



# Civil Resolution Tribunal

Date Issued: May 14, 2018

File: SC-2017-004671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rokform Solutions Ltd. v. Vinette*, 2018 BCCRT 183

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

Rokform Solutions Ltd.

**APPLICANT**

**A N D :**

Mark Vinette

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Maureen Abraham

### **INTRODUCTION**

1. The respondent Mark Vinette hired the applicant Rokform Solutions Ltd. to do a construction job. The applicant claims payment of its outstanding account. The respondent disputes the claim, on the grounds the account should have been reduced because the applicant used the wrong product. The 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 issue is whether the applicant is entitled to payment of its invoice without a set-off for costs incurred by the respondent as a result of their alleged improper installation.

## **EVIDENCE AND ANALYSIS**

7. The applicant and respondent have provided correspondence, statements and documents to support the position each is taking in this dispute. I have reviewed the materials carefully, although will not necessarily refer to or summarize all the information provided by the parties in this decision.
8. The applicant is a distributor of a product used to construct form foundations, and the quotes were based on required wall heights. The product is available in set sizes, and can be configured into various wall heights based on the number of blocks used and how they are cut.
9. The respondent describes himself as a retired renovation and remodelling contractor who is proficient in many construction areas and passed a provincial owner/builder exam. He was acting as an owner/builder for the construction project at issue in this dispute.
10. By April 2017, the applicant had provided five written quotes to the respondent for supplying the construction materials, each based upon different project scenarios provided by the respondent. Each written quote provided to the respondent stated that the applicant was a distributor of the product only, and refers to the product website address, a product installation manual and that the purchaser is responsible for complying with building codes and installation procedures.
11. The respondent then asked the applicant to supply a product suitable to build a five-foot high wall, rather than the heights set out in the quotes. The applicant supplied blocks which could be configured into a five-foot wall, provided the bottom row of blocks was cut to a 6-inch height from its existing height of 18 inches. The applicant advised the respondent that cuts would be necessary for configuring the installation to five feet. The product installation manual published by the product manufacturer indicates how the 18-inch block can be cut to various lengths, including six inches.

12. According to the product manufacturer, there are two acceptable block configurations for building a five-foot high wall, and the blocks supplied were one of those configurations. This is confirmed in the installation manual and correspondence from the manufacturer.
13. The respondent accepted the product supplied by the applicant and cut the bottom row of blocks to 9 inches, rather than six. He acted alone and unassisted in doing so, and says that the block could simply not be cut to six inches. He then proceeded to build a wall that was five feet and three inches tall, which is three inches over the applicable building code height limit.
14. The respondent says the applicant's representative had advised him to cut the blocks to the improper length, and verbally agreed to assist him during installation at no charge and to compensate him for any expense he incurred as a result of the over-height wall.
15. The evidence of the tradesperson hired by the respondent (as arranged through the applicant) to assist the respondent with installation is that the respondent was not concerned about the increased wall height and declined his suggestion that they re-cut the blocks. When the tradesperson invoiced the respondent for payment, the respondent refused to pay him directly and said he would only pay the tradesperson through the applicant. The applicant says it then paid the tradesperson, and that cost forms part of what is claimed in this proceeding. The respondent has not taken the position that he is not obligated to reimburse the applicant for the tradesperson's pay.
16. The respondent says that he incurred extra fill and labour costs because he had to raise the height of the land by 3 inches around the installed wall in order to meet building code requirements. He says that the price of the materials supplied by the applicant should be off-set by the increased costs for fill, labour and grading, which he calculates as \$1,931.20.

17. There is no evidence suggesting that the respondent made any attempt to review the product website, access the online installation manual or attend the installation training courses offered by the applicant. The quotes provided do not indicate that an installation manual would be provided with the product.
18. The applicant's position is that it is not responsible for the costs incurred by the respondent and is entitled to payment in full. The applicant says that the respondent had the responsibility of properly installing the product, access to training and the product installation manual, and opportunities to correctly cut (or re-cut) the blocks to the right size, but knowingly chose to use the products to build a wall to the wrong height. As such, the applicant says the respondent is responsible for any increased costs resulting from his decision.
19. The respondent's position is that the applicant was obligated to supply blocks which would not require cutting and breached their agreement by providing unsuitable blocks of the wrong size, and so is responsible for the costs of bringing the over-height wall into compliance with the building code, either because it had agreed to or was negligent in advising the respondent. The respondent says that after the set-off for those costs is considered, the respondent says the applicant is only entitled to payment of \$2,585.08.
20. The agreement the parties had was for the applicant to provide products to the respondent suitable to build a five-foot wall. I find that the applicant did provide suitable product for that purpose.
21. I find there is insufficient evidence to support the respondent's allegation that the applicant had gratuitously agreed to assume responsibility for any costs to the respondent arising from his improper installation of the product. I find there was no contract between the parties that the respondent could off-set his payment by costs he incurred to deal with an over-height wall.

22. I am satisfied that the applicant fulfilled the terms of its contract with the respondent, which was to supply product only. I am satisfied that the applicant was not negligent in any way, in the above circumstances.
23. In reviewing the evidence, it is clear that the applicant provided assistance to the respondent, including putting the respondent in touch with tradespeople and arranging for trades to assist the respondent.
24. However, the evidence is also clear that the applicant advised the respondent at the outset of their dealings that the respondent was responsible for installing the product correctly and ensuring compliance with all applicable building codes.
25. I find that it was unreasonable for the respondent to disregard the written advice on the quotes which referred him to the product website for installation information and confirmed that the applicant was a distributor only.
26. The respondent is not a layperson. He is a professional contractor who was managing his own project as a qualified owner/builder, and ought reasonably to have known that he should inform himself as to the proper installation method and process for a specialized product before taking any steps to cut or install the product.
27. I find there is insufficient evidence to support the respondent's assertion that the applicant advised him to cut or install the blocks incorrectly.
28. I find the respondent accepted the product as supplied, cut it to the wrong length, and proceeded to build a wall that he knew was over-height at the outset of the construction process. The respondent had an opportunity to fix his error before any problem arose, but did not.
29. Given my conclusions above, I find that the applicant is entitled to payment in full from the respondent, without set-off.

30. The applicant requests payment of \$4,673.06 for goods and services supplied to the applicant, plus interest of 24% per annum on that amount, and reimbursement of \$175 tribunal fees.
31. There is no evidence that, at time the respondent ordered products from the applicant, he was told interest would be payable at the rate of 24% on unpaid invoices and agreed to order the products on that basis. Accordingly, I will not order the respondent to pay a higher interest rate than is set out in the *Court Order Interest Act* (COIA).
32. The invoices rendered by the applicant to the respondent reflect the following amounts owed as at the following dates, and pre-judgment interest reflected in my order has been calculated from those dates:
  - a. May 10, 2017: \$380.86 (\$419.67 less credit of \$38.81)
  - b. June 1, 2017: \$477.06
  - c. June 30, 2017: \$2,558.16
  - d. July 31, 2017: \$1,256.98

## **ORDERS**

33. I order that:
  - a. The respondent Mark Vinette must pay the applicant \$4,871.39, within 30 days of the date of this order, as follows:
    - i. \$4,673.06 for goods and services,
    - ii. \$23.33 pre-judgment interest under the COIA, and
    - iii. \$175.00 tribunal fees.
34. The applicant is also entitled to post-judgment interest.

35. 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. I see no reason in this case not to follow that general rule. I therefore order Mark Vinette to reimburse Rokform Solutions Ltd. for tribunal fees of \$175.00, as above.
36. 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.
37. 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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Maureen Abraham, Tribunal Member