Civil Resolution Tribunal

Original Date Issued: December 14, 2022

Amended Date Issued: January 10, 2023

File: SC-2022-002266

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aksoylu v. Roberts*, 2022 BCCRT 1340

B E T W E E N :

KAMIL AKSOYLU

APPLICANT

A N D :

CAMILLE ROBERTS

RESPONDENT

AMENDED [i] REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about solar electricity installation services.

2. The respondent, Camille Roberts, hired the applicant, Kamil Aksoylu[ii], to assist her with setting up a solar electricity system at her home. The applicant says they spent

many hours on the project, building the solar panel structure, obtaining a permit, and following up on missing parts, but the respondent refused to pay their invoice. The applicant claims $3,774.91.

3. The respondent says the applicant overbilled her and their work building the structure was of no value, as it had to be re-built. The respondent says she is willing to pay the respondent for cutting a hole in the wall for the solar system's electrical panel, but says their other charges are "unsubstantiated".

4. The parties are each self-represented.

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 to 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 in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, 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.

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.

9. The applicant submitted several items of late evidence after the CRT's deadline. The respondent was provided with an opportunity to comment on the applicant's late evidence, and so I find she would not be prejudiced if it was admitted. I find the late evidence is relevant to the issues in this dispute. Noting the CRT's flexible mandate, I admit the applicant's late evidence and have considered it where relevant below.

ISSUE

10. The issue in this dispute is to what extent, if any, the respondent owes the applicant the claimed $3,774.91.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities (meaning "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. In 2020, the respondent ordered a solar system package from a supplier, WS. She planned to install the system on her property in the spring of 2021. The respondent says she met the applicant on April 3, 2021 at her home, and the applicant undisputedly told her they were an electrical engineer familiar with solar projects.

13. In an April 7, 2021 email, the respondent advised the applicant that her neighbour had offered to install cement blocks for the scaffolding that the solar panels sit on, and she asked the applicant if they knew anything about that part of setting up a solar

project. The applicant's reply, if any, is not before me, though it is undisputed that at some point the respondent hired the applicant to install her solar system.

14. The parties provided limited evidence about the scope and terms of their agreement. The applicant says the respondent agreed to pay them $90 per hour, which I accept as the respondent does not dispute it. However, there is no evidence that the applicant provided any estimate of the number of hours the project would take, its overall cost, or what work they would be doing.

15. There is generally an implied term in contracts for professional services that the work will be done to a reasonably competent standard. In open-ended hourly contracts, another commonly implied term is that the hours spent are reasonably required and put to some useful purpose. See the non-binding but persuasive decision *Simple Moves North Shore Movers Inc. v. Kenney*, 2022 BCCRT 452, referring to *Herbert v. Smith*, 2010 NSSM 44 at paragraph 26. I find it is appropriate to imply both terms here.

16. It appears that the project did not go smoothly, as the start date was delayed, and once started the applicant says they discovered the solar system package was missing several parts resulting in additional delay. The parties disagree about who was responsible for the initial delay, but I find nothing turns on this because the issue is whether the applicant overcharged for their time spent, as discussed below.

17. The applicant says they started building the solar panel structure on June 23, 2021 and used all available materials in the package before they had to stop due to missing parts. The evidence shows the applicant prepared a "missing materials list" and emailed it to the respondent on June 24. It is undisputed that the applicant worked on the structure's mounts on June 28 and started the electrical panel installation. The parties' emails show the applicant also sent the respondent several lists of additional parts to purchase.

18. In a July 3 email, the respondent advised the applicant that she could not afford to pay them to follow up on parts, and she would do that work herself. The respondent

says she also had concerns about the applicant's work, as the structure mounts did not appear set at the correct angle and FortisBC had questions about the applicant's permit application. More on this below.

19. It appears that WS provided most of the missing parts by about August 2021, though the applicant was out of town for an extended period. The respondent emailed the applicant on September 22, 2021 that she had hired her neighbour, SB, to complete the scaffolding structure and dig the required trench while the applicant was away. In their response, the applicant asked if the respondent had obtained all the materials from their list and advised they would contact the applicant later, as they were boarding a ferry. The respondent says she did not hear from the applicant again until October. In the meantime, she hired another contractor, PE, to complete the solar system installation.

