



Civil Resolution Tribunal

Date Issued: November 9, 2018

File: SC-2017-006659

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *GAUDET v. Pistrin*, 2018 BCCRT 707

B E T W E E N :

JOSEPH GAUDET

APPLICANT

A N D :

Angelo Pistrin

RESPONDENT

A N D :

JOSEPH GAUDET

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The dispute is about payment for home renovation services.
2. The applicant (and respondent by counterclaim), JOSEPH GAUDET, says the respondent (and applicant by counterclaim), Angelo Pistrin failed to pay the final bill for renovations to Mr. Pistrin's condominium. Mr. Gaudet seeks payment of \$3,970.83 for the outstanding invoice, plus an additional \$244.33 for liability insurance.
3. Mr. Pistrin says he withheld the final payment because Mr. Gaudet's workmanship was poor, and he failed to fix identified problems with the work. Mr. Pistrin says he is not liable to pay the outstanding invoice, and in his counterclaim he seeks \$5,000 as reimbursement for repairing deficiencies in Mr. Gaudet's work.
4. Mr. Gaudet is self-represented. Mr. Pistrin is represented by his daughter, Taina Glaspey.

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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence based on the written submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in

Yas v. Pope, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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: 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

9. The issues in this dispute are:
 - a) Is Mr. Gaudet entitled to payment of \$3,970.83 for work performed?
 - b) Is Mr. Gaudet entitled to payment of \$345.33 for liability insurance?
 - c) Is Mr. Pistrin entitled to \$5,000 to fix deficiencies in Mr. Gaudet's work?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Mr. Gaudet must prove his claim, and Mr. Pistrin must prove his counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Mr. Gaudet's claim: \$3,970.83 for Unpaid Invoice

11. The parties agree that Mr. Gaudet performed renovation work to Mr. Pistrin's condominium. The parties also agree that there was no written contract or scope of

work. There was a verbal agreement between the parties, and its terms are harder to prove than if the contract were written.

12. Mr. Gaudet says Mr. Pistrin failed to pay the final payment of \$3,970.83 for the renovation work. He admits there were some deficiencies with the work, which he said were not unusual in such a project, but says Mr. Pistrin and his family refused to grant him access to the home to repair those deficiencies. He says that for this reason, he is entitled to full payment.
13. Ms. Glaspey, on behalf of Mr. Pistrin, says Mr. Gaudet is not entitled to payment because the quality of the work was poor, and did not meet the expected standard.
14. Courts have found that construction contracts contain implied terms about the quality of the work to be performed. This is set out in *Morgan and Gaiga v. Pacific Coast Floor Covering Inc.*, 2018 BCPC 236, citing *Pavestone v. Kuentzel*, 2013 NSSC 199 at paragraph 45:

It is well established that "[c]ertain terms are implied in every building contract: materials must be of proper quality, the work must be performed in a good and workmanlike manner, the materials and work, when completed, must be fit for their intended purposes, and the work must be completed without undue delay" ... courts will imply a term in a construction contract that the work contracted for will be completed in accordance with a certain standard. What the comparative standard is will depend on the nature of the work and the parties' expectations and may include the industry standard, a regulatory body's standards, or other acceptable standards.

15. Ms. Glaspey provided extensive evidence setting out various deficiencies in Mr. Gaudet's work. These include gaps in the baseboards, flaws in the paint finishes, thin sections in paint, unfinished painting, bare wires left hanging, hearth tiles not level with floor, crooked kitchen countertops, crooked kitchen cabinet doors, kitchen cabinet hitting ceiling when opened, incomplete hardware on kitchen cabinets,

crooked wardrobe installation, incorrectly measuring flooring, missing tiles, incorrectly applied tile sealant, flickering lights due to incorrect switches, unfinished baseboards, missing grout sections on bathroom tiles, incorrectly installed dishwasher and incomplete drywall work.

16. Ms. Glaspey provided photos documenting some of these deficiencies. She also provided 5 witness statements setting out observed problems with the work. These included witness statements from family members, friends of the family, and an electrician.
17. Mr. Gaudet did not provide contrary evidence or specifically deny the alleged deficiencies. In his November 9, 2016 letter to Mr. Pistrin, Mr. Gaudet said he was surprised to find out about a few of the deficiencies, but he did not deny them. He said he did not return to the job to fix the deficiencies because of a lack of communication from Ms. Glaspey, lack of payment, and a feeling of being unwelcome after Ms. Glaspey's husband asked him to return the key and arrange future work through him.
18. Based on the evidence provided by Mr. Pistrin, which was not particularly disputed, I find that Mr. Gaudet's work did not meet the implied contractual standard of fitness for purpose and a reasonable standard of quality. While Mr. Gaudet did not hold himself out as a building contractor with experience in large projects, there is no indication that he warned Mr. Pistrin that he was incapable of performing the contracted work, and he did not turn down any aspect of the contract.
19. Mr. Gaudet says he should have been allowed to return to complete the work and fix the problems. However, given the large number of identified deficiencies and the fact that it would take many days to repair them, I find it was reasonable in the circumstances for Mr. Pistrin to terminate the ongoing contract and withhold payment. Mr. Gaudet has not proved he is entitled to the outstanding payment, because he has not proved he reasonably completed the contracted work.

20. For these reasons, I find that Mr. Gaudet is not entitled to payment of the outstanding \$3,970.83.

\$244.33 for Liability Insurance

21. Mr. Gaudet claims \$244.33 for liability insurance, which he says was required by the strata corporation in order to work on the condominium. Mr. Gaudet says he forgot to include it on his final invoice. Because it was never included on any invoice, and there is no evidence that the parties agreed that Mr. Pistrin would pay for such insurance, I find that Mr. Gaudet is not entitled to payment for the insurance. While I accept that the insurance was a necessary expense related to the project, it does not necessarily follow that Mr. Pistrin should pay for it. Some expenses of running Mr. Gaudet's operation are not billable to the client, but make up part of the overall rate charged to clients. I also note that the proposed budget provided by Mr. Gaudet did not include any amount for insurance.

22. For all of these reasons, I find that Mr. Gaudet is not entitled to payment of \$244.33 for liability insurance. Mr. Gaudet's claims are dismissed.

\$5000 Counterclaim

23. In his counterclaim, Mr. Pistrin seeks \$5,000 to pay for deficiency repairs. While I accept that the deficiencies will lead to some additional expense, I find that it would be excessive in the circumstances for Mr. Pistrin to pay nothing towards Mr. Gaudet's final invoice and also collect \$5,000 for repairs. Mr. Gaudet did complete the majority of the work for which he invoiced, and while the deficiencies are significant, they are not so extensive that all of the work set out in the invoice must be re-done. The fact that Mr. Pistrin does not have to pay Mr. Gaudet's invoice reasonably offsets Mr. Pistrin's cost to have the deficiencies repaired.

24. For these reasons, I dismiss Mr. Pistrin's counterclaim.

25. 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. As neither party was successful, I order no reimbursement.

ORDERS

26. Mr. Gaudet's claims, and his dispute, are dismissed. Mr. Pistrin's counterclaim is dismissed.

Kate Campbell, Tribunal Member