



Civil Resolution Tribunal

Date Issued: July 4, 2018

File: SC-2017-003792

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *JBC Construction Inc. v. Sure-Lok Builders Ltd. et al*, 2018 BCCRT 299

B E T W E E N :

JBC Construction Inc.

APPLICANT

A N D :

Sure-Lok Builders Ltd. and Neil Ziola

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant JBC Construction Inc. says the respondents, Sure-Lok Builders Ltd. (Sure-Lok) and Neil Ziola, failed to fully pay for the applicant's concrete removal services as agreed. Mr. Ziola is the principal of Sure-Lok, and says the applicant overcharged him. 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, and I note that neither party requested 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 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

6. The issues in dispute are: a) to what extent, if any, do the respondents owe the applicants for the claimed outstanding invoice balance, and b) to what extent is the

applicant entitled to damages for its time spent dealing with this dispute and filing a builder's lien.

EVIDENCE AND ANALYSIS

7. In a civil claim such as these, 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.
8. On March 1, 2016, Mr. Ziola responded to the applicant's Craigslist ad and said he was looking for an approximate cost to breakup and remove the concrete stoop and sidewalk in the photos he attached to his email.
9. There is no written quote in evidence before me, nor the applicant's Craigslist ad.
10. It is undisputed that the applicant did the respondents' concrete job in one day. There is no issue before me about the quality of the work done. Rather, the respondents challenge the amount of the invoice, based on the applicant's alleged 'maximum' \$1,500 quote and because the respondents say the amount of hours worked did not justify the maximum price.
11. On March 4, 2016 applicant issued its invoice #1667 to Sure-Lok, which Sure-Lok paid in full by check #0394 that same day. Invoice #1667 set out \$1,775 for "concrete stoop and sidewalk removal" and \$88.75 in GST, totaling \$1,863.75.
12. On March 5, 2016, the applicant emailed Mr. Ziola a copy of its invoice #1667 at his request, noting the applicant had already received full payment. On March 6, 2016, Mr. Ziola replied:

In retrospect I over paid for this work by a substantial amount. I had forgotten you said the work would not exceed \$1,500. So you worked less than 8 hours but if I pay you and your helper for 8 hours at \$75 per hour (\$50 and \$25) that is \$600 plus the hammer rental say \$150 that comes to \$750 plus GST, \$37.50 for a total of \$787.50. As you know I paid \$1,863.75 or \$1,076.25 overpayment.

Would you consider a refund as it is very obvious I paid too much? Please reply.

13. On March 7, 2016, Mr. Ziola stopped payment on his cheque #0394. In his email that date, among other things, he wrote that because the applicant had given him “an upset price” of \$1,500 he assumed it would be working by the hour. Mr. Ziola acknowledged in that email they had not discussed what the rate would be. I infer that by ‘upset price’, Mr. Ziola means a maximum price.
14. In its April 11, 2016 email to Mr. Ziola, the applicant’s principal said “I gave you a quote of \$1,500.00 for this concrete work and you accepted the price. ... The best I can do is revised my invoice to original quote price”, \$1,500 plus \$75 GST, for a total of \$1,575.00. There was otherwise no mention in this email of the additional \$275 of work that was billed in the invoice. The applicant submits that the \$275 represents the rental cost for a hydraulic jack hammer that was required due to the thickness of the concrete. The applicant submits in reply that Mr. Ziola had agreed with this extra charge.
15. The respondent submitted a handwritten page from his notebook that describes the applicant’s job with “\$1,500” beside it. The respondent also submitted in evidence written statements he made during the facilitation process, in which he said he expected the likely cost would be between \$650 and \$750 and would not exceed \$1,500 because the applicant “did not wish to quote a firm price”. The respondent also said he agreed the job was not based on an hourly rate, but that if the applicant had said the cost would be \$125 per hour it would not have been engaged to do the job.
16. Given the parties’ submissions and their email exchanges in evidence, as set out above, I find the applicant provided a \$1,500 quote for the project. It is undisputed the project was not based on an hourly rate. I agree with the applicant that GST would apply to the principal amount invoiced, for a total of \$1,575. However, I do not agree that the applicant has proven its entitlement to the ‘extra’ \$275 charge for the jack hammer. I find the applicant is entitled to \$1,575, together with pre-

judgment interest under the *Court Order Interest Act* (COIA) on that amount, from March 4, 2016.

17. The applicant claims \$521.70 in expenses relating to the time spent filing a builder's lien claim. The tribunal does not have jurisdiction over builder's liens, the BC Supreme Court does. While this was construed as an expense claim, I find the applicant has not proven it. First, the applicant submitted a "claim of lien" against a third party, dated April 15, 2014, which is unhelpful and irrelevant as it is unrelated to the respondents. The applicant has not provided sufficient evidence of its claim otherwise, and I dismiss it. Further, the tribunal generally does not award parties their time spent on dealing with the dispute, and I see no reason to deviate from that practice here. This practice is based on the tribunal's rules that generally state legal fees are not usually recoverable, and thus the same rule would apply to the individual party's time.
18. The applicant was substantially successful. On that basis, and for the reasons set out above, I dismiss the respondent's claim for \$495 for "loss of income for time spent on case".
19. Also, in accordance with the Act and the tribunal's rules, I find that the applicant is entitled to reimbursement of \$125 tribunal fees.

ORDERS

20. Within 14 days of this decision, I order the respondents to pay the applicant a total of \$1,729.73, broken down as follows:
 - a. \$1,575 in payment of the applicant's invoice #1667,
 - b. \$29.73 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
21. I dismiss the balance of the applicant's claims.

22. The applicant is also entitled to post-judgment interest under the COIA.
23. 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.
24. 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