



# Civil Resolution Tribunal

Date Issued: November 6, 2017

File: SC-2017-002611

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dill v. Hassan*, 2017 BCCRT 106

**B E T W E E N :**

David Dill

**APPLICANT**

**A N D :**

Shafiqul Hassan

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Andrew D. Gay, Q.C.

## **INTRODUCTION**

1. The applicant alleges that the respondent breached a contract relating to the installation of a balcony railing at the applicant's home. Specifically, the applicant says that the respondent failed to install a "top cap" railing and failed to have a professional engineer review and approve the respondent's work. The applicant

claims to have suffered financial losses as a result. The respondent denies each of the allegations. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). 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.
3. 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.
4. 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.
5. Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
  - 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**

6. The issues in this dispute are:
  - a. What were the terms of the contract between the applicant and the respondent?
  - b. Was that contract breached by the respondent, and if so how?
  - c. If the contract was breached by the respondent, what are the losses suffered by the applicant which result from the breach?
7. The respondent indicated he may have a counterclaim relating to the installation of some exterior stairs. However, as the respondent did not file a counterclaim I have not considered an order for any damages payable to the respondent.

## **EVIDENCE AND ANALYSIS**

8. There is no question that a contract existed between the parties, as the respondent provided goods and services to the applicant, and the applicant paid money in return. The parties agree that under the contract the respondent was obligated to source and install a series of glass panels as part of the exterior balcony railing of the applicant's home. The parties further agree that the applicant paid the respondent the sum of \$6,778.00, inclusive of tax, for the respondent's work.
9. The parties disagree, however, as to whether it was a term of the contract that (a) the respondent would install a top cap railing; and (b) the respondent would have an engineer review and approve the work at the respondent's cost. The respondent denies that these were terms of the contract.
10. On November 27, 2015, prior to commencing the work, the respondent issued a quotation to the applicant that described the work and quoted the price. The top cap railing is not expressly mentioned. The quotation also contains no mention of engineering review and approval. There are no other documents that describe the

contractual terms agreed upon by the parties. The applicant does not allege the respondent verbally agreed to provide the top cap railing or engineering approval. Accordingly, the question is whether it can be inferred from other evidence that the respondent agreed to install the top cap railing and obtain engineering review and approval as part of the quoted price.

### **The top cap railing**

11. The applicant says that the respondent purchased the top cap railing and left it in the applicant's garage, uninstalled. The respondent has not denied this. I find the reasonable inference from this evidence is that the respondent originally expected to install the top cap railing.
12. There is additional evidence of the applicant's intent to have the top cap railing installed. He says that he had it installed by another contractor at additional cost. The respondent has not denied this.
13. On the basis of this evidence, I accept that installation of the top cap railing was part of the contract. The respondent breached that aspect of the contract by failing to install it.
14. The applicant says that he had another contractor install the railing at a cost of \$250.00 after the respondent refused to complete the job. He has provided what he describes as an "invoice" from another company in support of his position. That document shows that the cost of installing the top cap was estimated to be \$250.00. The document appears to be an estimate, rather than an invoice, because the amounts quoted in the document are not totalled and no tax has been added. Nevertheless, the applicant has stated that he had the top cap installed at a cost of \$250.00 and this is not disputed by the respondent. I find the respondent must pay the applicant \$250.00 for the cost of the top cap railing installation.

### **Engineering review and approval**

15. As for the review and approval by a professional engineer, there is insufficient evidence supporting the applicant's position. He says that it is standard in the industry for a subcontractor installing a balcony railing to obtain engineering review and approval for the work at the subcontractor's cost. The applicant has not led any supporting evidence to support this assertion, and without it I find I cannot accept it. There is nothing in the respondent's initial quotation, nor in any other documents provided by the parties, which indicates that the respondent agreed to cover the cost of engineering review and approval. I find that the applicant has failed to prove that engineering review and approval was part of the contract between the parties. I dismiss this particular claim.

### **Damages for delay**

16. The applicant further claims that he suffered damages in the estimated amount of \$3,450.00 due to delay connected to the respondent's breach of contract. The difficulty with this claim is that the applicant led no evidence to support it. He did not indicate how long the delay was, he did not explain how the delay led to monetary loss, and led no evidence of any monetary amount being incurred. There is no evidence that the delay in the installation of the top cap railing caused the applicant to suffer any financial loss or damage, which given my findings above would be the only relevant delay. Accordingly, I dismiss the claim for damages for delay.

### **Exterior Stairway**

17. The respondent alleges that he delivered and installed a set of exterior steel stairs at the applicant's request. He claims that he quoted the applicant \$900 for this job, that the applicant agreed to pay this amount, but that the applicant failed to pay him after he completed the work. As noted above, the respondent did not file a counterclaim and accordingly I am not prepared to decide this matter.

18. I note that the applicant agrees that he asked the respondent to undertake this work, and agrees that he owes \$200 to the respondent. The parties are free to discuss a set-off of the amounts they owe to each other.

## **ORDERS**

19. I order that the respondent Shafiqul Hassan pay \$250 to the applicant David Dill, within 21 days of the date of this order, for the top cap railing installation.
20. I dismiss the applicant's claims for damages relating to engineering review and approval and with respect to alleged delay.
21. The applicant is entitled to pre-judgment interest on the \$250 under the *Court Order Interest Act* (COIA) in the amount of \$1.20, payable by the respondent.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. In this case, there has been divided success among the parties. Accordingly, I decline to make any order relating to tribunal fees or dispute-related expenses.
23. The applicant is entitled to post-judgment interest under the COIA.
24. Under section 48 of the Act, 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.
25. Under section 58.1 of the Act, 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.

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Andrew D. Gay, Q.C., Tribunal Member