Civil Resolution Tribunal

Date Issued: December 7, 2023

File: SC-2022-008999

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gallant v. McKenzie (dba Sugar Shack)*, 2023 BCCRT 1070

B E T W E E N :

LESLEY ROBIN GALLANT

APPLICANT

A N D :

MISTY MCKENZIE (Doing Business As SUGAR SHACK)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about design work. The applicant, Lesley Robin Gallant, says the respondent, Misty McKenzie, doing business as Sugar Shack, owes her money for interior design services, including consulting, painting, wallpapering, and construction.

2. The respondent allegedly hired the applicant to provide interior design services for the Kelowna location of their salon business, Sugar Shack. The applicant says she provided work as the parties agreed but the respondent refused to pay her invoice. The applicant claims $4,143.05 for her unpaid invoice.

3. The respondent says the applicant never clarified what amount she expected for her work and then charged more than the respondent expected. The respondent also alleges the applicant's work was not what the parties agreed to. The respondent asks me to dismiss the applicant's claims.

4. The parties are each self-represented.

5. For the reasons that follow, I allow the applicant's claim.

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.

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. 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 in the interests of justice.

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.

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.

ISSUE

10. The issue in this dispute is whether the respondent owes the applicant $4,143.05 for design services.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove her claims 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. In February 2022, the respondent messaged the applicant about plans to open a new location for the respondent's business, Sugar Shack. The applicant says she was already familiar with the respondent's brand from their Nelson location and the parties' prior history. The parties' messages show them discussing interior design ideas, such as paint colours and finishes. The respondent says in a text message that they only have a "vision" but was looking for the applicant to help "pull it together."

13. The parties exchanged messages throughout March and April, discussing design choices. The respondent provided specific and clear feedback to the applicant's ideas.

14. The parties agreed the applicant would travel to Kelowna to work on the respondent's location. The respondent argues that they were pressured by the applicant and told her not to go to Kelowna. However, the respondent texted the applicant "The place should be ready for your magic 18-22" with two kissing-face emojis, referencing the applicant's planned attendance from April 18 to 22. Later messages show the

respondent knew the applicant was departing for Kelowna. The respondent provided no evidence they asked the applicant not to go.

15. The applicant ultimately arrived on April 28 and began work on April 29. An Instagram post from Sugar Shack that day shows the applicant hanging wallpaper at the Kelowna location and a comment containing a variety of emojis expressing happiness and excitement. I infer the Instagram post was made by the respondent under the name of their original location.

16. The applicant sets out the work she completed in her May 12, 2022 invoice. She says she provided initial consultation and design work, including colour matching and providing samples. She also says she primed and/or painted ceiling panels, vent covers, picture frames, and doors, as well as hung wallpaper, and "built out" (customized) and painted a desk. The invoice states the applicant travelled to and from Kelowna but confirmed she did not charge for those costs, per the parties' agreement. The invoice also states the applicant picked up materials and set up a "spray room" away from the respondent's location, but again, confirmed she did not charge for that work.

17. The applicant worked in Kelowna up to and including May 9, 2022. Throughout the applicant's work, the parties remained in contact by text message. They routinely exchanged messages about design choices and work the applicant had done.

18. On May 2, the applicant sent photos of photo frames she had painted gold, to which the respondent replied they looked fabulous. On May 5, the applicant provided photos of gold vent covers, which the respondent said looked incredible. When the respondent later asked for pink vent covers, the applicant said it was an "easy fix" and repainted three of them. On May 7, the respondent texted to say the doors the applicant had painted were beautiful and that they loved the colour. On May 8, the respondent texted the applicant to say the finished desk was gorgeous and to thank her.

19. The respondent argues that their messages were simply "being nice" and should not be viewed as approval of the applicant's work. The respondent says the applicant focused on trivial issues instead of key design elements and acted without the respondent's agreement. I disagree.

20. The applicant was providing professional services to the respondent. As a part of providing those services, she was routinely checking in and seeking the respondent's approval. If the respondent was unhappy with the way the applicant was providing those services, the respondent had many opportunities to tell the applicant. They did not.

21. On May 9, 2022, after finishing work, the applicant texted to ask for payment of materials costs and a "few days of labour." The applicant sent her the invoice on May 12, 2022.

