



Civil Resolution Tribunal

Date Issued: November 19, 2018

File: SC-2018-002116

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FIRCREST DEVELOPMENTS LTD. v. Benson*, 2018 BCCRT 745

B E T W E E N :

FIRCREST DEVELOPMENTS LTD.

APPLICANT

A N D :

Wayne Benson

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, FIRCREST DEVELOPMENTS LTD., says the respondent, Wayne Benson, has failed to pay for its work on a residential renovation project. The applicant claims \$4,642.72. The applicant is represented by Kurtis Scramstad, who

is employed by Vanco Recovery Network Inc., a third party collection agency. The respondent is self-represented.

2. At the outset, I note that the applicant was originally identified as “Jack Gibson (Doing Business As FirCrest Developments, Ltd.)”. However, after my inquiry, the applicant advised that it should be FIRCREST DEVELOPMENTS LTD. The respondent was given an opportunity to respond, but did not do so. I have amended the style of cause above to show FIRCREST DEVELOPMENTS LTD. as the applicant, which is consistent with the evidence of the parties’ contract, as discussed below.

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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and 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.
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 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

7. The issue in this dispute is to what extent, if any, is the applicant entitled to payment of \$4,642.72 for work it did on a residential construction project.

EVIDENCE AND ANALYSIS

8. The respondent, operating as Frame to Finish Contracting, was the general contractor on the construction project. The respondent hired the applicant as a sub-contractor to provide labour for the construction of an addition to an existing residence. The applicant says the respondent and the homeowners not only approved the applicant's completed work but expressed satisfaction with the quality and timing.
9. It is undisputed that the applicant gave its \$18,642.72 invoice #906, dated August 26, 2016, to the respondent after it completed the work that August, but the respondent said he was having financial difficulties. The applicant says the respondent promised to pay. The respondent acknowledges that he was in financial trouble and was unable to fully pay the applicant's invoice.
10. The respondent made 3 payments between September and November 2016, totaling \$14,000. This left an outstanding balance of \$4,642.72, the amount claimed in this dispute. It is undisputed that the respondent has not paid anything since November 2016.
11. The respondent says that he hired the applicant to frame 2 jobs for him in Chilliwack, at 2 different addresses. The respondent says that after his financial

troubles continued, it “got me thinking about how many favours I had done for Fircrest on these jobs”.

12. The respondent says the applicant billed him for extras at \$1,200 per day and yet he completed at least 2 days of work that he says the applicant should have completed. On the job at issue in this dispute, “Reid”, the respondent says he had to relocate a crawlspace opening, move a footing, build a footing, and install the exterior doors and window.
13. However, the respondent provided no evidence in support of his submissions. The applicant denies billing for ‘extras’. There is no counterclaim before me, and I find I do not have the 2nd “Reeves” job before me to consider. I have no way of knowing how much time or money was spent by the respondent on the Reid job, even if I accepted the respondent’s submissions as accurate. I am not persuaded by the respondent’s evidence as the allegations about incomplete work only arose in January 2018 after the applicant sent the invoice to collection. Given this timing and the lack of evidence in support of the respondent’s submission, I do not accept the respondent’s evidence.
14. On balance, I find the applicant has proved it is entitled to payment of its outstanding invoice balance of \$4,652.72. The applicant is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from August 27, 2016.
15. As the applicant was substantially successful in this dispute, it is entitled to reimbursement of \$175 in tribunal fees paid, in accordance with the Act and the tribunal’s rules. There were no receipts provided for dispute-related expenses. I dismiss the applicant’s request for \$50 in “costs”, as this appears to relate to “time spent” on the dispute. The tribunal does not ordinarily order payment for time spent, which is consistent with the tribunal’s practice of not generally awarding legal fees.

ORDERS

16. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$4,925.31, broken down as follows:
 - a. \$4,652.72 as payment of the applicant's outstanding invoice #906,
 - b. \$97.59 in pre-judgment interest under the COIA, and
 - c. \$175 for tribunal fees.
17. I dismiss the applicant's remaining claim. The applicant is entitled to post-judgment interest, as applicable.
18. 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.
19. 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