



Civil Resolution Tribunal

Date Issued: November 1, 2022

File: SC-2022-003633

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lindstrom v. Seib*, 2022 BCCRT 1194

BETWEEN:

JANET LINDSTROM

APPLICANT

AND:

GARY SEIB

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about custom stained glass work.
2. The applicant, Janet Lindstrom, says the respondent, Gary Seib, hired her to resize his existing stained glass window. It is undisputed that she completed the work. She says Mr. Seib disagreed with the amount she charged, and has refused to pay her

invoice or pick up the re-sized stained glass window. Mrs. Lindstrom claims \$3,674.72 for her unpaid invoice.

3. Mr. Seib does not dispute that Mrs. Lindstrom re-sized the window, but says Mrs. Lindstrom vastly exceeded the work he asked her to do. He says Mrs. Lindstrom provided an estimate of approximately \$1,000 for the work, but then went significantly over the estimated amount without his authorization. Mr. Seib says the amount claimed is triple what it should be based on the estimate. It is undisputed Mr. Seib has paid nothing to Mrs. Lindstrom for her work.
4. Mrs. Lindstrom is self-represented. Mr. Seib is represented by his son, who is not a lawyer.

JURISDICTION AND PROCEDURE

5. 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.
6. 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 in this dispute call into question the credibility, or truthfulness, of the other. 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.

7. 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.
8. 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

9. The issue in this dispute is to what extent, if any, Mr. Seib is responsible to pay Mrs. Lindstrom the claimed \$3,674.72 for her unpaid invoice.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mrs. Lindstrom must prove her claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
11. The following is undisputed:
 - a. In January 2022, Mr. Seib asked Mrs. Lindstrom to resize his stained glass window in January 2022.
 - b. On May 22, 2022, Mrs. Lindstrom contacted Mr. Seib to say the window was ready, and told him her invoice was for \$3,674.72.

- c. Mr. Seib has not paid Mrs. Lindstrom, and Mrs. Lindstrom still has the window in her possession.
12. Although the window is still in Mrs. Lindstrom's possession, I find Mr. Seib does seek to cancel the parties' contract. Rather, as noted, Mr. Seib disputes Mrs. Lindstrom's invoice and says it is triple what it should be. Mr. Seib says Mrs. Lindstrom quoted \$1,000 to re-size his stained glass window so that it would fit an existing window opening in his home. Mrs. Lindstrom says she never provided an estimate for the work. Mrs. Lindstrom says she told Mr. Seib that she could not give an estimate without examining the window first. Mrs. Lindstrom also says Mr. Seib advised that cost was not an issue because the window was of great sentimental value to Mr. Seib's wife. Mr. Seib disputes this.
13. Mrs. Lindstrom submitted photographs of what she says are signs on the counter and wall of her studio with her posted rates. One sign said estimates were given, but there might be some surprises once the work started. Another sign said estimates were not always given, depending on the scope of work. The sign also said there might be some surprises. Both signs also indicated that Mrs. Lindstrom's hourly rate for repairs and restorations was \$90 per hour. Both posted signs support a finding that any estimate given was subject to change. Together, the information on the signs supports a finding that even if Mrs. Lindstrom did provide an estimate it did not amount to a fixed price contract.
14. Mr. Seib does not dispute that he hired Mrs. Lindstrom to re-size the window, and does not dispute that her hourly rate was \$90. Mr. Seib also did not specifically deny seeing the signs Mrs. Lindstrom says were in her studio. Rather, Mr. Seib says there is no evidence to prove that the signs shown in the photographs were in Mrs. Lindstrom's studio when he dropped off the window. If Mr. Seib did not see the signs, I would have expected him to specifically say so. He did not. Given the above, I find Mr. Seib likely did see the signs when he attended Mrs. Lindstrom's studio to have his window re-sized.

15. Mrs. Lindstrom also says when she went to remove the stained glass from the wood frame, she observed that silicone had been used. She says she called Mr. Seib to confirm the installation method and warned that the presence of silicone would create extra work. Mrs. Lindstrom says Mr. Seib did not ask about an estimate or the cost, and she did not provide any. Mr. Seib does not dispute that Mrs. Lindstrom called to advise him that the silicone would create extra work. Mr. Seib says he did not think to ask about the increased cost. He says he would have expected Mrs. Lindstrom to inform him of a substantial change in the estimated cost. First, I find this undisputed phone call confirms that there was no fixed price quote for the work. I say this because if there was a fixed price quote, Mrs. Lindstrom would have no reason to call Mr. Seib and warn him about extra work. Second, I find that Mrs. Lindstrom's call did advise Mr. Seib of a change in cost. That is, Mrs. Lindstrom warned Mr. Seib that the silicone would create extra work. Given that the parties did not agree to a fixed price to re-size the window, this extra work necessarily meant the cost to re-size the window would increase.
16. While the parties may have discussed how long re-sizing the window might take, and the associated cost, the evidence as a whole does not support a finding that Mrs. Lindstrom provided either a fixed price quote or an estimate to re-size the window. In emails between the parties on May 20, 2022, Mr. Seib said he was a little shocked to hear the final price because he only wanted the window "cut down to size". Notably, he did not refer to any \$1,000 estimate in the emails. Given all the above, on balance, I find it more likely than not that the parties agreed that Mrs. Lindstrom would resize Mr. Seib's stained glass window on a time plus materials basis.
17. Mrs. Lindstrom submitted a May 19, 2022 invoice that charged \$3,281.00 to reduce, redesign, re-lead and cement the stained glass window, including supplies. The invoice totaled \$3,674.72 with GST and PST.
18. Mrs. Lindstrom says she reduced her hourly rate from \$90 to \$75 because the cost seemed high. She also says she did not charge for the 6 hours it took for her to re-use 2 pieces of the original antique glass and add 2 pieces.

