Civil Resolution Tribunal

Date Issued: July 31, 2018

File: SC-2018-000064

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dead Level Construction Ltd. v. The Owners Strata Plan NWS181 et al*, 2018 BCCRT 405

B E T W E E N :

Dead Level Construction Ltd.

APPLICANT

A N D :

The Owners Strata Plan NWS181 and Leonis Management & Consultants Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about payment for ice and snow removal services. The applicant, Dead Level Construction Ltd., contracted with the respondent, The Owners Strata Plan NWS181 (strata), to provide those services. The applicant says it provided the contracted services and the respondents have refused to pay anything towards the applicant's $1,230.08 invoice.

2. The strata submits the applicant did not comply with the contract's terms and that the applicant applied too much de-icer on areas not included in the contract and unnecessarily applied it as the weather did not warrant it.

3. The applicant is represented Walter Anderson, who appears to be the applicant's employee. The strata is represented by Peggy Dowling, a strata council member. The applicant also named the respondent Leonis Management & Consultants Ltd. (Leonis), which was the strata's property manager. Leonis did not file a Dispute Response, although the applicant says it was served by registered mail, and has not participated in this dispute. I have addressed Leonis' liability below.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

6. 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.

7. Under the Act and 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.

ISSUE

8. The issue in this dispute is to what extent, if any, each of the respondents owe the applicant the claimed invoice amount for ice and snow removal services.

EVIDENCE AND ANALYSIS

9. 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.

10. I will address Leonis' liability first. The applicant says Leonis contacted it about de-icing and snow removal. As noted above, Leonis did not file a Dispute Response. Otherwise, the applicant made no submissions about Leonis' responsibility for the applicant's claims. I find there is no evidence before me that would suggest Leonis is responsible for the applicant's invoice. The applicant acknowledges that it was the strata which signed the contract and received the benefit of the applicant's services. I dismiss the applicant's claims as against Leonis.

11. I turn to the relevant chronology. On November 2, 2017, the applicant and the strata signed an agreement for the applicant's services, for the winter months between November 2017 and March 2018. In this dispute, the key term relates to de-icing:

> De-icing agent will be applied to prevent ice and snow buildup, and may continue at periodic intervals throughout the storm depending on the storm's severity.
>
> The [applicant] will exercise their best judgment in providing the services needed based upon existing conditions and weather forecasts provided by Environment Canada.

12. The applicant made 3 de-icing visits at the strata, on November 3, 4, and 6, 2017. The applicant's invoice #14967 was for $1,230.08, which was inadvertently dated November 2, 2017 but should have been dated November 6, 2017, after the applicant's third de-icing service visit. In its December 1, 2017 letter to the applicant, the strata said it was willing to pay 50% of the applicant's invoice, because of an alleged mistake that the applicant cleared the public roadway. As discussed below, the applicant says it never de-iced the roadway and never billed for doing so, although it acknowledges there was some confusion about the issue in emails. To date, the strata has not paid anything.

13. The strata submits that at the time of the first visit in the early morning hours of November 3, 2017, the contract had not yet been signed. I do not agree, because the strata's council president C dated her signature on the contract as November 2, 2017 and C also emailed the applicant on November 2, 2017 that she had signed the contract on the strata's behalf. In any event, the strata says the applicant picked up the signed contract later in the morning on November 3, 2017. There is no suggestion the strata objected to the contract's terms before signing it. The strata's objection first arose after it received the applicant's invoice on November 6, 2017. I find the contract's terms reasonably applied to all 3 de-icing visits, even if the contract was not signed until after the 1st visit.

14. In the contract, the strata chose to have "public sidewalks outside of property" and driveways serviced. In a December 1, 2017 letter to the applicant, the strata said it instructed the applicant to shovel and de-ice: the front entry, stairs and walk-way to the curb, the south-end stairs, the parkade entrance, and "garbage landing area"

that the applicant refers to as loading zone in its invoice. The broader terms were agreed to by the parties, and I find nothing turns on the fact that there was no additional "change order" signed, as alleged by the strata.

