



Civil Resolution Tribunal

Date Issued: June 20, 2018

File: SC-2017-006149

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vancouver Island Firestopping Services Ltd v. Goh et al*, 2018 BCCRT 270

B E T W E E N :

Vancouver Island Firestopping Services Ltd

APPLICANT

A N D :

Andrew Goh and Four Seasons Investment Properties Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Vancouver Island Firestopping Services Ltd. provided “firestopping” materials and labour at the respondents’ “Tenant Improvement Renovation Project”. The respondent Andrew Goh is the principal of the respondent company Four Seasons Investment Properties Ltd.

2. The applicant seeks payment of its \$3,010.79 invoice, 24% per annum interest, and \$150 for 2 hours of its time dealing with this dispute. The respondents say the applicant overcharged for time and submit they only owe \$1,405.92. The parties are self-represented, with Mr. Goh representing both respondents.

JURISDICTION AND PROCEDURE

3. 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.
4. 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, and I note that no one requested an oral hearing.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issue in this dispute is to what extent, if any, is the applicant entitled to payment of a) its \$3,010.79 invoice, b) \$150 for time spent dealing with this

dispute, c) 24% annual interest on the invoice, and d) tribunal fees and dispute-related expenses?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. It is undisputed that when the parties discussed the project in April 2017, the expectation was that the applicant would give a quote for the entire project. The applicant's job was to install firestopping materials, including repairing and replacing work done by others to make the respondents' project code-compliant. The project's start date was delayed as the respondents were waiting for a city inspection report. No quote for the entire project was ever given and there is no signed written contract between the parties. To date, the respondents have paid nothing towards the applicant's invoice.
10. The parties did not communicate again until August 2017. The applicant sent an employee supervisor to the respondents' site on August 17, 2017 to review the project. As set out in the applicant's August 23, 2017 email, the applicant said that it could only proceed on a "time and material" basis, due to concerns about 'unknowns' in the project as to what would be required to get it code-compliant. While Mr. Goh says he did not receive the applicant's August 23, 2017 email, I find that it is more likely that he did so, given that the parties thereafter operated on a time and materials basis. The August 23, 2017 email was sent to the same address used by Mr. Goh in other email exchanges with the applicant. Further, Mr. Goh submits that on August 17, 2017 the applicant knew he needed the work done soon after the city inspection and that on that date he and the applicant's employee discussed "the cost on labour and materials" and that he would approve daily work records. Based on the overall evidence before me, including various emails between the parties, I find Mr. Goh knew and accepted that the applicant's

contract was on a time and materials basis. Contrary to Mr. Goh's submission, the fact that there was no written and signed contract is not determinative.

11. The applicant's work was ultimately completed on 4 days between August 25 and September 21, 2017, as discussed below. Based on the email evidence before me, I accept that the project took longer than originally anticipated because Mr. Goh did not have the site prepared as required by their agreement, causing delay. In particular, certain drywalling work had not been done and the applicant had to stop for that work to be completed. The drywalling work was completed on September 10, 2017, which then allowed the applicant to resume work on September 11 and 18, 2017.
12. The applicant issued invoice #170918-05 for \$3,010.79, to "supply firestopping to penetrations in walls as per time and material sheets attached". The invoice noted the work was "100%" complete. The invoice is dated September 18, 2017, but one of the daily work records (billing hourly for various administrative tasks, for a total of \$450) is at the top dated September 21, 2017. Based on the content of the \$450 work record, I find it is clear that the related workers' 6 hours were worked before September 21, 2017 rather than all on that date. It is also undisputed that the \$450 is included in the \$3,010.79 claimed in this dispute, as discussed further below.
13. The daily work records all add up to \$2,867.42, which is the amount of the applicant's invoice, plus \$143.37 GST for the claimed total of \$3,010.79. The applicant billed for its workers' time at \$65 and \$75 an hour, save for the \$450 that reflected one worker's 3 hours at \$55 an hour and another's 3 hours at \$95 an hour.
14. On September 22, 2017, Mr. Goh emailed the applicant to dispute the invoice. Mr. Goh refused to pay for travel time and administrative tasks.
15. The \$450 charge relates to administrative time including consulting with other professionals and trades working on the project. Mr. Goh says he does not have to

