



Civil Resolution Tribunal

Date Issued: June 20, 2018

File: SC-2017-002828

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vancouver Rebar & Damp Proofing Ltd. v. Yamada*, 2018 BCCRT 271

B E T W E E N :

Vancouver Rebar & Damp Proofing Ltd.

APPLICANT

A N D :

Curtis Yamada

RESPONDENT

A N D :

Taljinder Hayre doing business as Hayre Rebar & Landscaping and
Vancouver Rebar & Damp Proofing Ltd.

RESPONDENTS BY COUNTERCLAIM AND THIRD PARTY NOTICE

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about payment for residential construction materials and labour.
2. The applicant (and respondent by counterclaim) Vancouver Rebar & Damp Proofing Ltd (Vancouver Rebar) says it delivered rebar to the respondent Curtis Yamada's building site on September 26, 2016, and installed the rebar in mid-October 2016. Vancouver Rebar says its bill for materials and labour was never paid, and seeks an order that the respondent pay \$4,095. Vancouver Rebar also seeks \$900 from Mr. Yamada as compensation for time, travel, and stress.
3. Curtis Yamada filed a counterclaim against Vancouver Rebar. He also added a third party to the dispute, Taljinder Hayre doing business as Hayre Rebar & Landscaping (Hayre Rebar).
4. Mr. Yamada says he never entered into a contract with Vancouver Rebar, so he does not owe Vancouver Rebar money for the rebar. Mr. Yamada says he contracted with Hayre Rebar. Mr. Yamada says Hayre Rebar then subcontracted with Vancouver Rebar for the rebar and installation, and Hayre Rebar is obligated to pay Vancouver Rebar for it.
5. In his third party claim, Mr. Yamada asks that Hayre Rebar be ordered to pay Vancouver Rebar for the rebar. In his counterclaim, Mr. Yamada asks that Vancouver Rebar's claim against him be dismissed.
6. Vancouver Rebar and Mr. Yamada are self-represented.
7. Hayre Rebar did not respond to the Dispute Notice and did not participate in the dispute, despite being properly served with the Dispute Notice that started this proceeding. Therefore, Hayre Rebar is in default.

JURISDICTION AND PROCEDURE

8. 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.

9. 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. Neither party requested an oral hearing.
10. 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.
11. 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.

PRELIMINARY MATTER – THIRD PARTY CLAIM

12. As noted above, Mr. Yamada added Hayre Rebar as a third party to this dispute. His claim is that Hayre Rebar owes Vancouver Rebar for Vancouver Rebar's claimed invoice, based on a contract between Vancouver Rebar and Hayre Rebar. Mr. Yamada seeks an order that Hayre Rebar pay Vancouver Rebar.
13. Because Mr. Yamada is not a party to this alleged contract, I find that he is not entitled to claim a remedy for any breach of that contract. For that reason, I dismiss Mr. Yamada's third party claim against Hayre Rebar.

ISSUES

14. The issues in this dispute are:
 - a. Should Mr. Yamada be ordered to pay Vancouver Rebar \$4,095 for rebar materials and installation?
 - b. Should Mr. Yamada be ordered to pay Vancouver Rebar \$900 as compensation for time, travel, and stress?

EVIDENCE AND ANALYSIS

15. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. For the counterclaim, the respondent 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.

Payment for Rebar and Installation

16. The participating parties agree that rebar was delivered to and installed at a property owned by Mr. Yamada in September and October 2016.
17. The principal of Vancouver Rebar, Jatinder Chahal, says there was no written contract with either Mr. Yamada or Hayre Rebar, and that Vancouver Rebar had no sub-contract with Hayre Rebar.
18. Mr. Yamada says Hayre Rebar contacted and contracted with Vancouver Rebar for the rebar and installation, so Hayre Rebar must pay Vancouver Rebar. Mr. Yamada says he never had any communication with Vancouver Rebar. He also says he paid Hayre Rebar in full for the rebar work.
19. As there is no written contract in this case, in order to succeed in its claim against Mr. Yamada Vancouver Rebar must prove on the balance of probabilities that it had a verbal contract with Mr. Yamada for rebar supply and installation. I find that the facts and evidence in this dispute do not support that conclusion.

20. A prior tribunal decision, *681288 BC LTD v. Hankin*, 2017 BCCRT 140, sets out a useful summary of the basic elements of a contract, at para. 19:

For a contract to exist, there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. There must also be valuable consideration, which refers to payment of money or something else of value (for a discussion of the basic elements of a contract, see *Babich v. Babich*, 2015 BCPC 0175, and *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd.*, 2015 BCCA 332). One party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter.

