



# Civil Resolution Tribunal

Date Issued: November 28, 2018

File: SC-2018-002162

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jamie's Millwright Service Inc v. Atlas Custom Cabinets LTD,*

2018 BCCRT 762

**B E T W E E N :**

Jamie's Millwright Service Inc

**APPLICANT**

**A N D :**

Atlas Custom Cabinets LTD

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Andrew D. Gay, Q.C.

## **INTRODUCTION**

1. The respondent Atlas Custom Cabinets LTD hired the applicant, Jamie's Millwright Service Inc, to provide electrical services relating to the installation of some

machines. The applicant says it provided the services but that the respondent has failed to pay two of its invoices.

2. The respondent says that the applicant charged a higher mark-up for parts than was permitted under their agreement. The respondent further says that the applicant's work was defective. For these reasons, the respondent says it should not have to pay anything further.
3. The applicant is represented by Jamie Stevens, its principal. The respondent is represented by Napinder Pandher, and employee or principal.

## **JURISDICTION AND PROCEDURE**

4. These are the tribunal's formal written reasons. 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 that there are no significant issues of credibility or other reasons that might require an oral hearing. An oral hearing was not requested by either party.
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 are as follows:
  - a. What were the terms of the contract between the parties?
  - b. Did the respondent breach the contract by failing to pay two of the applicant's invoices?
  - c. Did the applicant breach the contract by over-charging for parts or by performing defective work?

## **EVIDENCE AND ANALYSIS**

9. I have only referenced the evidence and submissions necessary to give context to my decision. The applicant has the burden of proving its allegations on a balance of probabilities.
10. In late 2017, the respondent hired the applicant to provide electrical services relating to the installation of some machines.
11. There is no written contract between the parties.
12. The applicant issued a series of invoices to the respondent in late 2017 and early 2018. The respondent paid most of them, but did not pay Invoice #20 and Invoice #27.
13. In the Dispute Notice, the applicant claims that the amount owing for Invoice #20 is \$3,067.42, and that the amount owing for Invoice #27 is \$501.53. However, the applicant led no evidence to support these numbers. The only copies of Invoices #20 and #27 are those provided by the respondent which show that the amount of Invoice #20 was \$2,513.12 and the amount of Invoice #27 was \$410.40. I find that the applicant is limited to claiming these amounts.

14. The applicant issued separate invoices for parts and labour. Invoices #20 and #27 are almost entirely for labour. This is significant because the respondent alleges that it was over-charged for parts on other invoices which it paid. The respondent argues that the over-payment is one of the reasons it is not obligated to pay Invoices #20 and #27.
15. As the invoices were all for a single job, I attach no significance to the fact that they were separated into parts invoices and labour invoices. If it is correct that the respondent was over-charged for parts, I find that this should be set off against the applicant's claim for unpaid labour.

### ***The Terms of the Contract and the Over-Charging for Parts***

16. The respondent says that the parties agreed to a 15% mark-up for parts. The applicant says there is no such agreement and that it has no obligation to disclose the mark-up which it charged.
17. When the respondent asked the applicant to provide documents showing what the parts cost, the applicant refused, saying that it would not provide any such information until its outstanding invoices were paid.
18. In an email message dated January 25, 2018, the applicant stated to the respondent "*I don't care if you agree on the 5% mark up. It was 15% because I get a 10% discount and then added 5%*". I find that this is the best evidence of what the parties' agreement was, and it is consistent with the respondent's position. Accordingly, I find that the agreement was that the applicant would charge a 15% mark-up on parts, of which 10% was comprised of the discount the applicant would get from his suppliers.
19. Given the agreement about the mark-up, I also find that the respondent was entitled to know what the applicant paid for parts.
20. The respondent has provided a quote from Torbram Electric Supply (Torbram) that shows that the cost of the parts was considerably lower than what the applicant

charged the respondent, even taking into account the 15% mark-up (made up of an assumed 10% discount and a 5% mark-up). The applicant did not respond to this evidence. The applicant has not disclosed what he paid for the parts. In these circumstances, I accept the respondent's argument that the applicant over-charged for parts.

