



Civil Resolution Tribunal

Date Issued: December 11, 2018

File: SC-2018-000750

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Furgason v. Chi Earth & Waterscape Ltd.*, 2018 BCCRT 832

BETWEEN:

Kathy Furgason

APPLICANT

AND:

Chi Earth & Waterscape Ltd.

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Kathy Furgason, hired the respondent, Chi Earth & Waterscape Ltd., to install a custom pool in the applicant's backyard. The applicant claims that the respondent's work was substandard and claims \$5,000 towards the cost of correcting the respondent's mistakes. The respondent says that the applicant

already withheld \$25,000 from the contracted price, which is more than enough to correct any errors.

2. The applicant is self-represented. The respondent is represented by an employee.

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 I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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. Did the applicant prove that the respondent failed to complete the pool installation to an acceptable standard?
 - b. If so, how much, if anything, does the respondent owe the applicant?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove her case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The applicant first contacted the respondent in October 2016 about constructing a lagoon-style pool and hot tub and landscaping her backyard in New Westminster. The respondent is based near Victoria. I accept that the applicant sought a quote that was all-inclusive because price certainty was important to her.
10. After some negotiation, on July 3, 2017, the parties agreed on a final price of \$100,000, which included everything except electrical work, the cost of a gas fireplace unit and a gas fitter. The respondent started working the next day. Initially, the job was supposed to take about 1 month.
11. On September 16, 2017, the applicant filled the pool but there was a leak from the pool to the hot tub. In addition, the applicant was not happy with the installation of the underwater lights, which she says jutted out and leaked. The applicant says that the respondent blamed its plaster subtrade. The respondent tried to fix it but the applicant was still not happy with the lights. In addition, the applicant believed that the respondent had not dug the sunk-in hot tub deep enough.
12. In September and October 2017, the applicant says that she had other pool contractors look at the project. The contractors told the applicant that there were

more serious deficiencies than just aesthetics. As examples, the contractors told the applicant the following:

- The respondent had not placed piping 18 inches under the frost line.
- The respondent had not installed the heaters in accordance with the manufacturer's specifications.
- The respondent had not installed the piping to the municipal line properly.
- The respondent had not installed the solar panels on the right part of the roof.

13. In October 2017, the applicant informed the respondent that she had hired another contractor to correct the deficiencies. The applicant withheld \$25,000 from what she owed the respondent to pay for the new contractor. The new contractor's labour cost \$15,500.

14. The applicant says that she spent \$46,136 fixing the respondent's mistakes and purchasing items that were supposed to be included in the initial quote, including the cost of the new contractor. She claims that after taking into account the amount she withheld, the respondent owes her \$21,136. The applicant has abandoned her claim that is in excess of the tribunal's small claims monetary jurisdiction of \$5,000.

15. The respondent admits that there were some errors that needed correcting. However, it disputes some of the items that the applicant claims. I take this to be an admission that the respondent breached the contract, but a dispute as to the amount of money the applicant needed to remedy the breach.

16. In addition, the respondent submits that its costs, such as subcontractors, were much higher than it anticipated and that it has already lost considerable money on the project. However, as the applicant points out, the respondent agreed to a fixed price contract and accepted the risk that it had underestimated its costs. The fact

that the respondent has already lost money has no impact on the merits of this dispute.

17. The applicant provided a detailed list of the materials she had to buy. The respondent did not dispute any of the items and I accept that the list represents the amount that the applicant has spent after hiring the new contractor. However, that is not the end of the inquiry. The applicant must prove that at least \$5,000 of the money she spent was the result of the applicant's breach of contract.
18. I find that the applicant has failed to prove that some of the work she did after the respondent stopped working on the project was necessary. I am not satisfied that it was necessary to move the heaters or that it was necessary to purchase new ones. The applicant provided a quote from the new contractor but it does not describe why the heaters needed to be moved and replaced. She provided no other objective evidence as to why the heaters needed to be moved and replaced. The applicant also does not say what happened to the original heaters, which were new and presumably had some market value. I am also not satisfied that the solar panels needed to be moved from the north side of the roof to the south side of the roof because there is no objective evidence.
19. I decided not to seek further evidence from the parties about these claims because even when I remove the cost of the above items from the applicant's list and take into account the \$25,000 that the applicant withheld, the respondent still owes the applicant just over \$10,000. I accept that some of the new contractor's labour cost went towards moving and reinstalling the heaters and moving the solar panels, but I find based on the entire quote that this was not more than 1/3 of the work the new contractor performed. Therefore, I find that the applicant has proven that the respondent owes her at least \$5,000 for breaching the contract.
20. I therefore award the applicant \$5,000 as claimed.

21. The applicant also sought an order that the respondent attend and do further work on the project. As I have awarded the monetary maximum, I decline to order the respondent to do further work on the respondent's property.
22. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175 in tribunal fees. The applicant has not claimed any dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$5,244.25,¹ broken down as follows:
 - a. \$5,000 as reimbursement for the cost of repairing the pool and landscaping,
 - b. \$69.25 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
24. The applicant's remaining claims are dismissed.
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

¹ Amended pursuant to section 64(c) of the Act to correct an arithmetical error made in a computation.

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.

Eric Regehr, Tribunal Member