Civil Resolution Tribunal

Date Issued: September 27, 2019

File: SC-2018-008754

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mike Barnabe dba as ARBORTEK v. Maier*, 2019 BCCRT 1144

B E T W E E N :

Mike Barnabe DBA as ARBORTEK

APPLICANT

A N D :

Carol Maier

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicant, Mike Barnabe dba as Arbortek, says the respondent, Carol Maier, hired him to assess a failed renovation by another contractor but did not pay him for his services. He wants the respondent to pay him $2,520 for his services.

2. The respondent says she did not hire the applicant and she never agreed to pay him for his preliminary assessment of her renovation.

3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. The applicable tribunal rules are those that were in place at the time this dispute started.

8. Under tribunal rule 9.3 (2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:

    a. order a party to do or stop doing something:

    b. order a party to pay money:

    c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent is required to pay the applicant $2,520 for contracting services.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove his claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.

11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

12. In 2018 the respondent owned a property in Nanaimo which she was renovating. In June 2018 in the midst of the renovations, her project manager quit. The respondent knew the applicant through a personal connection, and on June 27, 2018 she asked him to meet with her and her team to discuss the prospect of him helping her get her renovation back on track.

13. It is undisputed that the applicant met with the respondent and her lawyer, J.F., accountant, T.U., and friend, J.U., on June 29, 2018 to discuss preparing a

proposal, budget, and estimate to complete the renovation. The respondent submitted statements from all of the meeting attendees.

14. During the meeting the parties agreed that the applicant would need to visit the property in Nanaimo to determine the full extent of the remaining work and evaluate any necessary repairs to complete the renovation. T.U. said that J.F. “made it abundantly clear” to the applicant during the meeting that he was not to complete any work until the respondent approved his proposal.

15. The applicant says he told the respondent that if he was awarded the contract he would include his time spent on the preliminary assessment of the project in his fee, and if he was not awarded the contract he would invoice the respondent for his time spent on the preliminary assessment.

16. The respondent says she never agreed to pay the applicant for his preliminary assessment. She says her team specifically asked the applicant during the meeting if he expected to be paid for going to Nanaimo, and he clearly answered “no.”

17. T.U. said she asked the applicant what he intended to charge for his time on the preliminary assessment. T.U., J.U., and J.F. all said the applicant told everyone at the meeting that his time spent on the preliminary assessment would be included in the contract if he was awarded it, but that he did not say he would charge the respondent for his preliminary assessment if he was not awarded the contract.

18. It is undisputed that at the June 29, 2018 meeting the applicant did not advise the respondent of his hourly rate. The applicant says the respondent should have known his hourly rate because he had done work for her in the past. However, the evidence before me is that the nature of this previous work was different than the work discussed at the meeting.

19. On balance, I prefer the respondent’s version of events, and I find that at the June 29, 2018 meeting she did not agree to pay the applicant for his time spent on the preliminary assessment if she did not award him the contract. While the respondent, T.U., J.U., and J.F. all had slightly different recollections of what was said at the

meeting, they all say there was no agreement to pay the applicant for his time spent on the preliminary assessment. The fact that the parties did not discuss the applicant's hourly rate supports the respondent's position.

20. On the evidence before me, I find the parties left the June 29, 2018 meeting with the understanding that the applicant would conduct a preliminary assessment and prepare a proposal, and if satisfied, the respondent would hire him to be her project manager for the renovation. However, I find the evidence shows that after that meeting the respondent and her agents sent the applicant mixed messages about their arrangement.

21. The applicant submitted various communications with the respondent which he says show she hired him, or at least required him to perform some work. He submitted a text message he received from the respondent on an unspecified date which says, "Are you 100% ready to become my project manager on Tuesday July 3/18 Mike?" He confirmed that he was, and she responded, "…I'll start putting the revised contract together and an information package together to help you get up to speed…" While this text exchange seems to indicate that the respondent was planning to hire the applicant, I find her reference to revising a contract indicates that the relationship would not be confirmed until the parties signed a contract.

22. The applicant submitted a text message he received from the respondent on July 2, 2018 stating, "Do you want Eileen to help us move and clean things tomorrow?...Do you have a shop vac?" and the applicant responded, "I'm sure we could find something for her to do and yes I have a shop vac and will bring it." The applicant says this shows the respondent expected him to perform work moving and cleaning on July 3, 2018, which I accept.