21. Citing one notable example, the respondent says that it obtained information from Beaver Electric that the applicant over-charged for a transformer. In an email message to the applicant dated January 25, 2018, the respondent said that the applicant obtained the transformer for \$693.90 plus GST but charged the respondent \$1,006.95 plus GST. The applicant did not respond to this in his subsequent emails and has not responded to it in this proceeding. In these circumstances, I accept the respondent's argument that the applicant over-charged the respondent for the transformer.
22. The respondent says that the amount of the over-charge is \$1,610.11. Based on the information from Torbram provided by the respondent, and based on the amount of the over-charge relating to the transformer, I have calculated the total over-charge to be \$1,425.37. This takes account of the permissible mark-up agreed to by the parties. This amount must be deducted off the applicant's claim.

### ***The Claim for Unpaid Labour***

23. As indicated above, the amount of Invoice #20 was \$2,513.12 and the amount of Invoice #27 was \$410.40. These amounts are for labour.
24. The respondent asserts that it should not have to pay for the labour because the work was performed defectively.
25. Although there is no written contract between the parties, where a person holds himself out as qualified to perform a trade of a specific kind, there is typically an implied warranty that the work will be undertaken with proper skill and care and in a workmanlike manner consistent with the standards of that trade (the implied

warranty). Such warranties are implied where, objectively, the parties would have intended that such a provision would govern their relations, particularly if the contract would not be effective without it. I find that such an implied warranty applies to the applicant's work.

26. If the applicant performed the work required under the parties' agreement, then the burden is on the respondent to prove that there was a breach of the implied warranty. The respondent in this case has not suggested that the applicant did not perform the work, but rather that the work was done improperly. It is the respondent's burden to prove this.
27. On January 28, 2018, the respondent emailed the applicant stating that the applicant had performed the wiring incorrectly and raised various other concerns with the applicant's work. The applicant did not respond to these allegations.
28. The respondent has produced an estimate and an email message from another electrical company that refer to fixing work that was performed improperly. While these documents imply that parts of the applicant's work were performed improperly, I find that they do not satisfy the respondent's burden of proving that the applicant's work was in violation of the implied warranty.
29. As an example, one entry on the estimate states "Permit – Redoing work due to code violations – Safety Check and Repair". However, there is no evidence before me of what the applicant did that might constitute a violation of the Electrical Code, nor any evidence of what provision of the Code was allegedly violated. Without such evidence the respondent has not met its burden of proving a violation of the implied warranty.
30. For these reasons, I find that the respondent is obligated to pay invoices #20 and #27 but that the amount of \$1,425.37 must be deducted for the reasons given above. The result is that the respondent is obligated to pay to the applicant the sum of \$1,498.15.

31. The respondent has stated that it intends to pursue a claim for damages against the applicant in Small Claims Court because its claim exceeds the monetary jurisdiction of the tribunal. This explains the absence of a counterclaim. Nothing in these reasons is intended to comment on the merits of the respondent's potential claim.
32. The applicant is entitled to pre-judgment interest in the amount of \$13.65 under the *Court Order Interest Act* (COIA).

### ***Tribunal Fees and Expenses***

33. 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. In this case, the respondent was partially successful and accordingly I make no award of tribunal fees.
34. The applicant has sought \$130 for expenses relating to the cost of placing a lien on various units in the strata complex in which the electrical work was performed. I decline to make this award. First, any adjudication of the claim of lien would have had to take place in the Supreme Court of British Columbia. Second, the lien was removed without a successful claim having been established. Third, the lien was placed on strata units other than the one where the work was performed.

### **ORDERS**

35. I order the respondent to pay the applicant a total of \$1,511.80 within 21 days of the date of this order, broken down as follows:
  - a. \$1,498.15 for the amount owing on invoices #20 and #27; and
  - b. \$13.65 in pre-judgment interest under the COIA.
36. The applicant's remaining claims are dismissed.
37. The applicant is entitled to post-judgment interest, as applicable.

38. 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.
39. 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.

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Andrew D. Gay, Q.C., Tribunal Member