



Civil Resolution Tribunal

Date Issued: May 20, 2022

File: SC-2021-007904

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Orimaco v. Trustplus Management & Contracting Inc.*,
2022 BCCRT 601

BETWEEN:

RAY ORIMACO

APPLICANT

AND:

TRUSTPLUS MANAGEMENT & CONTRACTING INC. and SEVERINO
TAGUINOD

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This small claims dispute is about payment for a renovation contract.

2. The respondent, Trustplus Management & Contracting Inc. (TMC), performed renovation services for the applicant, Ray Orimaco. The other respondent, Severino Taguinod, is TMC's sole director and officer.
3. Mr. Orimaco says that the respondents refused to pay their own subcontractor, "OE", for the work OE performed at Mr. Orimaco's residence. Mr. Orimaco says he decided to pay OE for the work and seeks reimbursement of \$2,250 for drywall, finishing, priming, and siding and \$500 for 3 siding panels, 3 soffit holes, and 2 soffit recuts.
4. Next, Mr. Orimaco alleges the respondents refused to finish the project and he seeks a refund of \$2,250 that he paid TMC under the contract. Mr. Orimaco says he is limiting his total claim to the \$5,000 small claims monetary limit of the Civil Resolution Tribunal (CRT).
5. The respondents deny Mr. Orimaco's claims. They say TMC paid OE for the work he performed under the subcontract and TMC did not refuse to finish the project. The respondents allege that Mr. Orimaco owes TMC \$19,600 under the contract for its final invoice. I note TMC did not file a counterclaim for this alleged debt as it is more than the CRT's small claims limit.
6. Mr. Orimaco is self-represented and TMC is represented by Mr. Taguinod. OE is not a party to this dispute.
7. For the reasons that follow, I dismiss Mr. Orimaco's claims.

JURISDICTION AND PROCEDURE

8. These are the CRT's formal written reasons. 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.

9. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
10. 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.
11. 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.
12. CRTA section 11(1)(a)(i) says the CRT may refuse to resolve a claim or a dispute if it is more appropriate for another legally binding process. I note the respondents say that TMC intends to file a dispute in the BC Provincial Court (BCPC) against Mr. Orimaco for money allegedly owing to it. However, there is no evidence before me that TMC filed the BCPC action about the same contract and the parties have not requested that I refuse to resolve this dispute under CRTA section 11. I find no reason to refuse to resolve this dispute because of a potential BCPC claim.

ISSUES

13. The issues in this dispute are:
 - a. Is Mr. Orimaco entitled to reimbursement of money he paid to OE or to TMC?
If so, how much?

- b. To what extent, if any, is Mr. Taguinod personally liable to reimburse Mr. Orimaco?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicant Mr. Orimaco must prove his claims on a balance of probabilities, which means “more likely than not”. I have read all the parties’ evidence and argument but refer only to what I find relevant to provide context for my decision.
15. In August 2021, Mr. Orimaco hired TMC to enclose his deck and install wood soffits on his lower deck ceiling. The parties agreed by email that the total price for this project would be \$33,900. TMC’s subcontractor, OE, performed some or all of the work for this project. These facts are not disputed.
16. Mr. Orimaco says that several weeks into the project OE told him that Mr. Taguinod refused to pay OE for his work. Mr. Orimaco says he did not trust that Mr. Taguinod would pay OE and so he decided to pay OE directly as a “goodwill gesture”.
17. Mr. Orimaco submitted text messages of his conversations with Mr. Taguinod and OE and his cheque images confirming he paid OE a total of \$2,250 on October 12, 2021 and \$460 on October 13, 2021. In this dispute, Mr. Orimaco seeks reimbursement from the respondents for these 2 payments, plus \$40 he paid OE for gas.
18. I have reviewed the submitted texts. I find the texts do not establish that Mr. Taguinod refused to pay OE only that OE was concerned about not getting paid. Based on the submitted copies of the signed payment receipts, TMC’s “petty cash” receipts and TMC’s cheques issued in OE’s name, I find Mr. Taguinod or TMC paid OE before Mr. Orimaco paid them.
19. I note Mr. Orimaco suggests the respondents’ payment records are fake and asks the CRT to investigate the issue. I find it is not the CRT’s role to investigate a claim. Instead, it is up to Mr. Orimaco to prove his claim on the evidence. There is nothing

obvious about the records to indicate they are fake nor is there a statement from OE that the respondents never paid him. Without evidence to the contrary, I find the payment records are likely genuine.

