Civil Resolution Tribunal

Date Issued: October 7, 2022

File: SC-2022-001915

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Finlayson v. Hansen*, 2022 BCCRT 1104

B E T W E E N :

BRUCE ALEXANDER FINLAYSON

APPLICANT

A N D :

JOESPH HANSEN (also known as JOEY HANSEN)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Bruce Alexander Finlayson hired Joseph Hansen, who is also known as Joey Hansen, to design and prepare a fixed-price quote for a bathroom renovation. Mr. Finlayson paid Mr. Hansen $1,500 plus GST to prepare the quote. Mr. Finlayson says that Mr. Hansen breached the contract by providing a substantially over-budget quote, among other things. Mr. Finlayson claims a $1,575 refund.

2. Mr. Hansen says that Mr. Finlayson wanted a fixed-price quote, and not an estimate, which required considerable work to prepare. He says that he fulfilled the contract's terms by providing a quote. Mr. Hansen asks me to dismiss Mr. Finlayson's claims.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.

5. 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 sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.

6. 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:

    a. Did Mr. Hansen breach the parties' contract?

    b. If so, what are Mr. Finlayson's damages?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Finlayson as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

10. Before turning to the facts, I note that the contract documents in evidence do not mention Mr. Hansen personally. Instead, the contracts are between Mr. Finlayson and "Smith & Sons Nanaimo South". In his emails, Mr. Hansen refers to himself as a "franchise owner". There is no evidence that Smith & Sons Nanaimo South is an incorporated company. In the absence of any contradictory evidence, I find that Mr. Hansen operates Smith & Sons Nanaimo South as a sole proprietor. I therefore find that he is the proper respondent in this dispute. Mr. Hansen does not argue otherwise.

11. The parties signed a contract for design and planning services for an ensuite bathroom dated December 3, 2021. Mr. Hansen agreed to provide a "non-permit" set of floor plans and a "guaranteed fixed price quote" and schedule for the project. The "budget expectation" for the renovation was $12,000 to $18,000. The cost of the quote was $1,500 plus $75 GST. Mr. Finlayson signed the contract and paid the $1,575 on December 17, 2021.

12. Mr. Finlayson says that he knew the $12,000 to $18,000 budget range was unrealistic. He says that he knew the budget would be higher than that, likely in the $20,000 to $25,000 range, because he had chosen high-end fixtures.

13. Mr. Hansen gave Mr. Finlayson a February 18, 2022 quote for the renovation for $51,947.44. Mr. Finlayson emailed Mr. Hansen the same day asking for some changes to the quote. Mr. Hansen emailed a revised quote later that night for $50,955.44.

14. On February 19, 2022, Mr. Finlayson emailed Mr. Hansen questioning the quote's apparently high labour cost, noting that from what he could tell the materials should only cost $25,000. Mr. Hansen responded on February 22, 2022, that his initial estimate range was based on "the market from 3 years ago", which he said explained the increase. He said that Mr. Hansen was right about the materials cost. He said that the plumber quoted $8,000 and the electrician $4,000, and the remaining cost was for Mr. Hansen and his employees. Mr. Finlayson asked for advice about how to reduce the cost. There is no evidence Mr. Hansen responded. Mr. Finlayson eventually hired a different contractor to do the renovation.

15. Mr. Finlayson alleges 4 separate breaches of the contract. I will address them in turn.

Failure to Inform of Price Changes in Writing

16. The contract included a term that Mr. Hansen would inform Mr. Finlayson in writing of any price changes affecting the "estimate". I find that this is likely a standard term in all Mr. Hansen's renovation contracts. I say this because it refers to materials, labour and shipping, even though the preparation of a quote does not require any materials or shipping. Also, the parties' contract was for a fixed-price quote, not an estimate. It is therefore unclear what this term means.

17. Mr. Finlayson essentially says that the contract required Mr. Hansen to tell Mr. Finlayson in writing that the renovation costs would be higher than initially anticipated, presumably before delivering the quote itself. I find that the more reasonable interpretation is that Mr. Hansen would have had to inform Mr. Finlayson if the cost of preparing the quote would be higher than the agreed $1,500, which it undisputedly was not. I find that Mr. Hansen did not breach this contractual term.

