



Civil Resolution Tribunal

Date Issued: September 7, 2018

File: SC-2017-005606

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boykiw v. GVRD Roofing Inc.*, 2018 BCCRT 502

B E T W E E N :

Robert Boykiw (Doing Business As Regius Investment Corp)

APPLICANT

A N D :

GVRD Roofing Inc.

RESPONDENT

A N D :

Robert Boykiw (Doing Business As Regius Investment Corp)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Robert Boykiw (Doing Business As Regius Investment Corp), claims he is entitled to compensation from the respondent roofing company, GVRD Roofing Inc. The applicant hired the respondent to do a roofing project on a duplex building. Mr. Boykiw claims a total of \$4,344.06, comprised of: \$1,296.56 for “excess engineer reviews”, \$772.50 for damaged gutters and garage, and \$2,275 for “subcontractor costs”.
2. In its counterclaim, GVRD claims Mr. Boykiw did not pay his final bill. GVRD’s July 25, 2017 invoice balance totals \$4,030.90, although in this dispute GVRD claims \$5,000 and an order that Mr. Boykiw “stop causing harm to us”.
3. The applicant is represented by Mr. Boykiw. The respondent is represented by Chris McEachnie, who I infer is GVRD’s principal. Mr. Boykiw’s claim against GVRD’s law firm was withdrawn when Mr. Boykiw applied for an Amended Dispute Notice, and therefore I have not addressed that claim in this decision.

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 I can fairly resolve this dispute based on the documentary evidence and submissions before me.

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 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

8. The issues in this dispute are a) whether GVRD owes Mr. Boykiw for various charges related to the parties' roofing project, and b) to what extent Mr. Boykiw owes GVRD for its outstanding invoice and damages.

EVIDENCE AND ANALYSIS

9. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
10. The parties' roofing project began in July 2017. The July 5, 2017 contract price totalled \$16,800, inclusive of \$800 GST.
11. The parties' contract is for a new cedar shingle roof, including new plywood, underlay, flashings, new plumbing stacks, storm collars, plus clean-up. The contract says GVRD gives a "15 year Workmanship Warranty". The contract further stated the schedule was: start as early as July 11 and "**finish no later than**" **July 19, 2017** (my bold emphasis added). Finally, the contract provided "mid install review by owner's representative", and that any disputes would be resolved by RCABC or their designated mediator. However, it is undisputed that

GVRD is not a member of RCABC and so their mediation services were not available.

12. Mr. Boykiw paid \$6,720 on each of July 6 and 29, 2017, for a total of \$13,440, leaving a balance of \$2,560 (plus tax).
13. On July 31, 2017, Mr. Boykiw's engineer SE Spratt Emanuel Engineering Ltd. (Spratt) issued Mr. Boykiw an invoice #24974 for \$1,161.31. The detail for this invoice was "roofing project review", and included report review (\$100), report writing (\$187.50), site review (\$750), and administration (\$45.50), plus \$23.01 in disbursements. There is no detail provided as to the dates those steps were taken, other than they were for services provided to July 2017.
14. Spratt's report that is covered in invoice #24974 is dated July 28, 2017, and is titled "Reroofing Initial Review". This report states the engineer attended to do the review on July 18, 2017, following "several previous attempts to view the roof that were delayed due to project delays on site". The engineer noted the "field work appeared good". However, valleys were not constructed as open valleys as was specified, and instead "woven valleys" were used. Also, the sub-contracted roofers on site told the engineer they did not know where certain remaining vents were to be installed. At the time of the engineer's review, only the field application of shingles was largely completed, and "very few of the details" had been completed. Thus, Spratt stated it would need to conduct a second review. There is nothing in this report that appears to relate to anything other than the parties' roofing project.
15. Spratt issued Mr. Boykiw a second invoice #25066 on August 31, 2017, for \$383.25. This invoice again was for "roofing project review", and included report review, writing, and administration. This invoice covered services to August 2017.
16. In Spratt's August 1, 2017 report, related to a July 26, 2017 site visit, the engineer stated the roofing project was substantially complete. The engineer noted some left-over materials had been left on-site, although the roofers were off-site. The engineer noted an issue with a small roof extension, certain flashings, and

unnecessary and unsightly mastic in a particular location. The engineer also raised a concern about lack of required venting, although he also noted venting was not part of the parties' contract. As referenced in the engineer's earlier report, he noted woven valleys had been used, instead of the metal valleys as set out in the parties' contract. Finally, the engineer noted a downpipe needed to be re-installed.

17. Separately, GVRD had sub-contracted with a company, FH, to do the roofing project. FH invoiced GVRD \$5,775 on July 21, 2017 for the work. On September 11, 2017, FH advised Mr. Boykiw that GVRD had paid \$3,500, leaving a \$2,275 balance.
18. On August 20, 2017, Mr. Boykiw paid a gutter company \$200 for "re-sloping" and \$250 for gutter repairs, for a total \$472.50 invoice, inclusive of tax. I accept the gutters had been newly installed in April 2017, which Mr. Boykiw has proved with his cheque copies.