23. The applicant submitted a July 3, 2018 email the respondent sent to a third party in which she referred to the applicant as her new project manager. The respondent says she did this simply for efficiency and to avoid having to explain the applicant's proposal process to the third party. While on its own this email may have confused the applicant, I find the applicant's subsequent communications with the respondent

establish that the applicant understood he was not the respondent's project manager at that time.

24. The applicant submitted an email chain showing that he met with a painting subcontractor on July 4, 2018 to resolve payment issues and on July 4 and 5, 2018, he negotiated with the painter and arranged for them to finish the painting on the project. The respondent was copied on much of this correspondence, so I find she was aware he was doing this work. I find this work goes beyond preparing a budget and scope of work.

25. On July 4, 2018 the respondent's counsel emailed the applicant asking for the following information to finalize his contract: a detailed scope of work and budget, proposed timeline, and his fee "for preparing all this and managing the project to completion." The email also states, "I would appreciate it if you could get this information to me by the end of the week so the contract could be finalized and signed before any further work is actually commenced." Through subsequent email correspondence the applicant agreed to submit this information to J.F. by July 9, 2018.

26. On July 10, 2018, J.F. emailed the applicant stating, "there is no agreement as to payment for the time you have spent time over the last couple of weeks of information gathering. Without a contract, either of you can walk away at any time. It's not fair to either of you to spend more time on this without an agreement."

27. On July 10, 2018 the applicant sent the respondent a scope of work and an estimate for his own time to complete the project, but not a full budget for the project. The applicant's estimate stated that he had spent 4 days onsite meeting with various subcontractors, installed a protective covering to the floors, some cabinets, and counters, and done some "general cleaning." He stated that at his normal rate of $60 per hour, for 37.5 hours of work, he would charge $2,250 plus tax. He said if he was awarded the contract this cost would be absorbed into it, but if not, he would charge the applicant $2,250 plus tax.

28. J.F. said that the July 10, 2018 email from the applicant was the first time she learned his hourly rate, that he expected to be paid for the proposal, or that he had started work on the project without having signed a contract. On the evidence before me, I agree that July 10, 2018 was the first time the applicant notified the respondent or her agents of his hourly fee. However, I find the wording of J.F.'s July 4, 2018 email suggests the respondent would pay the applicant for his preliminary assessment, and also suggests that she knew the applicant had already completed some work.

29. On July 16, 2018, the respondent told the applicant that she had decided not to hire him as her project manager. It is undisputed that as of that date the applicant had not submitted a proposed budget for the project.

30. On July 23, 2018 the applicant sent the respondent an invoice for $2,520 including tax. The invoice states that he performed 40 total hours of work on July 3, 4, 5, 10 and 11, 2018 including cleaning and organizing the house and building materials; protecting and covering the floor, counters and cabinets; dealing with previous subcontractors' payment disputes; and meeting with new subcontractors to determine the scope of work required to repair the failed renovation.

31. The respondent does not dispute that the applicant performed the cleaning and organizing work described in the applicant's invoice, or that the work benefitted her. The evidence also establishes that the respondent knew the applicant spent time negotiating with the painter. I find that all of this work goes beyond the work required to prepare a budget proposal.

32. Given the ambiguous communications between the applicant and the respondent and her agents after the parties' June 29, 2018 meeting described above, and the fact the respondent does not dispute that the applicant completed some work of value to her, I find the principle of *quantum meruit* applies in the circumstances. *Quantum meruit* is a legal term meaning a reasonable sum of money to pay for work done when the amount due is not set out in a contract.

33. The evidence establishes that the applicant spent some time on July 3, 2018 cleaning and organizing the house and putting protective covering on the floors, counters, and cabinets. It also shows he spent some time on July 3 and 4, 2018 negotiating with a painter. Beyond that, I find the applicant has provided insufficient evidence to establish that he spent several full days meeting or negotiating with other subcontractors. While the applicant's invoice does not provide a breakdown of his time spent on each task, I find 40 hours is excessive for the work actually performed. On a *quantum meruit* basis, I find the applicant is entitled to compensation for 8 hours of work at the respondent's property, and I find his hourly rate of $60 is reasonable in the circumstances. Therefore, I find the respondent is required to pay the applicant $480 for his work at her property.

34. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the amount owing calculated from July 23, 2018, which is the date of his invoice, to the date of this decision. This equals $10.01.

35. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicant was only partially successful, I find he is entitled to reimbursement of half his tribunal fees in the amount of $62.50. He has not claimed 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 $552.51, broken down as follows:

    a. $480 for work completed at the respondent's property,

    b. $10.01 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $62.50 in tribunal fees.

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

38. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

39. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member