



Civil Resolution Tribunal

Date Issued: October 16, 2018

File: SC-2018-000495

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *A.A.G. Services Ltd. v. Forsat*, 2018 BCCRT 622

B E T W E E N :

A.A.G. Services Ltd.

APPLICANT

A N D :

Ida Forsat

RESPONDENT

A N D :

A.A.G. Services Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

John Chesko

INTRODUCTION

1. This dispute is about payment for renovation services.
2. The applicant, and respondent by counterclaim, A.A.G. Services Ltd. (A.A.G.), claims the respondent owes \$3,736.00 for work performed. A.A.G. says the work was substantially completed, but the respondent did not let him finish the job and refused to pay.
3. The respondent, Ida Forsat, says A.A.G.'s work was deficient and they had to hire another contractor to re-do the job. The respondent says they should not have to pay the invoice. The respondents also filed a counterclaim for \$4,063.50 of 'extra' expenses they submit were required to fix the deficiencies in the applicant's work.
4. A.A.G. is represented by an employee or principal. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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 on whole there are no significant issues of credibility or other reasons that might require an oral hearing.
7. 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.

8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to pay money;
 - b. order a party to do or stop doing something; or,
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Is A.A.G. entitled to payment of \$3,736.00 for work performed?
 - b. Is the respondent entitled to \$4,063.50 to finish and fix alleged deficiencies?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, to succeed the applicant has the burden of proof on the balance of probabilities. That means I must find it is more likely than not that the applicant's position is correct.
11. I have reviewed all of the submissions and evidence, but only address the evidence and arguments to the extent necessary to explain my decision.
12. The applicant gave the respondent a written quote for renovation services dated November 26, 2017. The quote includes: 1) Tile installation (\$3,120.00), 2) Drywall installation (\$1,000.00) and 3) Kitchen backsplash installation (\$400.00). The total amount of the quote including 5% sales tax was \$4,746.50.

13. The quote contains some printed terms at the bottom for progress payments and taxes. I note the terms of payment do not appear to add to 100%. I also note the written quotes do not set out any dates for completion.
14. I find the respondent accepted the November 26, 2017 quote for \$4,746.50 and A.A.G. started work at the respondent's property shortly after. I find on the evidence the respondent was the primary contact for the project and worked together with her husband who also oversaw and directed the project.
15. A.A.G. says the respondent made changes and additions to the project while it was under way. For example, A.A.G. submits the respondent changed their mind about tile selection and made them remove tile that had already been done while they considered heated flooring. A.A.G. says it did its best to carry out the requested changes, but the changes made things more difficult, costly and slowed the job.
16. On the evidence, I find there were verbal changes along the way and it was agreed A.A.G. would do extra drywall work (\$300.00) and install a niche (\$300.00) and 'DITRA' underlay (\$360.00).
17. A.A.G. says the respondent appeared generally satisfied and the job was coming along until there was a heated confrontation with the respondent's husband on December 22, 2017. On that date A.A.G. says the respondent's husband dismissed A.A.G. from the job site and told them not to return. A.A.G. says the respondent even called the police when A.A.G. workers tried to collect their equipment. A.A.G. says the police told them not to talk to the respondent or her husband. A.A.G. submits they felt 'humiliated' by the respondent's treatment of them.
18. A.A.G. submitted an invoice dated December 22, 2017 for \$5,736.00. The invoice sets out the following amounts: 1) Tile installation (\$3,120.00), 2) Drywall installation (\$1,300.00), 3) Kitchen backsplash installation (\$400.00), 4) installing a niche (\$300.00), 5) 'DITRA' underlay (\$360.00) and GST (\$256.00).