Mr. Boykiw's dispute

Excess engineering costs

19. Mr. Boykiw says engineering review of the roofing project should have required only 1 visit, which would have cost \$250. However, due to GVRD's delays and having no crew on site when appointments were scheduled, Mr. Boykiw says the engineering costs rose to \$1,544.56. Mr. Boykiw claims \$1,296.56, being the difference between \$1,544.56 and \$250. Mr. Boykiw also says one reason the cost rose was because the engineers had to issue a report, due to GVRD's sub-contractors not acting in accordance with the parties' contract.
20. GVRD says the engineer told them the engineering bill was for "all" the engineering on the entire renovation project. I find this allegation is not supported, given the engineering reports and invoices in evidence, as set out above. I find the engineering invoices are clearly only related to the parties' roofing project.

21. The question therefore is whether GVRD breached the parties' contract and/or was negligent in a way that unreasonably led to increased engineering costs. Mr. Boykiw bears the burden of proof for this claim.
22. GVRD does not deny that it delayed the project overall, and in particular with respect to the engineer's review. I accept that GVRD is responsible for these delays, which I find amounted to a breach of the parties' contract that GVRD would complete the roofing project by no later than July 19, 2017. The question is then: what is the associated deduction?
23. While Mr. Boykiw says \$250 would be the cost of a single visit, I do not agree that this is the likely total charge, even if only 1 engineering visit would have been necessary. The engineer's report and associated invoice from July 2017 simply do not support this conclusion. The engineer's invoice #24974 does not provide a break-down for its charges for the "several" extra visits, at least some of which I accept were necessary due to delay. However, I find the bulk of the work likely was done by Spratt on the visit when the roofers were present, and that work would have been done in any event, at Mr. Boykiw's cost. On a judgment basis, I find GVRD is responsible for \$300 of the engineering invoice #24974, due to GVRD's unreasonable delay.
24. As for the engineering invoice #25066, for the engineer's July 26, 2017 visit, I accept GVRD is responsible for this \$383.25 invoice. I say this because I find the engineer's second visit was only necessary because GVRD had failed to complete the roofing project on time.
25. Thus, in summary, I find GVRD owes Mr. Boykiw a total of \$683.25 for the engineering invoices, rather than the \$1,296.56 claimed.

Damages claim – gutters and garage

26. Mr. Boykiw says that one of GVRD's employees hit the corner of the garage with their vehicle, causing damage. Mr. Boykiw's employee witnessed it, and took photos, which I have reviewed. Mr. Boykiw estimates this repair will cost \$300. In

addition, Mr. Boykiw claims gutters were damaged by GVRD and had to be repaired and replaced by a different contractor, at a cost of \$472.50. Thus, under this particular claim, Mr. Boykiw claims a total of \$772.50.

27. GVRD denies its workers hit the edge of Mr. Boykiw's garage, and says there was a garbage bin in that area. GVRD alleges the damage to the side of the garage looks like old damage. Mr. Boykiw denies there was a bin at that location. Again, Mr. Boykiw bears the onus of proof in this claim. He says his worker witnessed the event and took the photos provided. However, I have no statement from the worker before me nor any explanation as to why not. Based on the evidence and submissions before me, I am unable to conclude it is more likely than not that GVRD or its workers caused the alleged damage.
28. On balance, I find Mr. Boykiw has not proved GVRD or its sub-contracted workers damaged the gutters or garage. I dismiss this \$772.50 claim.

Subcontractor costs

29. Mr. Boykiw appears to argue that because GVRD had no GST number when they hired a sub-contractor, FH, that this somehow exposed Mr. Boykiw to liability for FH's bills. Mr. Boykiw also says he required a "proper legal statutory declaration that all were paid". The outstanding sum owed by GVRD to FH is said to be \$2,275, which is the amount Mr. Boykiw claims in this dispute.
30. GVRD says that its obligations to FH are its business, not Mr. Boykiw's. GVRD says it has not yet paid FH because Mr. Boykiw has not paid GVRD. While FH may have an argument about whether GVRD is entitled to withhold payment pending payment by Mr. Boykiw, that is a matter between GVRD and FH. There is no contract between Mr. Boykiw and FH, and no evidence that FH has assigned its claim to Mr. Boykiw. Mr. Boykiw may have had an obligation to holdback a percentage, under the *Builders Lien Act*. But that would not amount to an order for payment from GVRD to Mr. Boykiw. I have no jurisdiction under the Act to order the cancellation of a lien under the *Builders Lien Act*. However, there is no

evidence before me that FH has filed a claim of lien. In any event, I am able to find that the holdback period under the *Builders Lien Act* has ended, as the evidence is that GVRD provided a form of certificate of completion.

