



Civil Resolution Tribunal

Date Issued: March 5, 2021

File: SC-2020-008740

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boulton dba Student Works Painting v. Head*, 2021 BCCRT 254

BETWEEN:

MILES BOULTON (Doing Business As STUDENT WORKS PAINTING)

APPLICANT

AND:

WALTER HEAD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for fence painting.

2. The applicant, Miles Boulton (dba Student Works Painting), says he painted a fence for the respondent, Walter Head, which he has not been paid for. Mr. Boulton seeks \$2,400 for his labour and materials.
3. Mr. Head says Mr. Boulton overcharged for the work, and says he owes \$486 per the parties' agreement, nothing more.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that 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. 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.
7. Section 42 of the CRTA says that 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. 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, and
 - c. Order any other terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is to what extent, if any, Mr. Head owes Mr. Boulton \$2,400 for fence painting work.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Boulton bears the burden of proof on a balance of probabilities. 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.
11. It is undisputed that in the summer of 2020, Mr. Head hired Mr. Boulton to paint at least parts of his fence. Mr. Head said he only needed the top and bottom painted, but that Mr. Boulton painted the entire fence. I find nothing ultimately turns on this.
12. The parties largely disagree about their contract's terms. Mr. Boulton says he quoted Mr. Head a total of \$6,120 for the job, while Mr. Head says he was quoted \$673, with a 10% discount if he paid a 20% deposit right then (so, \$606 total). The parties agree Mr. Head paid a \$120 deposit. Neither of the parties provided any evidence or submissions about the fence's size or the extent of the paint job. However, I note the contract in evidence states it was for the "upper fence", "trim on fence", and "sanding". The contract further states the "lower part of fence" and "door gates" were specifically excluded from the contract.

13. After the work was completed, Mr. Boulton charged Mr. Head the allegedly remaining \$6,000, and Mr. Head gave Mr. Boulton a cheque for that amount. Mr. Head says he knew the amount was incorrect, and should have been \$486, but “felt embarrassed” that he let himself be scammed so easily so did not say anything at the time. Mr. Head says one of his sons then contacted Student Works Painting and shortly thereafter Mr. Boulton notified Mr. Head that he had been overcharged for the work, and told Mr. Head to put a stop payment on the cheque, which he did. Next, Mr. Boulton had his manager re-do the quote, which amounted to \$2,964. Mr. Head did not agree to pay this amount.
14. Subsequently, Mr. Boulton says that because Mr. Head’s neighbour received a quote from a different contractor to paint his fence for \$2,400, Mr. Boulton proposed Mr. Head pay that amount for the work done by Mr. Boulton. However, Mr. Head did not agree and said he would pay the amount the parties initially agreed upon, \$606 including the already-paid deposit.
15. Mr. Boulton says he should be entitled to the full \$2,400 claimed in this dispute because Mr. Head already agreed to pay the \$6,120 as reflected in the contract. Both parties submitted copies of the alleged contract in evidence. Although in Mr. Boulton’s copy the number “6120” appears circled in the margin of the document, the actual contract price is not written anywhere in the assigned spaces or within the contract’s text. The quote does indicate that there was a “10% discount if booked at estimate” and also that a “20% reservation / material deposit” was required. I am unable to find that the circled “6120” in the contract’s margin is conclusive evidence of the agreed price.
16. On balance, I find the contract’s terms are more consistent with Mr. Head’s version of events. I say this because first, on the evidence before me, the overall paint job does not appear to be very large, given the contract specifically notes it was only for the upper part and trim of the fence, which I find is more consistent with a \$673 price than a \$6,120 price. Second, I find the contract’s terms and the deposit made are also more consistent with Mr. Head’s version of events, because \$673 minus a 10%

immediate signing discount is \$606, and a 20% deposit of \$606 is approximately \$120. Mr. Boulton does not address why, if Mr. Head agreed to a contract price of \$6,120 with a required 20% deposit, Mr. Head was only charged a deposit of approximately 2%.

17. Further, although Mr. Boulton claims \$2,400, I find he has not proven his entitlement to this amount. There is no evidence Mr. Head ever agreed to this amount. Additionally, Mr. Boulton did not provide any evidence of the job's size, his hours worked, or the cost of materials. I find Mr. Boulton has not proven he is entitled to more than the \$486 which Mr. Head admits is outstanding for the work done.
18. Although there is some indication in Mr. Head's evidence and submissions that he was unhappy with the quality of work done by Mr. Boulton, I note he did not provide any details about any alleged deficiencies, like descriptions or photos of same.
19. Given my conclusions above, I find Mr. Head must pay Mr. Boulton \$486 as the balance for unpaid fence painting work.
20. The *Court Order Interest Act* applies to the CRT. Mr. Boulton is entitled to pre-judgment interest on the \$486, from October 1, 2020, the approximate date the parties' post-contract price negotiations fell apart. This amounts to \$0.93.
21. 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. However, the evidence shows that Mr. Head agreed to pay Mr. Boulton the \$486 he owed, but Mr. Boulton did not accept. As Mr. Boulton did not accept Mr. Head's offer to pay the remaining \$486 and that is all he is awarded in this decision, I find Mr. Boulton was substantially unsuccessful and is therefore not entitled to reimbursement of his tribunal fees. Mr. Head did not pay any tribunal fees nor claim any dispute-related expenses.

ORDERS

22. Within 30 days of the date of this decision, I order the respondent, Walter Head, to pay the applicant, Miles Boulton (dba Student Works Painting), a total of \$486.93, broken down as follows:
 - a. \$486 in debt for unpaid painting services, and
 - b. \$0.93 in pre-judgment interest under the *Court Order Interest Act*.
23. Mr. Boulton is also entitled to post-judgment interest, as applicable.
24. 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.

25. 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