19. A.A.G. says the \$3,736.00 amount claimed is for work that was substantially completed before they were dismissed by the respondent. A.A.G. says the work was nearing completion and would have been finished in a 'few hours' if the respondent had not dismissed them. The amount claimed is \$2,000.00 less than the \$5,736.00 on the invoice to reflect a \$2000.00 deposit paid by the respondent.
20. The respondent submits A.A.G. did not meet required timelines for completion and the work was deficient. The respondent submits the work was initially promised to be finished in a few days, but that it stretched out much longer because A.A.G. would not assign enough workers to complete the job on schedule.
21. The respondent submits that even when work was falling behind schedule, A.A.G. would often only begin working after 5:00 pm. The respondent says the late starts were unacceptable because of neighbour complaints and municipal bylaws.
22. The respondent says A.A.G. did not take instructions from her seriously because she was a woman and they would only listen to her husband or another male relative.
23. The respondent agreed there was a heated verbal exchange on December 22, 2017 when A.A.G. was asked to redo work and A.A.G. was dismissed from the work site. The respondent says they called the police when A.A.G. would not immediately leave and to ensure that all keys to the property were returned.
24. The respondent says she asked a relative who personally knew A.A.G. to speak with them that same night to discuss potential solutions but A.A.G. did not want to return to the job. The respondent sent a text message to A.A.G. stating that he has the day to complete the job.
25. The respondent does not agree the work was as close to completion. The respondent says the tiling on the kitchen floor, entrance and main floor bathroom were under way but "about 20%" complete. The respondent also says grouting on the kitchen backsplash and master bathroom walls and drywall mudding on second floor bathrooms was incomplete.

26. The respondent also submits the finishing and tiling on 2 upstairs bathtubs was done incorrectly and could leak. The respondent says '2 people in construction' told them 'it would probably not be up' to Building Code standards.
27. The respondent claims \$4,063.50 from A.A.G. in its counterclaim. The respondent submits a total cost of \$8,810.00 is required to finish the work that A.A.G. initially quoted at \$4,746.50. The amount claimed by the respondent is the 'extra' money over what the respondent submits it was 'supposed' to cost based on A.A.G.'s original quote ($\$8,810.00 - \$4,746.50 = \$4,063.50$). The respondent sets out the following to explain how she arrived at the \$8,810.00 cost:
- a. \$3,800 for labour and \$850 for materials (\$4,650.00 total) to hire another contractor to redo the tiling around the bathtubs and finish other tiling that was not completed by A.A.G..
 - b. \$315 for another contractor to install baseboards.
 - c. \$95 to repurchase a niche that had to be removed when tiling was redone
 - d. \$3,750 for labour and material to remove and redo tiling in a second bathroom.
28. The respondent submitted some correspondence and pictures of the unfinished project. I note the respondent did not submit any proposals, reports or letters from other contractors or other persons about the deficiencies alleged. The respondent has provided no quotes or invoices for any of the charges claimed.
29. A.A.G. responds that the work claimed in its invoice was substantially complete when they were dismissed and the respondent is responsible to pay the invoice. A.A.G. submits the respondent did not have much of an issue about working late and says on only one occasion were they asked to stop working after 7:50 pm. A.A.G. says it was unreasonable to expect he would return after he was humiliated and dismissed and the police called. A.A.G. says the deficiency alleged about the bathtub finishing and tiling is unfounded. A.A.G. says he had discussed the issue

with the respondent in detail and followed instructions. A.A.G. submits the invoiced work was properly done and the respondent provided no solid evidence otherwise.

30. I find A.A.G. has proven on a balance of probabilities that it provided the agreed services to the respondents in November and December 2017 and should be paid for the work that was completed. For reasons set out below, I find the respondent has not proven their counterclaim.
31. As set out above, I find the parties had a written and verbal agreement that A.A.G. would provide the services set out in the November quote. I also find there were verbal change orders along the way and it was agreed A.A.G. would do extra work including extra drywall (\$300), install a niche (\$300) and DITRA underlay (\$360).
32. While I accept the job did not go as smoothly as the parties would have wished, I find the complaints about the scheduling are not a valid legal reason to withhold payment for the work in these circumstances. If timing was an important factor it should have been included in the written correspondence at the beginning. I also note some of the evidence of communications between the parties shows the respondent was agreeable and even preferred later start times on certain dates. The evidence also shows the respondent made changes to the job and I accept this would have added to the time required to complete the job.
33. I find the parties got into a heated disagreement on December 22, 2017 and both parties agreed to part ways. I find on December 22, 2017 the respondent dismissed A.A.G. and terminated the contract and the respondent accepted the contract was terminated.
34. I find A.A.G. reasonably declined to continue working after it was clearly dismissed from the job site and the police were called by the respondent.
35. On all the facts, I find A.A.G. had finished most of the agreed work and is entitled to be paid for what was completed. I have considered all of the evidence including the pictures and communications between the parties which I find to be consistent with my conclusion the work was close to complete. I also note the respondent's

