr. Glen refused to pay her. She seeks \$3,900 for unpaid services.

2. Mr. Glen denies that Ms. Good cleaned the properties or that he agreed to pay for any services.
3. The parties are each self-represented.

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 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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. 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. 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 a preliminary matter, I considered whether Mr. Glen acted in his own capacity or as the executor of Ms. Glen's estate when he allegedly offered to pay Ms. Good to assist with cleaning. Under the terms of Ms. Glen's will, in addition to being named as the executor, Mr. Glen was also the trustee and sole beneficiary. This means Ms. Glen's entire estate passed to Mr. Glen upon her death, which would include the trailer. The will did not direct Mr. Glen to liquidate the assets in Ms. Glen's estate. Since there were no other beneficiaries named in the will, I infer Mr. Glen intended to use the trailer for his own personal benefit and not for the purposes of satisfying the terms of Ms. Glen's will. Also, Ms. Good's claim includes compensation for time spent cleaning Mr. Glen's house in addition to the trailer. For these reasons, I find Mr. Glen was acting in his own capacity when he sought help with cleaning the trailer and so there is no need to add Mr. Glen in his capacity as the executor as a named party to this dispute.

Concurrent Dispute

10. I have decided a concurrent dispute, CRT file number SC-2020-002907, in which Ms. Good's son, Clayton Robillard, is the applicant and Mr. Glen is the respondent. Many of the facts and issues are the same or similar across both disputes. This resulted in similar written reasons. However, I decided each dispute on its own merits and issued separate decisions because the parties are not the same in each.

ISSUES

11. The issues in this dispute are:
 - a. whether Ms. Good provided cleaning services to Mr. Glen, and
 - b. whether Mr. Glen agreed to pay Ms. Good for those services, and if so the rate of pay.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Ms. Good bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. For the reasons stated below, I find Ms. Good failed to show there was an agreement between the parties and I dismiss her claims.
13. Ms. Good says when Ms. Glen died, Mr. Glen owned a house but was living in a trailer that Ms. Glen owned. She says both the trailer and house (properties) were filled with garbage and debris. She says she, Mr. Robillard, and his wife (AR agreed to clean both properties so Mr. Glen could move into the house and sell the trailer. Ms. Good says Mr. Glen told her on several occasions that they would be compensated “fairly” for all of their work after Mr. Glen sold the trailer. She also says Mr. Glen stated he was going to divide the proceeds of sale amongst Ms. Glen’s children.
14. Ms. Good says she, Mr. Robillard, and AR spent 10 hours per day from May 1 to May 11, 2018, and also the following year from May 15 to May 19, 2019 cleaning the properties. Ms. Good says after the trailer was cleaned, Mr. Glen denied he agreed to pay Ms. Good for the work.
15. Ms. Good provided statements from KB, PJ, and KG. All 3 witnesses stated that Ms. Good’s brother, CG, hired them to clean the trailer and described the type of work they did. They stated they, along with Mr. Robillard, worked 10 hours per day from

July 19 to July 21, 2019 and CG brought them pizza. They also stated that when they were hired, CG told them they would be paid at the end of each day and that Mr. Robillard would be paid when the house was sold. None of the witnesses stated how much they were paid or whether CG stated how much Mr. Robillard would be paid.

16. Ms. Good also provided several statements from family members that confirmed Mr. Glen stated he would compensate her for cleaning the properties. I have summarized the relevant portions of the witness statements below:

- a. According to Mr. Robillard, after the house and trailer were cleaned, Mr. Glen stated that he appreciated their help and that he would compensate them for their hard work when he sold the trailer. Mr. Glen also stated that on May 12 and May 14, 2019 that they would be paid for all of their help. On June 26, 2019, Mr. Glen stated that he would pay them for all of the work and help once the trailer was sold.
- b. According to AS, Ms. Good's husband, Mr. Glen stated that the family should keep records of expenses for the funeral and other functions and the estate would reimburse. AS also stated that Mr. Glen reimbursed him for his and CR's expenses and AS e-transferred money to CR. AS did not state how much he gave to CR.
- c. According to AR, Mr. Glen stated several times, including on May 12, 2019 and June 19, 2019 that they would be paid for all of their time when the house was sold. She also stated CG paid CR \$200.

17. Ms. Good says once the work was done, Mr. Glen denied that he had offered to pay her anything.

18. Ms. Good also says Mr. Glen gave several of Ms. Glen's belongings to family members and then later asked for their return. She says on May 11, 2018 Mr. Glen gave her a bag of Ms. Glen's coins but then on September 6, 2019 Mr. Glen asked for it to be returned and denied giving Ms. Good the coins. I infer Ms. Good put this

forward as proof that Mr. Glen habitually did not carry through with promises or agreements. I find the manner in which Mr. Glen dealt with Ms. Glen's belongings is not relevant to determining whether Mr. Glen agreed to pay Ms. Good for the work she performed.