21. In applying these principles to this case, I find that the evidence before me does not establish contractual intention or a 'meeting of the minds' between Vancouver Rebar and Mr. Yamada.
22. Vancouver Rebar has not provided evidence that Mr. Yamada or someone acting as his authorized agent ordered the rebar, or agreed to its price. Hayre Rebar may have sought to buy rebar from Vancouver Rebar in order to fulfill its contract with Mr. Yamada, but that does not make Hayre Rebar Mr. Yamada's agent.
23. Vancouver Rebar's submissions about who contacted them to provide the rebar at Mr. Yamada's property are contradictory. The Dispute Response that Vancouver Rebar provided following Mr. Yamada's counterclaim says, "The property owner is Curtis [Yamada] and we have only dealt with him." However, a subsequent submission says Sandeep Mann told Vancouver Rebar to make the invoice out to "Curtis" (Mr. Yamada), and they never knew who Curtis was before Mr. Mann told them. Mr. Mann was the site manager for the building site on Mr. Yamada's property.
24. I place significant weight on this contradiction, as it indicates there was no 'meeting of the minds' between Vancouver Rebar and Mr. Yamada.

25. In a signed statement dated January 27, 2018, Mr. Mann wrote that he assisted Mr. Yamada in managing and hiring trades. He said that after discussion with Mr. Yamada, they decided to hire Hayre Rebar to do the rebar work at the site, and that Mr. Mann called Taljinder Hayre and asked him to do it for the agreed-upon price of \$4,216 plus tax.
26. Mr. Mann wrote that Jatinder Chahal of Vancouver Rebar showed up at the site to do the work instead of Hayre Rebar, but based on his experience he did not find that unusual because it is common practice for the person you hire to subcontract the work to others.
27. Mr. Mann wrote that Vancouver Rebar completed the work, Hayre Rebar sent him an invoice, and he gave it to Mr. Yamada for payment. Mr. Mann wrote that when Mr. Chahal of Vancouver Rebar later contacted him seeking payment, he told him he needed to follow up with Hayre Rebar since Vancouver Rebar's contract was with Hayre Rebar.
28. Mr. Yamada provided a copy of an October 26, 2016 invoice from Hayre Rebar showing a charge of \$4,216 plus GST for rebar. Mr. Yamada also provided a copy of a cancelled cheque he wrote to Hayre Rebar on November 2, 2016 for the invoiced amount.
29. Mr. Mann's statement is uncontradicted by other evidence before me in this dispute. It is also corroborated by Hayre Rebar's October 26, 2016 invoice and Mr. Yamada's cancelled cheque.
30. Based on all of the evidence, I find that Vancouver Rebar has not met the burden of proving that they had a contract with Mr. Yamada to pay any amount for rebar and installation. In particular, Vancouver Rebar has not proven the key elements of that contract, such as price, and they have not proven that Mr. Yamada or his site manager actually ordered the rebar materials and labour.

31. For clarity, I make no findings in this decision about any claim Vancouver Rebar may have against Hayre Rebar.

Time, Travel, and Stress

32. Vancouver Rebar seeks \$900 from Mr. Yamada for time, travel, and stress related to this dispute. Even if I had found Mr. Yamada liable to Vancouver Rebar for the rebar invoice, I would decline to order this remedy. While payment delays are stressful, such frustration in the context of a commercial transaction does not amount to mental hardship triggering an award of damages. Also, the tribunal does not generally order compensation for a party's time spent on a dispute. I dismiss this claim.

Counterclaim

33. Mr. Yamada filed a counterclaim against Vancouver Rebar, asking for an order that Vancouver Rebar remove any claim, lien, or dispute against him.
34. There is no evidence or submission before me indicating that a lien was filed. Also, the tribunal does not have jurisdiction over builder's liens. The rest of Mr. Yamada's counterclaim is simply a defense against Vancouver Rebar's claim against him. He does not ask for any remedy that would not already flow from his success in defending that claim. I therefore dismiss Mr. Yamada's counterclaim because it is moot.

ORDERS

35. Vancouver Rebar's claims against Mr. Yamada are dismissed.
36. Mr. Yamada's third party claim against Hayre Rebar is dismissed. His counterclaim against Vancouver Rebar is also dismissed.

37. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. Because the claims both Vancouver Rebar and Mr. Yamada were all dismissed, I do not order reimbursement of any tribunal fees.

Kate Campbell, Tribunal Member