



Civil Resolution Tribunal

Date Issued: October 8, 2019

File: SC-2019-003325

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS3357 v. Bryan Wickham (dba Dragon Decorative Concrete Company) et al*, 2019 BCCRT 1171

BETWEEN:

The Owners, Strata Plan KAS3357

APPLICANT

AND:

BRYAN WICKHAM (Doing Business As DRAGON DECORATIVE CONCRETE COMPANY) and LINDA WICKHAM (Doing Business As DRAGON DECORATIVE COATINGS COMPANY)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute over the return of a deposit. The applicant, The Owners, Strata Plan KAS3357, says that it hired the respondents, Bryan Wickham (doing business as Dragon Decorative Concrete Company) and Linda Wickham (doing business as

Dragon Decorative Coatings Company) to do concrete work. The applicant paid a \$6,673.28 deposit. The applicant terminated the contract shortly after the respondents began work. They claim \$5,000, which is the maximum they can claim under the Civil Resolution Tribunal's (tribunal) small claims jurisdiction.

2. The respondents say that the deposit was non-refundable.
3. The applicant is represented by a member of its strata council. The respondents are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. 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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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. 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.

ISSUES

- 8. The issues in this dispute are:
 - a. Is the applicant entitled to a \$5,000 refund of the deposit?
 - b. If so, are both respondents responsible for the deposit?

EVIDENCE AND ANALYSIS

- 9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. I have read all the parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.
- 10. The respondents participated in the facilitation process but neither participated in the tribunal decision process. The tribunal case manager asked the respondents several times to provide evidence and submissions but they did not to do so.
- 11. The applicant says that its property manager reached out to Mr. Wickham to remove and replace a concrete pathway on 2 strata lots. Mr. Wickham responded by email on August 24, 2018, with a \$13,346.55 estimate.
- 12. In his email, Mr. Wickham said that they were booking 3 to 4 weeks out and that any work needed to be complete in late October before winter weather arrived. Mr. Wickham estimated that it would take 7 days. Mr. Wickham said that he required a 50% deposit before starting the job. It is undisputed that the applicant provided a \$6,673.28 deposit.
- 13. The applicant says that Mr. Wickham initially told him he would start on September 24, 2018. However, there were several delays and false starts, the details of which are not important to the outcome of this dispute. The applicant says that Mr.

Wickham started the project at some point in mid-October. The precise date is not clear but nothing turns on it.

14. The applicant says that Mr. Wickham spent only 4 to 5 hours working on the project. The applicant was concerned about the quality of his work. The applicant says that on October 25, 2018, it told Mr. Wickham that the contract was terminated and offered to pay Mr. Wickham's expenses to date. In response, the applicant says that Mr. Wickham threatened to sue and stopped communicating with the applicant.
15. As mentioned above, neither respondent gave evidence or submissions. Parties are under no obligation to provide evidence and submissions during the tribunal decision process but failing to do so can lead the tribunal to make an adverse inference.
16. In this dispute, I find that it is appropriate to make an adverse inference against the respondents. I make this finding primarily because the respondents' Dispute Responses both lack any detail that could reasonably help me understand their perspective. In addition, the respondents made allegations in their Dispute Responses that only they could prove, such as their allegation that their material costs exceeded the \$6,673.28 deposit.
17. I find that it was an express or implied term of the parties' contract that the work would be complete by the end of October, before the onset of winter conditions. As mentioned above, Mr. Wickham had estimated that the job would take 7 days to complete. Because Mr. Wickham had only worked 4 to 5 hours as of October 25, 2018, I find that Mr. Wickham breached the contract. By then, he had run out of time to complete the job before winter.
18. I will now address the 3 issues raised in the respondents' Dispute Responses.
19. First, the respondents say that "Dragon Decorative Concrete has been dormant for 4 years and has nothing to do with this". This position is at odds with the estimate in evidence that is on branded letterhead with "Dragon Decorative Concrete Co." In

any event, the applicant's claim is not against a corporation. There is no evidence that Dragon Decorative Concrete Company is a corporation.

20. Second, the respondents say that the deposit was non-refundable. There is nothing in Mr. Wickham's August 24, 2018 email or the estimate that suggests that the deposit was non-refundable.
21. Third, the respondents say that their costs exceed the value of the claim. They reserved the right to counterclaim, although they never did. Again, they provided no evidence to support their claim for a set-off. In fact, they acknowledge in their Dispute Responses that they were able to return some materials subject to a restocking fee. Mr. Wickham's estimate does not break down material costs and labour costs, so it is not possible to draw any inference from the estimate.
22. The applicant says that it offered to pay the respondents' expenses when it terminated the contract, which the respondents did not accept. The applicant says that if the respondents did incur any expenses, the cost will be covered by the \$1,673.28 that the applicant abandoned by bringing this tribunal claim.
23. I find that the respondents bear the burden to prove that they incurred expenses that should be set-off from the deposit. The respondents failed to do so.
24. For these reasons, I reject the respondents' arguments as set out in their Dispute Responses. I find that the applicant is entitled to a return of the deposit.
25. The next question is whether the order should be against both respondents. As mentioned above, the applicant claimed against 2 individuals, Mr. Wickham and Ms. Wickham.
26. The respondents used the same email address in their Dispute Responses, which is also the same email address that the applicant used to communicate with Mr. Wickham. The applicant says in its submissions that "there has been only one single individual, Mr. Wickham who represented himself as Dragon Coatings. All

emails, phone calls, and text messages were received and transmitted by Mr. Wickham”.

27. Even though the respondents failed to provide any evidence or submissions, the applicant must still prove its claim against each of them. Nothing in the applicant’s evidence or submissions explains why Ms. Wickham is a respondent. Her name does not appear anywhere in the materials before me other than the Dispute Notice. For these reasons, I am not satisfied that there is any basis for an order against Ms. Wickham, and I dismiss the applicant’s claim against her. I find that only Mr. Wickham must repay the deposit. As noted above, the applicant abandoned the deposit that exceeds \$5,000, the tribunal’s small claims monetary limit.
28. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$5,000 award from October 28, 2018, to the date of this decision. This equals \$87.24.
29. 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. I find the applicant is entitled to reimbursement of \$225 in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

30. Within 28 days of the date of this order, I order Mr. Wickham to pay the applicant a total of \$5,312.51, broken down as follows:
 - a. \$5,000 as a refund of the deposit
 - b. \$87.51 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$225 in tribunal fees.
31. I dismiss the applicant’s claim against Ms. Wickham.

32. The applicant is entitled to post-judgment interest, as applicable.
33. 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.
34. 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.

Eric Regehr, Tribunal Member