19. Mrs. Lindstrom submitted a handwritten document that she says is her timesheet. I find it shows time entries on 8 days, totaling 48 hours. 6 hours was subtracted from this, for a revised total of 42 hours. The timesheet also notes “3150 +131 sup”. I find this means the total charge was \$3,150 plus \$131 in supplies. 42 hours at \$75 per hour totals \$3,150. I find the hours and materials charge listed on the timesheet is consistent with Mrs. Lindstrom’s submissions and the \$3,281 charged in the invoice.
20. Mrs. Lindstrom says the window had to be taken apart around the chosen area, glass removed, recut, silicone cleaned off, and some pieces re-leaded. She says the existing lead that was usable had to be cut to allow for added lead and the border, which involved removing additional pieces. She says the previous work was not done properly and says extra soldering was required on some joints that were missing, and an exterior zinc border was added for strength. She says she then cleaned, waxed and then polished the window.
21. I find Mrs. Lindstrom has reasonably explained the stained glass window work she claims for. Although Mr. Seib disputes the amount charged based on his assertion that Mrs. Lindstrom provided a \$1,000 estimate, which I have found unproven, he does not dispute the quality of Mrs. Lindstrom’s work. He also did not specifically dispute the hours Mrs. Lindstrom says she spent re-sizing the window, or suggest that those hours were inflated. He did not dispute the \$131 materials charge, which I find is not obviously unreasonable.
22. Mrs. Lindstrom’s invoiced amount is also supported by a June 19, 2022 statement from Christopher Smith. Christopher Smith is a glass artist who has been working in stained glass since 1975, and has completed a number of stained glass restoration projects. I find Christopher Smith is qualified to give an opinion about stained glass restoration and I accept their opinion as expert evidence. Christopher Smith said Mrs. Lindstrom described the work in question and Christopher Smith saw the final product. Christopher Smith said based on their personal experience, they had a good idea of the work involved. Christopher Smith said in their opinion, Mrs. Lindstrom was due the money owed. Although not specifically stated, I infer that Christopher Smith’s

opinion is that the time spent by Mrs. Lindstrom to resize the stained glass window was reasonable.

23. Mr. Seib alleges that Christopher Smith's evidence should not be considered. Mr. Seib says Christopher Smith is one of Mrs. Lindstrom's colleagues and Mrs. Lindstrom clearly told Christopher Smith about the dispute, which "tainted" Christopher Smith's evidence. I place little weight on this submission because I find Christopher Smith having knowledge of the dispute does not show that Christopher Smith is not neutral. Mr. Seib also did not provide a contrary statement from any similarly qualified individual. In the circumstances, I accept Christopher Smith's evidence about the reasonableness of Mrs. Lindstrom's time spent resizing the window based on Christopher Smith's experience and I place significant weight on it.
24. Mr. Seib says he only asked Mrs. Lindstrom to cut the window down, and alleges that Mrs. Lindstrom did additional work that was not required. However, he did not provide any particulars of what this extra work allegedly consisted of. He also did not provide evidence to show that Mrs. Lindstrom did more work than necessary in order re-size the window as Mr. Seib requested. Therefore, I place no weight on this unsupported allegation.
25. Given all the above, I find Mrs. Lindstrom has proved that she is entitled to payment of \$3,674.72 for her unpaid invoice.
26. As noted, it is undisputed that Mrs. Lindstrom still has the window in her possession. However, Mr. Seib did not file a counterclaim or request the window be made available for pick up, so I make no orders about the window. Nothing in this decision prevents the parties from arranging to make the window available for Mr. Seib.

Interest, CRT fees, and dispute-related expenses

27. The *Court Order Interest Act* applies to the CRT. However, Mrs. Lindstrom expressly waived any claim for pre-judgment interest, so I make no order for interest.

28. 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 Mrs. Lindstrom was successful, I find she is entitled to reimbursement of \$175 in paid CRT fees. She did not claim dispute-related expenses.
29. Mr. Seib claimed \$750.00 for 15 hours of time spent responding to the dispute at \$50 an hour. However, as Mr. Seib is the unsuccessful party in this dispute, I find he is not entitled to reimbursement of any dispute-related expenses. Further, CRT rule 9.5(5) says the CRT will not award reimbursement of time except in extraordinary circumstances. So, I would not have ordered reimbursement of this claimed dispute-related expense in any event.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Seib to pay Mrs. Lindstrom a total of \$3,849.72, broken down as follows:
- a. \$3,674.72 in debt, and
 - b. \$175 in CRT fees.
31. Mrs. Lindstrom 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.

Leah Volkers, Tribunal Member