20. In any event, I find that the parties did not come to any agreement that Mr. Orimaco would pay OE on the respondents' behalf. I find Mr. Orimaco simply decided to pay OE the \$2,750 based on his concern that OE would not be paid. I find Mr. Orimaco has not established any legal basis on which he is entitled to reimbursement from the respondents for his voluntary payments to OE. I dismiss Mr. Orimaco's claim against the respondents for the \$2,750 he paid OE in October 2021.
21. As mentioned, Mr. Orimaco also seeks a refund of \$2,250 that he paid TMC under the contract. Mr. Orimaco alleges that TMC refused to finish the project, he paid TMC a lot of money and he "has nothing to show for it".
22. The 1 photograph in evidence shows an enclosed deck with siding and an installed window. Since Mr. Orimaco now has an enclosed deck, I do not agree that Mr. Orimaco has nothing to show for his payments on this project.
23. The respondents admit to not finishing some painting but deny that they abandoned the project. They say the City shut down the job site for lack of a permit and Mr. Orimaco still owes TMC \$19,600 for its performed work.
24. Unless the parties agreed otherwise, the courts have said that a contractor is entitled to payment upon substantial completion of the work: *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403. Mr. Orimaco submitted no independent evidence, such as a witness statement, or photographs, about the alleged unfinished work. So, I find the only unfinished work was likely some painting as it is admitted. I find TMC likely substantially completed the deck project except the painting. There is no information about the extent of the unfinished painting or the cost to Mr. Orimaco, if anything, to finish it. There is also no dispute that Mr. Orimaco never paid TMC's last invoice and so I find Mr. Orimaco has not established any loss because of the unfinished painting.

25. Further, Mr. Orimaco does not directly address the respondents' allegation that the City shut down the job site before the project was finished. The respondents raised this issue several times in their submissions, and I find Mr. Orimaco had a reasonable opportunity to respond to it. Without evidence to the contrary, I accept the respondents' assertion that the city shut down the project and TMC did not simply quit or abandon the project. For these reasons, I find Mr. Orimaco has not proven that the respondents owe him any refund for unfinished work.
26. Next, Mr. Orimaco alleges Mr. Taguinod "falsely" promised that TMC would do the project at no profit or "at cost" and says Mr. Taguinod has not provided invoices or receipts to show that was the case. Mr. Orimaco cites the federal *Competition Act* and alleges Mr. Taguinod "has broken the law for false advertisement as he lured [Mr. Orimaco] into choosing" TMC over competitor companies and seeks a \$2,250 refund on that basis.
27. I find the legal basis for Mr. Orimaco's claim is not entirely clear. It seems he may be alleging bad faith negotiations, or misrepresentation, or some unspecified breach of the *Competition Act*. Mr. Orimaco also said nothing about "false advertisement" in the Dispute Notice and I find the respondents did not have a fair opportunity to respond to this allegation. However, as I discuss next, Mr. Orimaco has not proven his allegations. So, I find no prejudice to the respondents in deciding this aspect of Mr. Orimaco's claim.
28. The only independent evidence about the parties' pre-contract negotiations is an August 13, 2021 email Mr. Taguinod sent Mr. Orimaco. In that email, Mr. Taguinod quoted \$33,900 for the project's total cost. He stated that his price is a "friendly discount" giving him 10% less "profit" than the 15% profit contractors "normally" quote. I find Mr. Taguinod did not promise to do the job at cost but that his quote only allowed for a 5% profit margin. As for competitors, Mr. Orimaco provided no evidence that he obtained quotes from other companies or what competitors were charging for the same project. For these reasons, I find Mr. Orimaco has not established that Mr.

Taguinod lured him into this contract or made any false promises. I dismiss Mr. Orimaco's claim for a refund.

29. I acknowledge that the parties made submissions about whether a "Notice of Entry" document indemnified the respondents from all liability. Given Mr. Orimaco has not proven that the respondents are liable, I find nothing turns on this document and there is no need to decide the issue. Similarly, I find no need to decide whether Mr. Taguinod, as TMC's sole director would have been personally liable to Mr. Orimaco.
30. 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 the unsuccessful party, I find Mr. Orimaco is not entitled to any reimbursement. The respondents did not pay any CRT fees nor claim dispute-related expenses

ORDER

31. I dismiss Mr. Orimaco's claims and this dispute.

Trisha Apland, Tribunal Member