20. The evidence shows the applicant emailed the respondent their October 25, 2021 invoice for "design, engineering, permit work, missing parts and project management" services, totalling the claimed $3,774.91. The invoice included $1,980 for work performed on-site (22 hours at $90 per hour), $1,215 for "management" in the office (25 hours at $45 per hour), and $579 for materials. The applicant says they discounted their hourly rate by half for the office work, as a courtesy.

21. I find the applicant bears the initial burden to prove they worked the number of hours and supplied the materials they billed the respondent for. I find the respondent then bears the burden to show the applicant's time was not reasonably spent or to a reasonably competent standard. I address each item on the applicant's invoice below.

On-site work

22. The applicant provided a breakdown of the 22 on-site hours they charged for: 8 hours on June 23, 9 hours on June 28, and 5 hours on July 1. I find the June 23 and 28 on-site hours related primarily to building the solar panel scaffolding structure and mounting it, and the July 1 hours related primarily to starting the electrical panel installation.

23. The respondent's complaint about the scaffolding structure is that the work was allegedly substandard and of little or no value to her because it had to be re-done.

24. In general, expert evidence is required to prove whether a professional's work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry. The 2 exceptions to this general rule are when the work is obviously substandard, or the work relates to something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.

25. The respondent provided photos of the scaffolding structure the applicant built and mounted against a hill in the respondent's yard. The respondent also provided a statement from SB, who stated he had to move and level the lower footings because the applicant installed them at different elevations, and he moved the upper footings to obtain the correct angle for maximum year-round sunlight exposure. SB stated he also added another footing for the centre rail, ground anchor screws, and 2 diagonal braces, before mounting the solar panels on the frame.

26. I agree with the respondent that the structure the applicant built was obviously not square (warped) and angled too low for maximum sunlight exposure. However, I accept the applicant's submission that they had only placed the structure in its approximate location and that its installation was incomplete because of the missing parts, which the respondent had received by the time SB started working on it.

27. Overall, I find the respondent has not shown the applicant's work on the structure was substandard or had to be re-done. I find it simply had to be completed. I also find the respondent has not shown the applicant's construction work took longer than it should have or was otherwise unnecessary. So, I find the respondent is not entitled to any deduction for this aspect of the applicant's work, and she must pay the applicant the claimed 17 hours for it.

28. As for the electrical panel installation, the respondent says she is willing to pay the applicant for this work. She says it did not take more than half a day, including travel

time, but did not provide any supporting evidence for that submission. It is unclear whether the parties had an agreement about payment for travel time. In any event, there is no suggestion that the applicant did not work on-site for the claimed 5 hours on July 1. In the absence of any evidence to the contrary, I accept that the applicant likely worked the claimed 5 hours. I also find the respondent has not established that any of the work done was substandard or that the applicant's time was not reasonably spent.

29. For all these reasons, I find the applicant is entitled to payment for the claimed 22 hours of on-site work at $90 per hour, for a total of $1,980.

Office work

30. The applicant's breakdown of office hours, billed at $45 per hour, shows they charged 3 hours for "design and engineering" on June 20, 1 hour on June 23 and 2 hours on July 1 for "permit application process", and 21 hours for "missing parts management" between June 28 and August 30. While this totals 27 hours, the applicant says they discounted their invoice by 2 hours, as a courtesy.

31. The respondent does not specifically dispute the applicant's design and engineering work. I find the evidence shows the applicant reviewed the solar system package contents and instructions before they started building the structure on June 23. So, I find the applicant reasonably charged 3 hours at their reduced rate for this work.

32. As noted, the respondent takes issue with the applicant's permit application work. She says the applicant directed her to complete the permit application herself, and she was ultimately unsuccessful in obtaining a homeowner's permit. The respondent says she later learned it was the electrician's responsibility to obtain the permit, which she says PE did when it completed the solar system project for her.

33. However, the evidence shows that FortisBC emailed the applicant on July 16, 2021 confirming it had approved the applicant's net metering application for the solar system. Based on the applicant's emails with Fortis BC, I infer that the net metering

application was required to get approval for constructing a solar power system connected to the existing electrical system. I find this was likely separate from a homeowner's electrical permit, which the evidence suggests was required only after the solar system installation was complete.

34. Based on the evidence before me about the applicant's communications with FortisBC and their successful net metering application, I am satisfied that the applicant likely worked the claimed 3 hours on the application process. I find the respondent has not shown this time was unreasonably spent.