Failure to Provide an "On-Budget" Quote

18. Mr. Finlayson's primary argument is that Mr. Hansen breached the contract by providing a quote so much higher than the initial budget expectation. First, I find that the contract does not include an explicit requirement that the project's budget be between $12,000 and $18,000. In other words, while the contract mentions the budget expectation, it did not require Mr. Hansen to prepare a quote within that range. Mr. Finlayson does not argue otherwise, since he admittedly knew all along that the renovation cost would be at least $20,000.

19. Given that there was no explicit requirement that the budget be within a certain range, Mr. Finlayson essentially argues that there was an implied term that the quoted amount would be reasonably close to the stated budget expectation.

20. Implied terms are contractual terms that the parties did not expressly consider, discuss, or write down. The court (and the CRT) will only imply a term if it is necessary to give business efficacy to the contract. Put another way, the term must be something that both parties would have considered obvious if they had been asked about it when they signed the contract. See *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216, at paragraphs 25 to 32.

21. Applying that legal test, I find that there was not an implied term that Mr. Hansen would prepare a quote with renovation costs within a certain range. It is possible that Mr. Finlayson would have considered it obvious that there would be a hard limit on the quote's renovation costs, but I find that Mr. Hansen likely would not have agreed given the uncertainty around the cost of materials and subcontractors.

22. Since there was no contractual term limiting the quote's ultimate cost, I find that Mr. Hansen did not breach the contract by providing a quote well over the expected budget.

Failure to Provide Drawings

23. As mentioned above, the contract required Mr. Hansen to provide a "non-permit set of floor plans for renovation". Mr. Hansen undisputedly did not provide any drawings. He says that there was no point providing drawings because Mr. Finlayson had prepared his own. I do not accept this argument. The contract price included drawings and Mr. Hansen did not produce them. I find that Mr. Hansen breached the contract by failing to provide the required drawings.

24. There is no evidence of the drawings' monetary value. It is undisputed that Mr. Hansen did a site visit to prepare the quote. It is also undisputed that he had to determine the exact cost of materials and labour (both his own and the subcontractors). Mr. Finlayson's drawings were relatively straightforward. I find that the drawings were a relatively small component of Mr. Hansen's overall work for the quote. On a judgment basis, I find that $250 will adequately compensate Mr. Finlayson for this breach of contract. I award Mr. Finlayson $250 in damages.

Failure to Provide Reasonably Competent Services

25. Mr. Finlayson also argues that Mr. Hansen's overall process was not worth $1,500. He says that Mr. Hansen failed to work with Mr. Finlayson work to reduce costs. He also says that he provided Mr. Hansen with a floorplan and fixture wish list, so Mr. Hansen did not have to do any design work.

26. There is an implied term in contracts for professional services that the service will be done to a reasonably competent standard. In general, expert evidence is required to prove whether a professional's conduct fell below a reasonably competent standard. This is because the ordinary person does not know the standards of a particular profession or industry. The exceptions to this general rule are when conduct is obviously substandard or about something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112. There is no expert evidence about Mr. Hansen's work, such as from the contractor Mr. Finlayson ended up hiring.

27. Here, I find that there is nothing obviously substandard about Mr. Hansen's work in preparing the quote. I note that the contract did not explicitly contemplate multiple revisions to the quote based on Mr. Finlayson's feedback. I find that the question of whether the quote itself was inflated or poorly done is something that would require expert evidence to prove. I find that Mr. Finlayson has not proven that Mr. Hansen's work was below a reasonably competent standard.

28. The *Court Order Interest Act* (COIA) applies to the CRT. However, Mr. Finlayson expressly waived his interest claim, so I award no prejudgment interest.

29. 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. Mr. Finlayson was partially successful, so I find he is entitled to reimbursement of half of his $125 in CRT fees, which is $67.50. He did not claim any dispute-related expenses. Mr. Hansen did not claim any dispute-related expenses or pay any CRT fees.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Hansen to pay Mr. Finlayson a total of $317.50, broken down as follows:

    a. $250 in damages, and

    b. $67.50 in CRT fees.

31. Mr. Finlayson is entitled to post-judgment interest, as applicable.

32. 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.

Eric Regehr, Tribunal Member