own evidence was that A.A.G. should return and complete the job in one day. How much of the agreed work was complete? I find A.A.G. had not completed the extra drywall change addition (\$300) and I deduct that from the invoice (\$3736.00 - 300.00 = \$3436.00). Based on all of the evidence, I find A.A.G. had completed about 90% of the work when it was dismissed on December 22, 2017 and is entitled to be paid 90% of the remaining \$3436.00 invoiced amount. I find A.A.G. is entitled to be paid \$3092.40.

36. I have considered whether A.A.G. should receive a greater amount than 90% in the circumstances because the respondent terminated the contract before A.A.G. could complete the job. I have considered whether A.A.G. lost out on profit it would have made if it had been allowed to finish: see *B.G. Checo International Limited v British Columbia Hydro & Power Authority*, 1993 Canlii 145 (SCC), *Golden Hill Ventures Ltd. v. Kemess Mines Inc.*, 2002 BCSC 1460 and *Limen Forming West Ltd. v. Stuart Olson Dominion Construction Ltd.*, 2017 BCSC 1485. I find \$3092.40 is the proper measure of damages in all the circumstances as A.A.G. did not have to supply more labour under the contract and it did not establish further loss.
37. What about the respondent's counterclaim?
38. I find the respondent has not provided persuasive evidence to support the counterclaim. While I accept the work was not complete, the respondent has not proven the work by A.A.G. was otherwise deficient. Specifically I do not find the respondent has met the required burden of proving the bathtubs were improperly done or that A.A.G. breached its contract obligations. I find the submission that unidentified 'construction people' told the respondent the tub 'may' not meet Code is not persuasive. I find that in these circumstances the allegation that a tradesperson has not done their job properly requires more persuasive evidence. Without clear evidence, perhaps from an experienced builder or other expert, explaining how the finishing and tiling was improperly done, I am unable to find the applicant has proven its counterclaim against A.A.G. I also do not accept the respondent's unsupported allegations of improper measurements and fraud.

39. I also do not accept the respondent's submissions about the costs claimed to re-do and finish the work. As I have found above, A.A.G. completed a substantial amount of the work before they were dismissed. I simply do not accept the unsupported estimate of costs to complete the work put forward by the respondent. To the extent I have found A.A.G.'s work was not completed, the amount allowed for A.A.G.'s claim has been reduced.
40. In summary, based on the evidence and submissions before me, I find A.A.G. completed most of the agreed work before the contract was ended and the respondent owes A.A.G. \$3,092.40.
41. I find the respondent has not proven its counterclaim and it is dismissed.
42. In accordance with the *Act* and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As A.A.G. was substantially successful, I order the respondent to reimburse A.A.G.'s \$175 tribunal fees.
43. A.A.G. is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from December 22, 2017.

ORDERS

44. Within 30 days of the date of this order, I order that the respondent pay to A.A.G. a total of \$3,299.66 as follows:
- a. \$3,092.40 for A.A.G.'s outstanding invoice;
 - b. \$32.26 as pre-judgment interest under the COIA; and,
 - c. \$175.00 for reimbursement of tribunal fees.
45. I dismiss the respondent's counter-claim.
46. A.A.G. is entitled to post-judgement interest under the COIA, as applicable.

47. 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.
48. 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.

John Chesko, Tribunal Member