19. Mr. Glen provided a very brief Dispute Response. Mr. Glen denies he offered to pay for cleaning services. He says he gave family members the opportunity to sort through Ms. Glen's belongings and take any items they wanted. Mr. Glen did not directly address whether Ms. Good cleaned the properties. Instead he relied on a statement he submitted from CG, who, as stated above, is Ms. Good's brother. I have summarized the relevant portions of CG's statement as follows:

- a. Mr. Glen was temporarily hospitalized in July 2019 and asked CG to assist with cleaning the trailer.
- b. While Mr. Glen was hospitalized, Mr. Robillard, AR, and Ms. Good took Mr. Glen's cash and sold Ms. Glen's belongings. CG did not state which items were sold or how much cash was taken.
- c. CG spent \$5,500 of his own money to hire Mr. Robillard's friends from July 19 to July 21, 2019 to complete the landscaping and remove garbage from the trailer. Mr. Robillard worked as well and he paid Mr. Robillard \$450. CG did not state whether Mr. Glen reimbursed him for the expense.
- d. CG returned to Alberta once the trailer was cleaned up.
- e. Mr. Robillard stopped paying rent and Mr. Glen's neighbor told Mr. Glen that Mr. Robillard had abandoned the house. CG did not explain the source of this information.

20. Ms. Good says CG's statement is inaccurate and untruthful. She says CG's statement is hearsay since CG was not present when many of the events in his statement occurred. 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, including hearsay evidence. CG's statement lacks pertinent details and consists primarily of hearsay evidence, unsubstantiated allegations, and his personal opinion. So, I find his statement is unreliable and I give it little weight.

21. Based on the evidence before me, I find that Mr. Glen asked Mr. Robillard, AR, and Ms. Good to clean the properties and offered to compensate them for the work they did. I also accept that Ms. Good worked approximately 10 hours per day for 16 days cleaning the properties.

Was there an enforceable contract between the parties?

22. Verbal contracts can be binding, but they must be proven. As the applicant bears the burden of proof, Ms. Good must establish the existence of the agreement and its terms.
23. Although I am not bound by it, I note that a prior CRT decision, *681288 BC LTD v. Hankin*, 2017 BCCRT 140, sets out a useful summary of the basic elements of a contract, at paragraph 19:

“For a contract to exist, there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. There must also be valuable consideration, which refers to payment of money or something else of value (for a discussion of the basic elements of a contract, see *Babich v. Babich*, 2015 BCPC 0175, and *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd.*, 2015 BCCA 332). One party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter.”

24. In applying these principles to this case, I find that the evidence before me does not establish contractual intention or a 'meeting of the minds' between Ms. Good and

Mr. Glen. I find that although Mr. Glen offered to compensate Ms. Good for the work she did, there was no certainty in terms, specifically about how much Mr. Glen would pay Ms. Good.

25. Ms. Good admits that the parties never discussed the rate of pay, although she suggests it should be \$25 per hour since that is the amount that she says KB, PJ and KG were paid. As mentioned above, these witnesses did not state how much they were paid or whether CG told them how much he was going to pay Mr. Robillard and so I find their statements were not helpful on this issue. Likewise, as discussed above, although Ms. Good provided several statements from family members, none of the witnesses stated whether Mr. Glen discussed how much he would pay her.
26. Since Ms. Good failed to prove the parties agreed to the amount she would be paid, I find there was no binding contract between the parties.

Unjust enrichment and quantum meruit

27. Although it was not specifically argued, I also considered whether Mr. Glen was unjustly enriched by Ms. Good's services. The legal test for unjust enrichment is that the applicant must show: a) that the respondent was enriched, b) that the applicant suffered a corresponding deprivation or loss, and c) there is no valid basis for the enrichment (see *Kosaka v. Chan*, 2009 BCCA 467).
28. I find that Mr. Glen was enriched by Ms. Good's labours and that Ms. Good put time and effort into cleaning the properties. Since there was no agreement between the parties, I find there was no valid basis for the enrichment. And so, I find Ms. Good is entitled to be compensated for the work she did.
29. As mentioned above, Ms. Good says she worked 16 days cleaning the house and the trailer. The court in *Johnson v. North Shore Yacht Works Corp.*, 2014 BCSC 2057 stated in paragraph 100 that when there is no *consensus ad idem* (or meeting of the minds) as to agreement terms, a party is entitled to an award on a *quantum*

meruit basis. *Quantum meruit* is a legal term meaning a reasonable sum of money to pay for work done.

30. As mentioned above, Ms. Good says she should receive \$25 per hour based on the amount other workers were paid. Ms. Good did not explain how she determined the rate of pay of the other workers since it was not mentioned in their statements. If damages cannot be readily calculated on the basis of the evidence before a court, the court can assess the damages as a matter of impression (see *Lineham v. Forfert Estate*, 2003 BCSC 1324 at paragraph 30).
31. Considering the type of work described by the witnesses, I find that \$20 per hour is reasonable. Since Ms. Good worked 10 hours per day for 16 days, I find she is entitled to receive pay for 160 hours of work which comes to \$3,200.
32. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Good is entitled to pre-judgement interest on the \$3,200 from May 19, 2019, the last day she worked, to the date of this decision. This equals \$72.91.
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. I find Ms. Good is entitled to reimbursement of \$175 for CRT fees. She did not claim dispute related expenses.

ORDER

34. Within 14 days of the date of this order, I order Mr. Glen to pay Ms. Good a total of \$3,447.91, broken down as follows:
 - a. \$3,200 in damages,
 - b. \$72.91 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.

35. Ms. Good is entitled to post-judgment interest, as applicable.
36. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
37. 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.

Rama Sood, Tribunal Member