35. This leaves the applicant's time spent on managing the missing parts. The applicant's time breakdown stated they worked 12 hours on this issue between June 28 and July 1, and a further 9 hours between July 19 and August 30. As noted, the applicant prepared a missing parts list for the respondent, based on their review of WS' invoice and the materials provided. It is unclear why the time to prepare the list does not appear on the applicant's breakdown, given they sent it to the respondent on June 24, and they billed no time that day.

36. In any event, I find the missing parts list was not particularly extensive and was comprised largely of washers, screws, nuts, and bolts. I find it would not likely have taken the applicant longer than one hour to make the list. The respondent then forwarded the applicant's list to WS for follow up, so it is unclear why the applicant says they were also communicating directly with WS.

37. It is undisputed that the applicant sent the respondent several emails between July 1 and July 3 about other materials they needed for the project, such as electrical wire and cable, along with pricing options. Even if those emails were related to the missing parts, I find they likely would have taken no longer than 2 hours in total to research and write. There is no other evidence before me about what the applicant spent their time on to "manage" the missing parts between June 28 and July 1. Overall, I find the applicant has not established that they spent the claimed 12 hours on managing missing parts between June 28 and July 1. I find only 3 hours is proven.

38. As noted, the respondent asked the applicant on July 3 to stop spending time on following up on missing parts, which the applicant acknowledged. However, the applicant submits that the process was "solidly in motion" and they kept receiving emails and calls about the parts. The applicant did not provide any specific evidence about these alleged communications. On July 19, the respondent again advised the applicant that she would try to obtain the parts herself from WS or the manufacturer. The respondent also stated that "as agreed", she would not pay the applicant to meet with WS about the missing parts. Yet, the applicant's breakdown includes 2 hours for a meeting with WS on July 20.

39. I find the respondent expressly stated that she did not agree to pay the applicant for time managing missing parts after July 3, and I find the applicant's explanation for the 7 hours charged for this task after that date is insufficient and unsupported. So, I find the applicant has not shown entitlement to those claimed 7 hours.

40. Given my findings above, I find the applicant has proven they spent 3 hours on design and engineering, 3 hours on the permit application, and 3 hours managing the missing parts, all at $45 per hour. This totals $405.

Materials

41. The respondent disputes the applicant's $579.91 materials charge, as she says the materials "were not used" and that she bought all materials herself. I infer from the parties' email evidence that the parties agreed the respondent would purchase any required materials for the project.

42. The applicant's materials list suggests they charged for materials they already had, that they used during their on-site work. However, the applicant did not explain what each material was used for or provide any supporting evidence of their cost or that the respondent agreed to pay for them. I also cannot tell what some of the claimed materials are, from their description on the list.

43. The only material the parties specifically addressed in submissions was an electrical panel the applicant stated was $185. As noted, the applicant did not install the electrical panel, they only cut a hole in the wall for it. The applicant says they left the panel on-site and speculates that PE might have installed their panel. However, there is no evidence that the applicant asked the respondent about the panel's status or requested it back at any time, which I would have expected if the applicant had left this material on-site. More importantly, even if the applicant left their panel on-site, they provided no evidence of its cost.

44. Overall, I find there is simply insufficient evidence to support the cost of the claimed materials or that the respondent agreed to pay for them. I find the applicant's $579.91 materials claim unproven.

45. In summary, I find the respondent must pay the applicant $1,980 for their on-site work and $405 for their office work, for a total of $2,385.

46. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the $2,385 from November 24, 2021, which is 30 days after the applicant's invoice date, to the date of this decision. This equals $24.99.

47. 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 find the applicant was partly successful, and so is entitled to reimbursement of half their CRT fees, which is $87.50. The respondent paid no fees, and neither party claimed dispute-related expenses.

ORDERS

48. Within 30 days of the date of this decision, I order the respondent, Camille Roberts, to pay the applicant, Kamil Aksoylu, a total of $2,497.49, broken down as follows:

    a. $2,385 in debt,

    b. $24.99 in pre-judgment interest under the *Court Order Interest Act*, and

c. $87.50 in CRT fees.

49. The applicant is entitled to post-judgment interest, as applicable.

50. 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

[i] Amended under CRTA section 64 to correct inadvertent party name references in paragraphs 13 and 48. All amendments are marked in underlined text.

[ii] The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and form of address to ensure the CRT respectfully addresses them throughout the process, including in published decisions. The applicant did not specify their preferred pronouns or title, so I have used gender neutral they/them/their pronouns in this decision.