



Civil Resolution Tribunal

Date Issued: March 22, 2024

File: SC-2022-008245

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mellson v. Swindell*, 2024 BCCRT 303

B E T W E E N :

PAUL MELLSON

APPLICANT

A N D :

JULIE SWINDELL and SALLY DEZWAAN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for deck repairs.
2. Applicant Paul Mellson says he did deck repairs for respondents Julie Swindell and Sally Dezwaan. Mr. Mellson says the respondents did not pay the full invoiced amount, and he requests an order that they pay \$1,637.14.

3. The respondents say Mr. Mellson overcharged them for labour and materials. They say Mr. Mellson did not provide a quote for his work, but only a “ballpark figure”, and did not provide invoices showing materials costs upon request. The respondents say they paid Mr. Mellson fairly for the work, and he is not entitled to more.
4. Mr. Mellson is self-represented in this dispute. Ms. Dezwaan represents the respondents.
5. For reasons set out below, I find in favour of Mr. Mellson in this dispute.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT’s mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUE

9. Do the respondents owe Mr. Mellson \$1,637.14 for deck repairs?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Mellson, as the applicant, must prove his claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
11. The parties agree that in 2022, the respondents hired Mr. Mellson to do deck repair work. Mr. Mellson completed the work in October 2022, and sent the respondents an invoice for \$4,809.75, including tax. The invoice sets out various materials costs, as well as \$1,600 for an unspecified amount of labour. The respondents paid only \$3,172.61, and refused to pay more.
12. The respondents do not say Mr. Mellson's work was deficient or incomplete. Instead, they say he overcharged for labour and materials.
13. The evidence before me shows that the parties exchanged text messages about the deck work and the price. Ms. Swindell texted Mr. Mellson to inquire about doing the work. They agreed that Mr. Mellson would look at the deck, which he did. After that, Mr. Mellson texted Ms. Swindell the following:

Here is the price for replacing your decking. Materials, this includes new good one side plywood, 60 mil vinyl decking, flashings & glue.

Materials \$2795.

Labour \$1600.

Total \$4,396.

Tax \$415

Total \$4810

14. The evidence before me shows that Ms. Swindell replied,

Hi Paul, Thank you for the quote. Please book us in. I believe I have materials left over from cabin project, ie PL glue, plywood, boxes of nails. Perhaps it could shave off \$?

15. Mr. Mellson's response to this text is not in evidence. However, Mr. Mellson says the plywood Ms. Swindell had was the wrong thickness for the deck, and the glue was dried out. The respondents do not say they provided any supplies for the project, so I find they did not.
16. I find the evidence shows that the parties exchanged texts which clearly set out the work to be performed, and the price. After receiving Mr. Mellson's text with the quote, Ms. Swindell instructed him to go ahead with the work. Since there is no evidence the parties later agreed to reduce the price set out in the quote, I find they did not. Rather, I find the text exchange above sets out the agreement between the parties.
17. The respondents argue that there was no signed contract agreeing to the price for the work. However, a signed agreement is not necessary to form a contract. A contract can be verbal, or set out in correspondence, such as the text exchange above.
18. The respondents say Mr. Mellson never gave them a formal quote, but only a "ballpark price". I disagree. I find the text message was a written quote, which Ms. Swindell agreed to.
19. The respondents also say that when Mr. Mellson first looked at the deck, he agreed to do the work for \$8.00 per square foot. However, I find the evidence does not support this assertion. Even if Mr. Mellson said that when he first looked at the deck, his later text message set out his quoted price. I note that when Ms. Swindell responded to the text quote, agreeing to go ahead with the work, she did not mention that the price should be \$8.00 per square foot. So, I find the parties agreed that Mr. Mellson would do the deck work the price set out in the quote, and not for \$8.00 per square foot.
20. The respondents say that after doing the work, Mr. Mellson refused to give them invoices showing how much he paid for the materials. Mr. Mellson says he does not buy materials for each job he does, but instead buys bulk materials at a "contractors' rate" and keeps them in his inventory for various jobs.

21. I find there is nothing in the parties' agreement that required Mr. Mellson to provide materials invoices or receipts. The respondents say they believe Mr. Mellson used materials left over from other jobs. However, since he performed the work and charged the respondents the quoted price, I find it does not matter if the materials were left over from other jobs.
22. The respondents provided written quotes from 2 hardware stores, showing they could have purchased the materials for a lower price. However, I find nothing turns on this. First, there is no evidence before me showing that the hardware store quotes are for the identical materials used in the deck. Second, as explained above, the respondents agreed to pay the amount in the quote. They were free to negotiate the materials prices before agreeing to the quote, but not after, and certainly not after the work was complete.
23. Finally, the respondents argue that Mr. Mellson overcharged for labour. Ms. Swindell says she tracked how much time Mr. Mellson spent at the jobsite, and provided a calendar noting these times. She says the amount of labour charged resulted in an unreasonably high hourly rate.
24. In the quote, Mr. Mellson did not set out an hourly rate for labour. Instead, the quote included a lump sum of \$1,600 for labour. Since Ms. Swindell agreed to that quote, I find Mr. Mellson was not contractually obligated to charge an hourly rate, or to justify his hours of work.
25. For all these reasons, I find the respondents were contractually required to pay the invoiced price of \$4,809.75. Since they already paid \$3,172.61, I order them to pay Mr. Mellson the remaining \$1,637.14.
26. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Mellson is entitled to pre-judgment interest from October 12, 2022 (the date of the invoice). This equals \$102.28.

27. As Mr. Mellson was successful in this dispute, under CRTA section 49 and the CRT's rules I find he is entitled to reimbursement of \$125 in CRT fees. Mr. Mellson did not claim dispute-related expenses, so I order none.

ORDERS

28. I order that within 30 days of this decision, the respondents must pay Mr. Mellson a total of \$1,864.42, broken down as follows:

- a. \$1,637.14 in debt,
- b. \$102.28 in pre-judgment interest under the COIA, and
- c. \$125 in CRT fees.

29. Mr. Mellson is entitled to post-judgment interest under the COIA, as applicable.

30. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Tribunal Member