



Civil Resolution Tribunal

Date Issued: December 21, 2023

File: SC-2022-009441

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rolling Tides Construction Inc. v. Burkett*, 2023 BCCRT 1128

B E T W E E N :

ROLLING TIDES CONSTRUCTION INC.

APPLICANT

A N D :

CHARLES BURKETT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This is a dispute about an unpaid invoice.
2. The respondent, Charles Burkett, hired the applicant, Rolling Tides Construction Inc. (Rolling Tides), to remove rock stairs and install concrete stairs at his cabin. Rolling Tides says that Mr. Burkett has not fully paid its invoice and claims \$2,196.53.

3. Mr. Burkett says that Rolling Tides quoted him \$8,000 as a fixed-price to complete the work at his cabin and he has already paid Rolling Tides \$9,000.
4. Rolling Tides is represented by an employee. Mr. Burkett represents himself.

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.
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. 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.
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.

ISSUE

8. The issue in this dispute is what, if anything, Mr. Burkett owes Rolling Tides for its work at his cabin.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Rolling Tides must prove its 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. Rolling Tides did not provide reply submissions despite being given the opportunity to do so.
10. It is undisputed that Mr. Burkett hired Rolling Tides to remove rock stairs and install concrete stairs at his cabin. Mr. Burkett says that an employee at Rolling Tides quoted him \$8,000. After discussions with the co-owner of his cabin, Mr. Burkett says he told Rolling Tides' employee that the \$8,000 price was acceptable. He says that the Rolling Tides employee promised that he would receive a written contract confirming \$8,000 as the final price, but none was sent. Mr. Burkett says the work done by Rolling Tides was satisfactory.
11. Rolling Tides sent an invoice dated June 30, 2022, to Mr. Burkett for \$11,277.55. The invoice has a breakdown of billable time for different employees at Rolling Tides, but does not describe each employee's activities. Rolling Tides provided a list of disbursements related to the project which totals \$3,199.41. The disbursements are marked up by 15% to \$3,679.33 on the invoice sent to Mr. Burkett.
12. Mr. Burkett paid Rolling Tides \$9,000 to account for the \$8,000 price, GST, and the fact that Rolling Tides tinted the concrete steps. He says the parties agreed to discuss the remaining amount on the invoice, however they were unable to come to a resolution.
13. Mr. Burkett argues that Rolling Tides quoted him \$8,000 as a fixed-price so he should not have to pay any more. He says he co-owns his cabin with a third party and had to get their consent before agreeing to hire Rolling Tides. He says the co-owner of his cabin only agreed to an \$8,000 fixed-price so he would never have agreed to hire Rolling Tides on a time and materials basis.

14. Rolling Tides denies giving Mr. Burkett a fixed-price quote. It says it gave a rough estimate of \$8,000 to \$10,000 and that the parties agreed the final invoice would be based on its employees' time and the cost of materials. It says Mr. Burkett added to the scope of work during the project so the parties could not have been operating on a fixed-price contract.
15. The first question is whether the parties had a binding contract. For a contract to exist, there must be a "meeting of the minds", meaning that the parties agree to all the essential terms of a contract such as its scope and price. I find that the parties never had a true meeting of the minds. Mr. Burkett believed this was a fixed-price contract for \$8,000 while Rolling Tides believed the final price would be based on time and materials.
16. Even though the parties did not have a binding contract, Rolling Tides is still entitled to be paid a reasonable amount for the work it did based on a legal doctrine called *quantum meruit* which means "value for work done" (see *Johnson v. North Shore Yacht Works Corp*, 2014 BCSC 2057 at paragraph 100).
17. As noted above, Rolling Tides has the burden of proving its claim. The difficulty for Rolling Tides is that it has not provided any evidence about the value of its work. I have no way of knowing whether the time spent and hourly rate charged by Rolling Tides' employees is reasonable or whether a 15% markup on disbursements is industry standard. I infer from the parties' submissions that Mr. Burkett expanded the scope of work by requesting tinted concrete. However, Rolling Tides did not provide any evidence or submissions about how tinting the concrete stairs affected its costs.
18. On the evidence I have, I find that the \$9,000 already paid by Mr. Burkett is reasonable from a *quantum meruit* perspective. Rolling Tides' submission was that its initial estimate was between \$8,000 and \$10,000. Mr. Burkett's \$9,000 payment falls within this estimate. So, I find that Rolling Tides is not entitled to any additional payment and dismiss its claim.

19. In his Dispute Response, Mr. Burkett quotes an email from Rolling Tides which threatens “a conversation with the [building inspector] about the work we were contracted to complete in the riparian zone.” Mr. Burkett says he is concerned that Rolling Tides’ work was not done properly and asks for a letter from Rolling Tides stating that its work complies with applicable government regulations. Other than the limited exceptions for personal property and specific performance, the CRT does not have jurisdiction to make injunctive orders in small claims disputes. So, I find that I cannot order Rolling Tides to provide the letter requested by Mr. Burkett.
20. 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. As Rolling Tides was not successful, I do not reimburse its CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

21. I dismiss Rolling Tides’ claim and this dispute.

Peter Mennie, Tribunal Member