Civil Resolution Tribunal

Date Issued: October 17, 2022

File: SC-2022-000737

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Henwood v. Boydell (dba A Cut Above Manufacturing)*, 2022 BCCRT 1130

B E T W E E N :

CASSIDY HENWOOD and MEAGHAN ANDERSEN

APPLICANTS

A N D :

JUSTIN BOYDELL (Doing Business As A CUT ABOVE MANUFACTURING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. The applicants, Cassidy Henwood and Meaghan Andersen, say they paid the respondent, Justin Boydell (dba A Cut Above Manufacturing), a $1,500 “down payment” for work the respondent agreed to do on the applicants’ truck. The

applicants say the respondent never did the work and refused to return the $1,500. The applicants claim the $1,500.

2. In the Dispute Response filed at the outset of this proceeding, the respondent did not deny that the applicants paid him $1,500, but said they owed a further $500 deposit before he was obligated to do any substantive work on the truck. In any event, he said he spent more than 7 hours on the applicants' job. The respondent later chose not to submit any evidence or further written arguments, despite having the opportunity to do so. I infer it is the respondent's position that the $1,500 payment is not refundable.

3. Ms. Andersen represents the applicants. The respondent is 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 parties to this dispute call into question the credibility, or truthfulness, of the other. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, the court recognized that oral hearings are not necessarily required where credibility is in issue. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue is whether the respondent owes the applicants the claimed $1,500 they paid for work they say the respondent did not complete.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the submitted evidence and the applicants' submissions, but I refer only to what I find is necessary to explain my decision. As noted, after filing the Dispute Response, the respondent chose not to provide any documentary evidence or written argument.

10. It is undisputed that the respondent is an industrial welder and metal fabricator with previous automotive experience, and that he agreed to do some work on the applicants' truck. While the agreed scope of work is somewhat unclear, it appears to have involved fabricating and installing new frame ends where the radiator attaches and a new front bumper, as well as replacing various other parts, some of which the applicants agreed to provide.

11. The applicants submitted a series of text messages they exchanged with the respondent. The text messages show the respondent told Mr. Henwood at the outset that he required cash payment for the job, which would be "around $3,500 labor" and that he would source another truck for parts. The respondent also stated he generally

requires “50% down on labour” to keep the bills paid on such large jobs. When Mr. Henwood expressed some concern about paying so much before any work started, the respondent told Mr. Henwood he needed “as close to $2,000 as possible”.

12. I find the evidence shows the parties further discussed the job over the phone on December 30, 2021. The applicants say the respondent increased his estimate to $4,000 for labour, which I find is supported by the evidence. In Mr. Henwood’s December 30 text message to the respondent after their conversation, Mr. Henwood stated: “That’s 1500 down and 2500 owed”. The respondent replied: “You bet!”. I find there is insufficient evidence that the parties expressly agreed any additional down payment was required, as the respondent alleged in his Dispute Response.

13. The evidence shows the applicants had previously paid the respondent $500 on December 18, 2021, and they paid an additional $1,000 on December 30, 2021, totalling the claimed $1,500.

14. It is undisputed that the weather contributed to some delays in the respondent starting work on the applicants’ truck. In a January 5, 2022 text, Mr. Henwood asked if the truck might be ready by mid-February for a planned trip. The respondent replied that he could not give an accurate time estimate before pulling the truck apart first. The respondent said he had moved the truck from where the tow truck had left it, but he still needed it turned around to start work.

15. On January 13, 2022, Mr. Henwood requested an update, and the respondent advised he had looked at “a bunch of donors”, got steel for making the end of the frame, got a “divorced trans cooler” and transmission lines to run a loop so he could turn the truck around. The respondent stated he would not be pulling the body apart until the truck was turned around and he had obtained all the replacement parts. The respondent also advised that he would need to pay a couple of guys in cash to help him with the job, so he asked when the applicants could get him the “next payment”.

16. In response, Mr. Henwood questioned why he should pay more when the work had not already started. The respondent replied that he had made an exception for the

applicants to do a job he would not typically take on and did not have time for. The respondent also reminded Mr. Henwood that he had previously told him he had given only an estimate for labour, not a firm quote, which Mr. Henwood disputed.

