Date Issued: August 31, 2022

File: SC-2022-001349

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McMahon v. Riseley*, 2022 BCCRT 978

B E T W E E N :

KALE MCMAHON

APPLICANT

A N D :

MATTHEW RISELEY

RESPONDENT

A N D :

KALE MCMAHON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about a partially paid invoice for services in connection with preparing the construction of a garage. The applicant and respondent by counterclaim is Kale McMahon. The respondent and applicant by counterclaim is Matthew Riseley.

2. Mr. McMahon says Mr. Riseley hired him as a general contractor to build the garage. Mr. McMahon claims $3,338.58 as the balance owing under a March 1, 2022 invoice for preparation work and expenditures. Mr. Riseley disagrees. He says Mr. McMahon breached their agreement by designing a garage that cost well beyond their agreed-upon budget of $80,000 to construct.

3. Mr. Riseley counterclaims for a refund of $3,000 paid for the invoice. He says the work done has no value as the designed garage is too expensive. Mr. McMahon denies that Mr. Riseley is entitled to a refund. He says Mr. Riseley never provided a budget and instructed him to increase the size and scope of the garage during the design process.

4. The parties are self-represented.

5. For the reasons that follow, I find Mr. McMahon has largely proven his claim and dismiss Mr. Riseley's counterclaim.

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. Some of the evidence in this dispute amounts to a “he said, he said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

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.

ISSUES

10. The issues in this dispute are as follows:

    a. Did Mr. McMahon breach the parties’ contract?

    b. Are any of the requested remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. McMahon and Mr. Riseley must prove their respective claims and counterclaims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

12. I begin with the undisputed facts. Text messages show that in September 2021, Mr. Riseley texted Mr. McMahon to provide a quote for building a double garage that included an upper-level deck. The messages show that Mr. Riseley hired him in October 2021 to act as a general contractor to build the garage, and to start the process of drafting sketches and obtaining municipal building permits.

13. The parties proceeded informally without a written contract. Mr. McMahon emailed a sketch of the garage to Mr. Riseley on October 13, 2021. He said it would cost about $80,000 to $100,000. Mr. Riseley did not say the garage could not exceed this cost at the time.

14. Later, on the evening of October 14, 2021, Mr. Riseley emailed that he had suffered a financial setback of about $70,000. He said he still wanted to build the garage, but wished to build the garage in stages. He said the "initial budget" would be around $20,000 to $30,000. He suggested Mr. McMahon build a "shell" for a double garage. Mr. Riseley planned to add decking, drywall, and a finished exterior later. He advised he was also looking at extra financing options.

15. Mr. McMahon replied that $30,000 would only pay for the cost of demolishing the existing structure, excavating the area, and building the foundation and slabs. This did not include building the garage's shell. He suggested waiting until financing became available, before proceeding with obtaining surveys, drawings, engineering services, and permits. On October 17, 2021, Mr. Riseley replied, "I think we should go ahead and start as we will get the financing required to do further renovations and we need it no matter what."

16. Given this email, I find Mr. Riseley authorized Mr. McMahon to proceed with preliminary work, such as obtaining a building permit, without obtaining a firm budget first. Consistent with this, Mr. McMahon hired a land surveyor, as shown in the surveyor's November 10, 2021 invoice. There is no indication that Mr. McMahon agreed to work for free, so I find the parties agreed he would be paid a reasonable amount for the work done.

17. The parties' November 24, 2021 text messages show Mr. McMahon subsequently dropped off revised plans and a copy of an unsigned written contract at Mr. Riseley's residence. I find the written contract was not binding. This is because no party ever signed it. Further, it lacked basic information such as how much the garage would cost and who Mr. McMahon was contracting with.

18. Mr. Riseley texted that day that, apart from some windows facing the front street, "all is good". He asked if Mr. McMahon could realistically keep the cost below $70,000 if Mr. Riseley personally finished the exterior and interior, apart from the insulation and drywall. Mr. Riseley added, "That's our aim". Mr. McMahon replied to him the same day. He said that he would send updated drawings and start putting together a "more solid budget".

19. Mr. McMahon then submitted materials to the city for a building permit on December 9, 2021. Receipts show he paid the city the cost of doing so around this time.

20. From the above, I find the closest the parties came to a firm budget was the November 24, 2021 text messages about keeping the cost of the larger, but bare-bones garage below $70,000. I find a key point of disagreement is whether Mr. McMahon should have first completed the budget before applying for the building permit in December 2021. I discuss this below.