22. The invoice charges for 8 days of work, though the applicant says she was on-site for 11 days. As noted above, the applicant says she did not charge for the time spent traveling, sourcing an off-site location for her to paint, or sourcing materials. The applicant charges $4,143.05, broken down as follows, and accounting for a $200 deposit the respondent made:

8 days of labour, 9-12 hours per day, $400 per day:	$3,200.00
GST for labour:	$160.00
Materials, at cost, including taxes, after returns:	$983.05
Deposit:	($200)

23. In an undated message, the respondent wrote "I'm not mad … I appreciate you and I remember how you helped me out. When I first opened and even modeling… I'll make payments!" As this message is undated, I cannot determine if it was sent before or after the first request for payment or the invoice. So, it does not prove the respondent agreed to any particular amount. However, I find it does show the respondent expected to make some payments to the applicant.

24. The respondent has undisputedly paid nothing to the applicant for the invoice.

25. So, did the parties have a contract for the applicant to provide design services?

26. I start with the basic principles of contract formation. The parties must mutually intend to create a binding contract. Whether there is an enforceable contract involves an objective test based on what a reasonable person in the parties' situation would have believed and understood, rather than on the parties' subjective beliefs. The contract's essential terms must be sufficiently clear, and the party seeking to rely on the contract must show there was a matching offer and acceptance of those terms. See: *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216, at paragraphs 66 to 69.

27. Where there is no written contract, the party trying to prove that a contract exists must prove that the parties agreed on the contract's essential terms. Whether there is an enforceable contract involves an objective test based on what a reasonable person in the parties' situation would have believed and understood, rather than the parties' subjective beliefs. See: *Berthin v. Berthin*, 2016 BCCA 104, at paragraph 46.

28. Here, I find the parties had a contract for the applicant to provide design services to the respondent. A reasonable person in the parties' position would conclude the respondent intended to hire the applicant to do the design work. The parties remained in regular communication throughout the project. The respondent was aware of the applicant's travel to the job site, ongoing work, and design choices. The respondent had the opportunity to request changes, which they did, or to ask the applicant to stop work, which they did not. The respondent showed the applicant's work on their social media, updating the new location's progress. The respondent was enthusiastic and complimentary about the applicant's work until they received the invoice. Finally, as noted above, the respondent agreed to pay the applicant for her work, saying they would "make payments."

29. Where a binding contract exists, but the parties have not agreed on price, the principle of contractual *quantum meruit* applies. This means the applicant is entitled to be paid

a reasonable amount for the goods or services she provided. See: *Infinity Steel Inc. v. B & C Steel Erectors Inc*., 2011 BCCA 215.

30. The respondent argues that the applicant overcharged them. The respondent provides their own estimate of how long the projects should have taken the applicant, citing their own research on Google. I find I cannot make such findings on the basis of the respondent's submissions alone. I find that expert evidence is required to prove these allegations because determining the cost and time required for interior design work is outside ordinary knowledge and experience: see *Bergen v. Guliker*, 2015 BCCA 283.

31. The respondent did not provide any expert evidence about what the work should have cost or how long it should have taken. While the respondent provided the opinion of another interior designer, it was only with respect to the design's look and feel and did not speak to the work's overall cost.

32. The respondent argues they told the applicant "countless times" they were on a tight budget, and they would have been "more assertive" if they knew how much it would cost. The respondent also alleges the parties regularly traded services on a barter system and rarely exchanged money, and suggests the applicant agreed to perform this work for, in part, social media exposure. However, there are no communications in evidence to support the respondent's allegations. Even if there were, nothing prevented the respondent from asking about the cost either up-front or on an ongoing basis, or setting out what the precise trade would be. While the respondent claims they were "railroaded" into allowing the applicant to attend, the parties' communications are mutually enthusiastic, friendly, and free of pressure.

33. The charges on the invoice are not obviously unreasonable for 8 days of work. The charges for materials are supported by receipts. I accept the invoice reflects what the applicant should be paid for her services under contractual *quantum meruit,* and I find the applicant is entitled to her invoice of $4,143.05.

34. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the $4,143.05 from May 12, 2022, the date of the invoice to the date of this decision. This equals $219.38.

35. 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 the applicant is entitled to reimbursement of $175 in CRT fees. The applicant did not claim any dispute-related expenses.

ORDERS

36. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $4,537.43, broken down as follows:

    a. $4,143.05 in debt for design services,

    b. $219.38 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

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

38. 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.

Christopher C. Rivers, Tribunal Member