17. At this point, the parties' relationship deteriorated. The respondent told Mr. Henwood the keys would be in the truck so he could retrieve it the next day. Mr. Henwood requested his deposit returned before the respondent had "a problem", which the respondent interpreted as a threat. Mr. Henwood denied threatening the respondent but accused him of stealing his deposit. While Mr. Henwood then attempted to apologize and offered to send $500 the next day, the respondent did not reply.

18. Ms. Andersen took over communications with the respondent the following week. She confirmed on January 19 that the applicants had retrieved their truck and requested the $1,500 down payment back as there were "no services completed". The respondent replied that he had "crawled around" under the truck in the snow to take measurements and planned how to pull it apart, looked at 6 potential donor trucks, and put off other jobs to prioritize their truck. Ms. Andersen requested that the respondent provide her with the hours he put in so they could "work something out". While the text message screenshots in evidence appear to indicate the respondent replied to Ms. Andersen, there are no further texts messages before me.

19. The applicants say they never agreed the $1,500 down payment was non-refundable, so the respondent should have to return it given he did not start work on the truck.

20. In law, there is a distinction between a true deposit and a partial payment. A true deposit is designed to motivate contracting parties to carry out their bargains. When a buyer refuses to pay for what they had previously agreed to purchase (which is called repudiating the contract), generally the buyer forfeits the deposit. In contrast, a partial payment is made with the intention of completing the transaction, such as with a down payment to cover work to be performed or materials to be purchased under the contract. For a contractor to keep a partial payment, they must prove their losses to justify keeping the money received: see *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30 and *Drozd v. Evans et al*, 2006 BCSC 1650 at paragraph 34.

21. Here, I find the applicants' $1,500 down payment was a "partial payment". I find this is consistent with the respondent's initial texts that he required advance payments to cover expenses on bigger jobs, and his later request for a further payment so he could pay others to assist him with the job. I am satisfied that the parties did not intend the applicants' money would be forfeited to the respondent if either party terminated the contract early. So, I find it is unnecessary to determine which party terminated the contract because either way I find the respondent was entitled to be paid for the work he had performed up until the parties' contract came to an end.

22. Therefore, I find the respondent must prove he incurred expenses sufficient to justify keeping the applicants' $1,500 down payment. I find such expenses include the respondent's time for work performed. As noted, the respondent did not submit any evidence or written arguments in this dispute. However, the respondent provided some detail in his Dispute Response about the time he says he spent on the applicants' job. Specifically, the respondent stated he spent 2 hours moving the truck towards the bay area with a floor jack, over 2 hours taking measurements and templates to recreate the bent frame ends and assess the necessary repairs and parts replacement, and 3 hours to view trucks that could be potential "parts donors", 2 of which he stated were out of town. The respondent also said he incurred fuel costs for this travel, though he provided no supporting evidence of his fuel expenses.

23. The applicants do not specifically dispute that the respondent did the above-stated work. I also find it is generally consistent with the respondent's text message updates about the work he had done, sent before the parties' relationship broke down. On balance, I find the respondent likely spent about 7 hours of time on the applicants' job, and so he is entitled to some of the down payment for the work he performed.

24. However, the respondent did not provide any evidence about the value of his time or his expenses, or the proportion of the job completed in relation to his estimated $4,000 in labour. It is unclear on the evidence that the work the respondent completed, required any level of professional expertise. On a judgment basis, I find $30 per hour is a reasonable rate for the respondent's time on the tasks he completed.

Accounting for fuel and other limited expenses he likely incurred, I find the respondent was entitled to keep $250 of the applicants' down payment for the work he completed. So, I order the respondent to return the $1,250 balance to the applicants.

25. The *Court Order Interest Act* applies to the CRT. I find the applicants are entitled to pre-judgment interest on the $1,250 from January 19, 2022, the date they requested a refund after retrieving their truck, to the date of this decision. This equals $8.86.

26. 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. The applicants were largely successful, and so they are entitled to reimbursement of $125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

27. Within 21 days of the date of this decision, I order the respondent, Justin Boydell (Doing Business As A Cut Above Manufacturing), to pay the applicants, Cassidy Henwood and Meaghan Andersen, a total of $1,383.86, broken down as follows:

    a. $1,250 as reimbursement of their down payment,

    b. $8.86 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

28. The applicants are entitled to post-judgment interest, as applicable.

29. 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.

Kristin Gardner, Tribunal Member