



Civil Resolution Tribunal

Date Issued: October 24, 2018

File: SC-2017-006085

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wayco Flooring Ltd v. Sidhu*, 2018 BCCRT 648

B E T W E E N :

Wayco Flooring Ltd

APPLICANT

A N D :

Harry Sidhu

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Susan E. Ross

INTRODUCTION

1. This is a contract dispute over renovation work. The applicant, Wayco Flooring Ltd, claims \$3,864 for unpaid services and materials provided to the respondent, Harry Sidhu.

2. The respondent says there is a balance owing of \$1,750, which he has refused to pay because the applicant's work is incomplete and deficient. He says he is exempt from PST on one of the applicant's invoices. He denies receiving two other invoices from the applicant and says they do not relate to him or his properties. He also seeks reimbursement for the expense of legal advice to respond to the dispute.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 the parties had provided written documentation and photos sufficient to resolve the issues on a scale that is proportionate to the amount involved.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;

- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. According to the invoice and payments, how much does the respondent owe the applicant?
 - b. Did the applicant complete the work it contracted to provide and are there outstanding deficiencies?
 - c. Should the respondent pay PST as charged in the applicant's second invoice?
 - d. Has the applicant proven that its third and fourth invoices relate to work done for the respondent?
 - e. Is the applicant entitled to 2% per month interest on its outstanding invoices?

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions necessary to give context to my decision.

Issue #1 – outstanding invoice balance

9. I agree with the respondent that the invoices and payments do not support the applicant's claim of \$3,864.27. They show that the applicant issued four invoices for renovation services and goods to the respondent between July 2016 and February 2017. These four invoices total \$20,815.57 inclusive of GST and PST, and the respondent has paid \$18,210.56, leaving an unpaid balance of \$2,605.01. I agree with the respondent that the applicant's final statement dated November

30, 2017, indicating a balance owing of \$2,605.07 has an error of six cents which I consider insignificant.

Issue #2 – work completed and deficiencies

10. The applicant's first invoice (#17969 dated July 20, 2016) is for \$10,000 inclusive of taxes for renovation work to the respondent's home. The respondent has withheld payment of \$1,750 on the basis that the applicant's work is incomplete and deficient. There is evidence that he has tried unsuccessfully to get the applicant to remedy those problems.
11. The respondent provided 22 photos. Most relate to the renovations to his home: damage to walls, discoloured siding and damaged lawn from discarded tile grout water being splashed against or on it, lifting of vinyl plank flooring, cracked grout, chipped tile, wood stain wearing off stairs, poor seams and fraying edges in carpet. Two photos also relate to uninstalled vinyl plank in a mechanical room of the respondent's office flowing from work done on the applicant's second invoice (#18110 dated September 1, 2016).
12. The applicant generally denies that its work is incomplete or deficient without responding to specific items in the respondent's photos. It questions why the respondent did not raise deficiencies earlier and says it is prepared to remedy any problems, but not without full payment of its outstanding invoices first.
13. Assessing the problems that the respondent is claiming is challenging when he has provided no quotes or other costing to remedy them. I have examined the photos bearing in mind that the tribunal must take both a practical or proportionate approach to item-by-item determinations such as these. However, neither party can ask the tribunal to make findings based on speculation.
14. I find the photos of damage to the walls show very minor flaws that would be easily remedied and the discolouring on the siding is in just two very small spots that are not readily perceptible at all. The crack in the tile grout is a single minor flaw, again

likely easily remedied. For the two chipped tiles, one is almost imperceptible and the other is small. The two photos of frayed carpet are a couple of strands against baseboards that I find are minor and likely also easily remedied. The photos of the carpet do not show obviously poor seaming and on the evidence provided I conclude there are no tangible deficiencies of this kind.