31. Given my conclusions above, I find Mr. Boykiw is not entitled to the \$2,275 claimed with respect to money owing by GVRD to FH. I dismiss Mr. Boykiw's claim in this respect.
32. In summary, I have found above GVRD owes Mr. Boykiw a total of \$683.25 for the engineering invoices. I find Mr. Boykiw is entitled to \$7.55 in pre-judgment interest on that amount under the *Court Order Interest Act* (COIA), from August 31, 2017. This totals \$690.80. Mr. Boykiw's remaining claims are dismissed. I have addressed the issue of tribunal fees below.

GVRD's counterclaim

33. In its counterclaim Dispute Notice and in its submissions, GVRD claims a total of \$5,000, the tribunal's monetary limit, and describes its claim as "pay us in full and stop causing harm to us". There is no specific breakdown of the outstanding invoice balance in GVRD's submissions. It appears the alleged "harm" relates to over \$1,400 in legal bills GVRD incurred in its attempts to satisfy Mr. Boykiw's requests for a statutory declaration and other completion documents,
34. GVRD's July 25, 2017 invoice #613 on its face indicates a \$4,030.90 balance owing. However, \$290 of this is for "repair work" (\$250) and "stat dec" (\$40), and for reasons discussed below I find GVRD cannot recover the \$290. Instead, I find GVRD at most would be entitled to \$2,560 plus \$128 GST, for a total \$2,688.
35. However, what about the \$250 "repair work"? The parties made somewhat contradictory allegations about separate but related roofing work outside the parties' contract (roof "valleys" and additional tear-off). I have limited my focus on the written contract before me in evidence, as I find that is the best evidence of the parties' agreement. In particular, Mr. Boykiw acknowledges he agreed to pay an additional \$250 for the "wing repair" but says it was not done properly and is still

incomplete. I dismiss this \$250 claim because I find GVRD has not proved it has reasonably completed the job, which is consistent with the engineer's inspection report. As for the \$40 "stat dec", as also noted below, I find this is a legal expense that GVRD must bear.

36. Next, GVRD's invoice charged \$366.40 in "late fees", on the basis of 10% per annum on all invoices over 45 days. First, I find that as of July 25, 2017, GVRD has not completed the project as at minimum the agreed engineering review was not yet done, nor had GVRD completed the clean-up, which Mr. Boykiw ultimately had done. I do not allow the \$366.40, because of these reasons and second, because I find the parties did not agree to a 10% late interest fee.
37. Mr. Boykiw acknowledges in his submission that GVRD has provided the contractual warranty, although he says this was done late. Mr. Boykiw does not dispute that he did not pay the final invoice balance. Taking Mr. Boykiw's comments together with the engineering report findings, I find that GVRD left a number of items unsatisfactorily completed, as summarized above from the engineering reports.
38. As noted above, GVRD bears the burden of proof in its counterclaim. GVRD's invoice does not provide a line item breakdown. GVRD's outstanding balance at issue in this dispute represents 20% of its contract with Mr. Boykiw. Under tribunal rule 113, I accept Spratt's expert evidence as to what it found deficient, which for the most part GVRD did not contest other than to generally say it did the job to acceptable standards. I acknowledge that it appears undisputed that GVRD provided Mr. Boykiw with a statutory declaration, which is not in evidence before me but which I infer indicated the job was substantially complete. Nonetheless, based on the engineering reports, which I accept as accurate, I find GVRD has not proved it did not leave 20% of the job unsatisfactorily completed.
39. I therefore find GVRD has not proved it is entitled to any further payment in respect of the roofing project. This conclusion disposes of GVRD's claim in relation to its outstanding invoice.

40. I also dismiss GVRD's request for an order that Mr. Boykiw "stop doing harm to us", which was not explained other than with reference to the legal fees GVRD incurred in trying to satisfy Mr. Boykiw's requirements for final documentation of completion and warranty. Except in extraordinary cases, as set out in the tribunal's rules, the tribunal does not award a party legal fees, which is consistent with the self-representation provision in section 20 of the Act. Even though the fees were largely incurred before this tribunal proceeding began, this is not an extraordinary case. Further, there is nothing in the parties' contract about recovery of legal fees and here I find GVRD's decision to hire a lawyer was a cost of doing business that GVRD must bear. Even if I had found GVRD was entitled to some further payment of its outstanding invoice, I would dismiss GVRD's claims for recovery of legal fees (including the cost to obtain a "stat dec"). In summary, I dismiss GVRD's counterclaim dispute.
41. I have found GVRD owes Mr. Boykiw \$690.77. In accordance with the Act and the tribunal's rules, as Mr. Boykiw was partially successful in his dispute, I find GVRD must pay half of his \$175 tribunal fees, or \$87.50.

ORDERS

42. Within 30 days of this decision, I order GVRD to pay Mr. Boykiw a total of \$778.30, comprised of:
- a. \$683.25 in damages relating to the engineering invoices,
 - b. \$7.55 in pre-judgment interest under the COIA, and
 - c. \$87.50 in tribunal fees
43. The balance of Mr. Boykiw's claims are dismissed. GVRD's counterclaim dispute is dismissed. Mr. Boykiw is entitled to post-judgment interest under the COIA.
44. 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 decision.

45. 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