



Civil Resolution Tribunal

Date Issued: December 23, 2020

File: SC-2020-005316

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pomeroy v. Blok*, 2020 BCCRT 1458

B E T W E E N :

DARREN POMEROY

APPLICANT

A N D :

VANDA BLOK also known as WANDA BLOK and HENDRIK BLOK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a contract dispute. The applicant, Darren Pomeroy, says that he made an agreement with the respondents, Vanda Blok also known as Wanda Blok and Hendrik Blok, to do some construction on their property. Mr. Pomeroy says that he performed the work required by the contract, as well as some additional clean-up work, but that

he has not been paid in full. Mr. Pomeroy claims \$4,620. The Bloks deny that they owe Mr. Pomeroy any more money.

2. Mr. Pomeroy is self-represented. Mr. Blok represents the respondents.

JURISDICTION AND PROCEDURE

3. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 in the interests of justice.
5. Section 42 of the CRTA says 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.
6. 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

7. The issue in this dispute is whether the respondents owe Mr. Pomeroy \$4,620 for work completed on their property.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. Mr. Pomeroy did not submit any evidence or provide any submissions despite receiving an extension to the due date along with reminders. Mr. Blok provided evidence and submissions on behalf of both respondents. While I have considered all of the information before me, I will refer to only what is necessary to provide context to my decision.
9. Mr. Blok, Ms. Blok, Mr. Pomeroy, and another individual (MN) signed a May 30, 2019 contract for the construction of stairs and a deck structure on the Blok property. The contract stated that Mr. Pomeroy and MN were “self-employed workers” but did not explain the nature of their relationship. The contract provided that the project’s total cost would be \$26,200, with a 25% deposit payable before the start date and a weekly “progress fee per full time worker”. The final payment would be made “upon satisfactory completion of the work”. The contract did not specifically mention clean-up or debris removal.
10. In his Dispute Notice, Mr. Pomeroy stated that the Bloks refused to pay the last draw owing under the contract until he and his spouse (who was not a party to the contract) cleaned up some debris. Mr. Pomeroy says that this clean-up work was not part of the agreement but, even after he completed it, he was not paid. Mr. Pomeroy asks for an order that the Bloks pay him \$4,620 for the contract’s remainder and the additional clean-up work.
11. The Bloks say that they made payments of \$26,208.10 and that that no money is owing on the contract. The Bloks admit that they told Mr. Pomeroy that they would not pay the final installment until the project was complete and construction debris

was removed from their property. They say that some clean-up was done, but debris from the project remains on the property. They also say that Mr. Pomeroy is not entitled to payment for the removal of debris.

12. The information provided by the Bloks shows that the \$5,000 payment for substantial completion was made on July 4, but the final payment of \$2,600 was not made until October 17. According to the Bloks, MN filed a builders' lien against their property and told them that he did so because Mr. Pomeroy had not paid him for his work. The Bloks say that they attempted to contact Mr. Pomeroy to discuss the matter, but he did not respond. The Bloks say they paid the final \$2,600 to MN in return for him removing the lien. Documents in evidence confirm that the lien was removed from the property on October 7, 2019 and that the Bloks transferred \$2,600 to MN on October 17, 2019.
13. Although the parties' agreement set out a schedule for the payments throughout the project, it did not specify to whom the payments were to be made. Bank records in evidence show that payments were made by cheque and electronic transfer to Mr. Pomeroy, MN, and Mr. Pomeroy's spouse. I find that, by transferring \$2,600 to MN, the Bloks made the final payment due under the parties' agreement and satisfied their contractual obligations. I find that Mr. Pomeroy is not entitled to the payment of the \$2,600 he claims under the contract.
14. Mr. Pomeroy claims an additional \$2,000 for clean-up work. The contract describes specific tasks to be performed but, as noted, does not mention clean-up or debris removal. I find that the scope of work in the parties' contract did not include clean-up or debris removal and that these tasks were not included in the contract's \$26,200 price.
15. While there is no indication that the Bloks agreed to pay an additional sum for clean-up work, they have had the benefit of that work. I find that this is an appropriate case to consider the use the principle of *quantum meruit* to determine an amount fairly owing to Mr. Pomeroy for the work that he did.

16. Although the Bloks confirm that Mr. Pomeroy and his spouse did attend their property one day to “clean debris”, there is no evidence about the nature or duration of the clean-up work. There is also no evidence about the type of debris that Mr. Pomeroy may have removed, but the Bloks say that construction debris including cement remains on their property. I find that there is insufficient evidence before me to establish the value of Mr. Pomeroy’s work.
17. I find that Mr. Pomeroy has not met his burden of proving that the Bloks owe him any additional funds under their agreement or for clean-up and debris removal. So, I dismiss his claim.
18. 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. As Mr. Pomeroy was not successful, I dismiss his claim for reimbursement of his CRT fees.

ORDER

19. I dismiss Mr. Pomeroy’s claims and this dispute.

Lynn Scrivener, Tribunal Member