



Civil Resolution Tribunal

Date Issued: February 2, 2022

File: SC-2021-003294

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Guerrero v. Sunflower Daycare Centre Inc. dba Dharma Kids Centre, 2022 BCCRT 126*

B E T W E E N :

OMAR GUERRERO

APPLICANT

A N D :

SUNFLOWER DAYCARE CENTRE INC. DBA DHARMA KIDS
CENTRE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about payment for painting services.
2. The applicant, Omar Guerrero, performed interior and exterior painting services for the respondent, Sunflower Daycare Centre Inc. dba Dharma Kids Centre (Dharma),

in 2019. He says he completed 95% of the painting job and only some bricks and the front door were left to finish. He says Dharma did not want to pay for the work, insulted the work quality, and wanted to apply \$100 per day in “penalties for not showing up”. Mr. Guerrero seeks an order that Dharma pay him the \$3,000 allegedly owing for his exterior painting services.

3. Dharma says it “completely disagrees” with Mr. Guerrero’s allegations. It says Mr. Guerrero delayed the job by months, he rarely showed up, and the painting was not up to industry standards having peeled after 22 months. Dharma says it tried to “fire” Mr. Guerrero part way through the project but instead the parties renegotiated a new rate with delay “penalties”. Dharma says it paid Mr. Guerrero \$6,800 as agreed and it does not owe him anything more.
4. Mr. Guerrero is self-represented. Dharma is represented by an employee or director.
5. For the reasons that follow, I dismiss Mr. Guerrero’s claim.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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

10. The issue in this dispute is to what extent, if any, Dharma owes Mr. Guerrero \$3,000 as claimed for the exterior painting.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Guerrero must prove his claims on a balance of probabilities (which means “more likely than not”). I have read all the parties’ submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. The parties agree that Dharma hired Mr. Guerrero to paint the interior and exterior of its property under a verbal contract. There is very little evidence before me about the terms of the parties’ agreement. Mr. Guerrero started painting Dharma’s property sometime in July 2019 and finished 95% of the job by September 3, 2019. The parties then mutually ended the contract. These facts are not disputed.
13. Unless the parties agreed otherwise, the courts have said that a contractor is entitled to payment upon substantial completion of the work: see *Belfor (Canada) Inc. v. Drescher, 2021 BCSC 2403* at paragraph 16. I find Mr. Guerrero substantially completed the job and is entitled to be paid the agreed price, subject to any reduction for delay and deficiencies.

14. However, the evidence does not establish what the contract price was. The only written evidence about the price or rate is a June 21, 2019 text message from Mr. Guerrero to Dharma that states (reproduced as written):

Best I can do is small exterior 1500\$

Big exterior 5,200

For interior 2250\$

\$50 per door

\$1.20 per ft long trims.

15. Mr. Guerrero says this texted quote was the “basis” of their agreement and this is why Dharma texted back to proceed with the job. Dharma says it did not express an “unequivocal agreement” to the quoted price and there were changes made in the course of the job. Dharma does not say what it did agree to pay.
16. I find the text quote alone is not enough to establish what the parties agreed to in terms of the total job price. The parties later texts also suggest the job scope changed over time and there are no specifics about Dharma’s property or its dimensions in evidence. If the parties further settled on a price, that evidence is not before me. I come back to this issue below.
17. The e-transfer receipts show that Dharma paid Mr. Guerrero in regular installments from June 2019 to September and paid Mr. Guerrero a total of \$6,800. I note Dharma had asked Mr. Guerrero for invoices itemizing or explaining the charges, which Mr. Guerrero never provided. There is also no invoice in evidence here. Mr. Guerrero says in his reply argument that he never invoiced Dharma because an invoice is just a receipt due on full payment. However, an invoice is not a receipt. It is a bill that is normally given to a client explaining or itemizing what is owed. I find no reason Mr. Guerrero could not have invoiced Dharma.
18. In argument, Mr. Guerrero says Dharma owed him \$4,000 for the interior painting and \$5,800 for the exterior painting without specifying how he calculated these amounts. Again, Mr. Guerrero says \$3,000 is outstanding and Dharma says this is not so.

Dharma says \$6,800 was full payment “as per our agreement”. However, it also says it subtracted some amount for “liquidated damages for the project delays”. Though it does not specify, I find Dharma likely held back \$100 per day or \$600 as indicated by its September text messages. So, I find Dharma likely means that the parties agreed to \$7,400 for the job, less a \$600 set off or reduction for the delay.

19. Again, Mr. Guerrero has the burden to prove his claim on a balance of probabilities. Even if I accept Mr. Guerrero’s assertion that the price was based on the June 21, 2019 text, there is no evidence to allow me to determine whether the exterior size was “big” or “small” (or both if there were 2 exteriors), the number of painted doors, the length of painted trim, or any other specifics to determine the exact amount owing for this painting job. As a result, I find Mr. Guerrero has not established, with sufficient evidence, that he is owed more for the job than \$7,400 subject to a set off.
20. The parties agree the job was delayed. As mentioned, I find Dharma held back about \$600 for delay “penalties”. I note in the Dispute Notice, Mr. Guerrero described the delay penalty as “illegal” but he did not pursue this argument in submissions. In reply, Mr. Guerrero admits that he agreed to a penalty for each late day. However, he says Dharma should not have calculated the 2 days that he was waiting for Dharma to pick the door colour or Sunday, which was his day off.
21. Regardless of the exact length or reason for the interior delay, I find the parties’ text messages show that they agreed to a \$200 total reduction for the interior delay. As for the exterior, Mr. Guerrero says himself that it took him 11 or 12 days to finish the exterior work and the parties agreed to 7 days. I find Mr. Guerrero never painted the exterior door and so I find Dharma picking colours is not relevant. I find some of Mr. Guerrero’s delay was more likely than not because Mr. Guerrero did not always show up as scheduled as this is reasonably supported by Dharma’s employee’s witness statement. There is also no evidence from Mr. Guerrero to find otherwise, such as a contrary statement from Mr. Guerrero’s crew or some written documentation about the scheduling or historical weather reports. I find Mr. Guerrero delayed the exterior

painting without a valid reason by about 4 or 5 days. On a judgment basis, I find the \$400 reduction is appropriate for the exterior delay.

22. Without evidence in writing about the agreed price and without any invoices itemizing the work done, I find Mr. Guerrero has not established that Dharma owes him more than the \$6,800 it already paid. So, I dismiss Mr. Guerrero's \$3,000 claim. Considering my conclusion, I find no need to discuss the job quality.
23. 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. As Mr. Guerrero was unsuccessful, I find he is not entitled to any reimbursement. Dharma did not pay CRT fees nor claim any dispute-related expenses and so, I have awarded none.

ORDER

24. I dismiss Mr. Guerrero's claims and this dispute.

Trisha Apland, Tribunal Member