15. The contract states invoices will be sent out after each visit and must be paid in full within 30 days of service. Apart from the 'roadway' issue referenced above and discussed further below, I find there is no evidence to support a conclusion the applicant de-iced outside of its contractual terms.

16. In anticipation of the applicant providing the preventative de-icing service, on November 3, 2017 the strata e-mailed the applicant and acknowledged that de-icing melt had been "spread around". In the afternoon on November 5, 2017, the applicant emailed the strata that it had salted due to black ice on "Friday" (November 3) and that it would be out before 7 am the next day to apply ice melt to prevent safety issues. In response, the strata replied "Ok, thanks for your update … I appreciate your attention to detail". At that time, the strata expressed no concern about the applicant's work or its de-icing schedule.

17. However, on November 7, 2017, the strata refused to pay the applicant's invoice on the basis that the preventative de-icing was unnecessary because freezing temperatures were not forecasted and there had been no fresh snow. The strata wrote, "we were really only interested in snow removal and de-icing on the day it snows". While that may be so, that was not what the parties agreed to. The strata submits that de-icing should be based on ground temperature, not air temperature and that a certain amount of square footage can be serviced with specified amounts of salt. The applicant says ground temperatures are not forecasted, so it could not do preventative maintenance based on ground temperature. I find the contract left the decision up to the applicant, about how much and when to de-ice. The strata is not an expert in de-icing and snow removal, and its submissions and its evidence from websites does not support the strata's argument that the particular methods used by the applicant were inappropriate.

18. I turn then to the roadway de-icing issue. The applicant says that its email reply indicating that it de-iced the road was based on the honest but mistaken belief that the strata's prior assertion that the applicant's staff had de-iced the City's road was true. The applicant denies ever de-icing the road in front of the strata or in the alley behind and that it never invoiced for such work. On balance, bearing in mind the scope-of-work descriptions set out on the invoice that do not include a road, I accept the applicant's evidence on this point.

19. The strata also submits that the applicant used an excessive amount of de-icer along with excessive manpower to service the combined service area. Again, the strata is not an expert in de-icing and its submissions and supporting evidence do not address the particular product used by the applicant, which the applicant described in its contract. The amount of square footage of ground, which the strata says was about 1900 square feet is not determinative, bearing in mind also that the applicant de-iced on 3 separate days. I have set out above my finding that the applicant never de-iced the road and never billed for doing so. The fact that C was clearly happy with the applicant's attention to detail is strong evidence that the applicant did not fail to fulfill its agreement with the strata.

20. In summary, I find it is not open to the strata to essentially second-guess in hindsight the applicant's decisions about preventative de-icing, given the contract provided that the applicant would use its best judgment. Moreover, C was happy with the applicant's work and schedule. I do not agree with the strata that the applicant's judgment was so unreasonable in terms of the amount of de-icing melt used and the amount of time it took to apply it, such that the applicant breached the parties' contract.

21. The contract states de-icing sidewalks/stairs are at $65 per hour for labour and $28.50 for a 25 kilogram bag of "ice melt (lawn and garden safe)", plus GST. Shoveling of stairs/sidewalks/courtyards was at $45 per hour. These rates are reflected in the applicant's invoice.

22. I find the applicant is entitled to an order for payment of its invoice, for $1,230.08. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on that amount, from December 6, 2017, the date that invoice was due. I note the applicant's contract provided for 2% contractual interest (which I assume referred to a monthly rate), but the applicant claimed only COIA interest and thus that is what I have ordered.

23. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute I find it is entitled to reimbursement of $125 in tribunal fees paid. The applicant claimed $11.00 in dispute-related expenses, but I order only $10.71 as that is the amount of the applicant's receipt for registered mail.

ORDERS

24. I order the respondent strata to immediately pay the applicant a total of $1,374.98, broken down as follows:

    a. $1,230.08 as payment of the applicant's invoice #14967,

    b. $9.19 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees and $10.71 in dispute-related expenses.

25. The applicant is also entitled to post-judgment interest under the COIA, as applicable. The applicant's claims against Leonis are dismissed.

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