pay this because he did not give instruction for the applicant's worker to speak to the plumber, architect, and/or drywaller and there were no contract with the applicant to do so. I disagree with Mr. Goh. I find the parties' agreement included the implicit term that the applicant would consult and coordinate with other professionals as necessary. The respondents' own architect told Mr. Goh that a time and materials agreement meant he needed to pay for all of this time billed, and that he could not choose what he wanted to pay. In the circumstances before me, I agree.

16. The \$450 billed is not unreasonable, given the code compliance issues and the drywall problems that delayed the applicant's completion of the project. Further, Mr. Goh's April 18, 2017 email indicated he wanted to contact the applicant and get a quote, following which the architect would need to be assured the drywall was done properly. In one late September 2017 email, Mr. Goh expressly asked the applicant to communicate with the architect, although I acknowledge this particular email was after the job was completed.
17. I do not accept Mr. Goh's submission that he did not approve the relevant daily work records for the applicant's time claimed in this dispute. The respondent's copies of the daily work records are cut off somewhat on the bottom, but apart from the \$450 one they nonetheless appear to bear his signature and are the same in content as those submitted by the applicant. Given the nature of the in-office administrative time billed on the \$450 daily work record, I would not expect that form to have been approved by Mr. Goh at the job site. In other words, the fact that Mr. Goh did not approve and sign a time sheet for the \$450 is not determinative.
18. I also do not accept Mr. Goh's submission that he is not responsible for the applicant's travel time. On balance, I find that travel time and administrative tasks related to the job are reasonably chargeable under the parties' agreement, which is also what the respondents' architect told him in an email, as noted above. I find

the \$450 was reasonably charged under the parties' time and materials agreement.

19. However, I do accept Mr. Goh's submission that he should not have to pay for 2 hours of time, or \$130, that the applicant's workers spent waiting for Mr. Goh to open up the site on September 11, 2017. This is because the applicant did not inform Mr. Goh in advance that the workers were coming, and here I note the applicant's September 12, 2017 apology for the associated confusion. I therefore find that \$130 should be deducted from the applicant's invoice.
20. Otherwise, I do not accept Mr. Goh's submission that the time records are exaggerated, and in particular I do not accept that his photos support his position he does not owe for the time claimed. Apart from the \$130 reduction referenced above, I find the respondents must pay the applicant's invoice in full. I find the applicant is entitled to payment of \$2,874.29 in satisfaction of invoice 170-918-05.
21. What about interest? The applicant's invoice states it is due within 30 days and that interest of 2% per month or 24% per annum applies to overdue invoices. The applicant's claim for \$60.21 is a calculation based on a 24% contractual interest rate, to the date the applicant applied for dispute resolution. I find the applicant is entitled to pre-judgment interest at the 24% contractual interest rate as claimed, from October 22, 2017 which is 30 days after the date Mr. Goh received the applicant's invoice, until the date of this decision.
22. I dismiss the applicant's claim for time spent on this dispute. As set out in numerous prior tribunal decisions, which are not binding on me but which I find persuasive, such an order is not appropriate given the self-representation provision set out in section 20 of the Act.
23. In accordance with the Act and the tribunal's rules, I find that the applicant was substantially successful and is entitled to reimbursement of \$175 in tribunal fees and \$45.40 in dispute-related expenses for attempts to serve the respondents with the Dispute Notice.

ORDERS

24. I order the respondents to immediately pay the applicant a total of \$3,550.17, broken down as follows:
- a. \$2,874.29 as payment of the applicant's final invoice,
 - b. \$455.48 in pre-judgment contractual interest at 24% per annum,
 - c. \$175 in tribunal fees, and
 - d. \$45.40 in dispute-related expenses.
25. The applicant is also entitled to post-judgment interest, as applicable. I dismiss the applicant's remaining claims.
26. 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.
27. 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.

Shelley Lopez, Vice Chair