



Civil Resolution Tribunal

Date Issued: May 12, 2021

File: SC-2020-006724

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Levy v. Wood*, 2021 BCCRT 506

BETWEEN:

STACEY LEVY and JAYSON SENYK

APPLICANTS

AND:

ANGELA WOOD, RYAN NALESNYK, and ERNESTINE WOOD

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about roof and gutter cleaning. The applicants, Stacey Levy and Jayson Senyk, say the respondents, Angela Wood, Ryan Nalesnyk, and Ernestine Wood, owe them for roof cleaning services they performed. The applicants seek an order for payment of their \$1,338.75 invoice.

2. The respondents say they do not owe the applicants anything because the applicants did not do the work they were asked to do, and the work the applicants did was deficient.
3. Ernestine Wood asked to be referred to as Mrs. Wood. I will refer to Angela Wood as Ms. Wood.
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 the dispute's parties that will likely continue after the CRT process has ended.
6. 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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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.
7. 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.

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.

ISSUES

9. The issues in this dispute are:
 - a. Did the parties have a contract?
 - b. If so, was the applicants' work deficient?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims 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. In the Dispute Notice, the applicants say that Ms. Wood called them about power washing her parents' roof. The applicants say they provided Ms. Wood with an estimate for brush cleaning the roof and cleaning the gutters, and it is undisputed that the applicants serviced Mrs. Wood's roof on July 29, 2020. Mrs. Wood wrote a July 29, 2020 cheque for the services, but later issued a stop payment on the cheque. The respondents say they issued the stop payment because they discovered the roof had not been power washed as requested and they say the completed services were poorly done.
12. It is undisputed that the respondents have not paid for the July 29, 2020 roof service.

Did the parties have a contract?

13. The only written evidence before me of the parties' contract is an estimate sent to Ms. Wood by email. It appears to be a computer-generated estimate setting out a

description of services and their associated costs. The client named on the estimate is Ms. Wood. However, the estimate does not identify the person or company that provided the estimate for roof services.

14. The email to Ms. Wood also appears to be computer-generated, and the screenshot of the email does not set out the sender's name or email address. The email provided a link for Ms. Wood to download the estimate, and it was titled: "Your Estimate With Quick Sidekick Home & Business Maintenance LTD" (reproduced as written).
15. The respondents each say that Ms. Woods called "Quick Sidekick" about servicing Mrs. Wood's roof. The applicants provided recordings of each of the respondents' calls about the roof services. For every call, including Ms. Wood's initial call to request the services, Mrs. Levy or her co-worker answered the phone: "Quick Sidekick". I also note that Mrs. Wood made out her July 29, 2020 cheque to "Quick Sidekick", though none of the parties provided a copy of the invoice in evidence.
16. The applicants do not explain their relationship with Quick Sidekick, but I infer that Mrs. Levy and Mr. Senyk are either employees or principals of Quick Sidekick Home & Business Maintenance Ltd. The evidence suggests that Mr. Senyk was one of the individuals that performed the service on Mrs. Wood's roof, and that Mrs. Levy answered some of Mr. Nalesnyk's calls complaining about the alleged poor service.
17. I find the weight of the evidence establishes that Ms. Wood contracted with Quick Sidekick to provide the roof services. Given that Quick Sidekick used the "LTD" designation when sending the estimate, I find that Quick Sidekick was an incorporated company with the capacity to enter into contracts. There is no evidence before me that either Mrs. Levy or Mr. Senyk contracted in their personal capacities to provide roof services to any of the respondents.
18. The common law concept of privity of contract says that as a general rule, a contract cannot give rights or impose obligations on a person who is not a party to the contract. Thus, only a party to a contract has standing (the ability to demonstrate a legal right

or interest) to enforce it. There are exceptions to this rule, but I have no evidence before me that any of the exceptions apply.

19. Based on privity of contract, I find that Quick Sidekick is the only party that can bring a claim against the respondents for payment. I note that CRT offered the applicants the opportunity to name the company as an applicant, but they chose not to do so. I find the applicants were not parties to the contract with the respondents, so they have no right to bring a claim for payment. I dismiss the applicants' claim.
20. The parties submitted evidence about alleged deficiencies with the roof services performed. Given that I find the applicants have not established entitlement to payment, it is not necessary to summarize that evidence.
21. Nothing in this decision prevents Quick Sidekick from filing a dispute against the respondents, subject to the applicable limitation period.
22. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. The respondents were successful but did not pay fees or claim expenses. I dismiss the applicants' claim for reimbursement of CRT fees.

ORDER

23. I dismiss the applicants' claims and this dispute.

Kristin Gardner, Tribunal Member