21. On December 20, 2021, Mr. McMahon advised he had obtained the building permit. He provide an estimate for the garage without any drywall installed. It totaled $163,854.63. Mr. McMahon wrote, "I know this is a lot more than you were hoping to spend".

22. Mr. McMahon invoiced Mr. Riseley on January 3, 2022 for $6,338.58. On February 1, 2022, Mr. Riseley's family member paid $3,000 of the amount owing. Mr. Riseley texted Mr. McMahon on February 3, 2022. He raised various complaints about the invoice. In particular, he said that Mr. McMahon should not have paid for the cost of obtaining the building permit before providing him the December 2021 estimate.

Did Mr. McMahon breach the parties' contract?

23. Mr. Riseley says that Mr. McMahon breached the parties' contract by designing a garage that exceeded a budget of $80,000. However, I find that the parties never agreed upon this figure. As noted above, Mr. McMahon quoted a figure of $80,000 to $100,000 in October 2021. I find this was for a single-car garage, as Mr. McMahon said so in an October 14, 2021 email to Mr. Riseley.

24. Mr. Riseley acknowledges that he ultimately approved plans on November 24, 2021, for a garage that was "triple the size" he originally asked for. So, I find this at least partially explains the increase in the estimate. I find it unproven that Mr. McMahon breached the contract by exceeding the October 2021 budget of $80,000 to $100,000.

25. I find the next key issue was whether Mr. McMahon should have first established a "more solid budget" before incurring the costs of a building permit in December 2021. In particular, Mr. Riseley says Mr. McMahon should have reasonably known in November 2021 that the cost of the bare-bones garage would exceed his budget of $70,000. He says that given this, Mr. McMahon should have at least warned him before paying for the cost of obtaining the building permit.

26. As noted above, I have found that Mr. Riseley authorized Mr. McMahon to obtain building permits in his October 17, 2021 email. I also find that the parties did not explicitly agree that Mr. McMahon should create a "more solid budget" before obtaining the permits. So, I find Mr. Riseley essentially alleges professional negligence. In claims of professional negligence, it is generally necessary for the applicant to prove a breach of the applicable standard of care with expert evidence.

See *Bergen v. Guliker*, 2015 BCCA 283. This is because the standards of a particular industry are often outside of an ordinary person's knowledge and experience.

27. Here, I find that expert evidence is necessary. This is because I find do not find it obvious whether a general contractor and builder such as Mr. McMahon should have known that the garage's cost would exceed $70,000, and warned Mr. Riseley before proceeding further. In particular, I have no evidence about the difficulty of estimating the cost of building a garage such as the one in this dispute. I note this was after the garage plans were changed to be larger in November 2021. Given this, I find it unproven that Mr. McMahon breached the standard of care. I find Mr. Riseley's counterclaims to be unproven and dismiss them.

28. This leaves determining the appropriate remedies. Mr. McMahon's invoice says he paid $1,548 to land surveyors and $1,413.74 to obtain the building permit. However, Mr. McMahon's receipts and invoices only show that he paid $1,354.50 and $1,134.74 for surveying and permit-related fees. I find he is only entitled to reimbursement of the lesser amounts supported by evidence.

29. Mr. McMahon also charged $3,075 before tax for his general contractor fees. The invoice indicates this was for 61.5 hours of work. This included preparing CAD drawings, ensuring building code compliance, and providing supporting documentation. I find it likely he worked the number of hours claimed as there is no evidence otherwise. Mr. McMahon charged $50 per hour, which matches the rate stated in the unsigned November 23, 2021 contract. While I have found this contract was not binding, I find it is the best evidence of a reasonable rate for Mr. McMahon's work.

30. Given the above, I find that Mr. McMahon was entitled to charge $2,489.24 in survey and permit expenses and $3,228.75 for his fee, inclusive of tax, less the payment of $3,000. I order Mr. Riseley to pay the balance of $2,717.99. Mr. McMahon explicitly waived any entitlement to prejudgment interest, so I award none.

31. For the same reasons stated above, I dismiss Mr. Riseley's counterclaims.

32. 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. I find Mr. McMahon is entitled to reimbursement of $175 in CRT fees as he was largely successful. I dismiss Mr. Riseley's claim for reimbursement of CRT fees. The parties did not claim reimbursement for any specific dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Mr. Riseley to pay Mr. McMahon a total of $2,892.99, broken down as follows:

    a. $2,717.99 in debt, and

    b. $175 in CRT fees.

34. Mr. McMahon is entitled to post-judgment interest, as applicable.

35. I dismiss Mr. Riseley's counterclaims.

36. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member