15. The vinyl plank lifting on one of the stairs is a noticeable deficiency. The photos of the backyard show damage from the applicant throwing grout water onto the lawn. I accept that reseeded has not healed the damage and some soil replacement or other remediation such as fertilizer is likely needed. The affected area is not large, what one would expect from throwing a pail of water. I accept the respondent's evidence that vinyl plank flooring was purchased for the mechanical room and the photos show it was not installed there. This is a tangible deficiency, but not a major one. Wood stain has visibly worn off the outer treads of three stairs. I accept that this is a deficiency in the stain product or its application, more than just normal wear and tear, but not difficult to remedy.
16. Bearing in mind the approximately \$20,000 value of all the contracted work against which the respondent has established a few remediable deficiencies and a failure to complete installation of vinyl plank in a mechanical room, on a judgment basis I attach a value of \$750 inclusive of taxes to remedy the combined problems, which I find the respondent is entitled to deduct from what he owes to the applicant. This is reflected in my order below.

Issue #3 – PST exemption

17. The applicant's second invoice is for \$10,500.00 inclusive of taxes, for labour and materials relating to the supply and installation of cobblestones, carpet and vinyl plank flooring. The applicant paid this invoice except for the \$539.44 PST charge which he claims to be exempt from under a Farm Exemption Certificate he provided to the applicant. The applicant has provided a copy of an undated handwritten letter from it to the respondent saying it has been advised that the PST farm exemption cannot be claimed on buildings or renovations to farm

property and that if the respondent believes otherwise he may pursue a refund through the tax authorities.

18. I agree that the goods and services involved do not qualify for the PST farm tax exemption. The applicant is therefore required to collect the PST and the respondent owes the applicant the outstanding \$539.44 PST charged. If the respondent wants to contest the issue and request a refund of the PST charged, he can take the matter up by a direct application to the provincial sales tax officials.

Issue #4 – third and fourth invoices

19. The applicant's third and fourth invoices (#18182 dated October 13, 2016 and #18434 dated February 14, 2017) are to Sidhu Growers, 38603 #4 Road, Abbotsford, BC, V3G 0E1. They are for small amounts, \$173.82 and \$141.75, inclusive of taxes, for office backsplash tile and a piece of remnant carpet. The respondent denies receiving these invoices. He says the address on them is not his property and he did not receive the items billed.
20. The applicant has provided no evidence that the address to which these invoices were billed and shipped does relate to the respondent, who denies receiving or being associated with these invoices. I find that the claim for their payment by the respondent is not proven.

Issue #5 – interest

21. The applicant claims \$463.68 in interest as a 2% monthly interest charge on outstanding balances invoiced to the respondent. I dismiss this claim because none of the applicant's four final invoices state that they are subject to an interest charge for unpaid balances, and no monthly interest charge on outstanding balances is otherwise proven to be a term of the contract between the parties. A notation of "2% interest per month after 31 days" is printed on the form used for a handwritten version of the applicant's second invoice (#18110 dated August 31,

2016). I find that was an interim account replaced by the final type-written account issued two days later, which says nothing about an interest charge on unpaid balances. The applicant is entitled, however, to pre-judgment interest calculated under the *Court Order Interest Act* below.

Conclusions

22. I find the applicant invoiced the respondent for a total of \$20,815.57 inclusive of taxes, and the respondent paid \$18,210.56, leaving an unpaid balance of \$2,605.01. Of that amount, I find the applicant has not proven that the \$315.57 billed in its third and fourth invoices is owing. I also find the respondent is not entitled to withhold \$539.44 in PST charged in the second invoice, but he is entitled to withhold \$750 on account of deficiencies and incomplete work. I find the applicant's proven claim against the respondent is \$1,539.44.
23. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Because there has been mixed success in this dispute, I conclude that the applicant should be reimbursed for \$62.50, one half of its tribunal fees. The applicant claims a \$250 administrative fee but provided no evidence what this is for. I deny this expense. The respondent claims reimbursement of \$403.20 for legal advice to respond to the dispute. I also deny this expense as the tribunal is a forum for self-represented parties and its rules state that legal fees are reimbursable only in extraordinary cases. This is not an extraordinary case.

ORDERS

24. Within 30 days of the date of this decision, I order the respondent Harry Sidhu to pay the applicant Wayco Flooring Ltd a total of \$1,633.80, broken down as follows:
 - a. \$1,539.44 as monies owing for renovation work done by the applicant;

- b. \$31.86 in pre-judgment interest under the *Court Order Interest Act* calculated from July 21, 2016; and
 - c. \$62.50 in tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable.
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.

Susan E. Ross, Tribunal Member