



Civil Resolution Tribunal

Date Issued: December 20, 2018

File: SC-2017-006063

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cubestone Development Ltd v. All Star Excavating & Demolition Ltd*, 2018
BCCRT 891

B E T W E E N :

Cubestone Development Ltd

APPLICANT

A N D :

All Star Excavating & Demolition Ltd

RESPONDENT

AND:

Cubestone Development Ltd

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about excavation work for the construction of a home. The applicant, Cubestone Development Ltd (Cubestone), says that the respondent, All Star Excavating & Demolition Ltd (All Star), did not perform some work properly. Cubestone says that it incurred expenses in finishing the project, and seeks repayment from All Star. All Star denies responsibility for the expenses claimed by Cubestone. In addition, All Star brought a counterclaim against Cubestone seeking payment of outstanding invoices. Cubestone's position is that it does not owe All Star any money.
2. Cubestone is represented by Dan Liu. All Star is represented by Amrik Singh Butter.

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. whether All Star should reimburse Cubestone \$2,730 for work Cubestone paid a third party to complete;
 - b. whether All Star should pay Cubestone \$1,500 to compensate it for its “time and efforts”;
 - c. whether All Star should pay Cubestone \$500 in legal fees;
 - d. whether All Star should apologize to Cubestone; and
 - e. whether Cubestone owes All Star Money for outstanding invoices.

EVIDENCE AND ANALYSIS

8. As a preliminary matter, All Star questioned whether its contracts were made with Cubestone or with an individual who was acting as a project manager on the construction site. According to Cubestone, although All Star provided quotes to, and negotiated with, the project manager engaged by Cubestone, the agreements were signed by one of its shareholders. I am satisfied that, no matter who was involved with the negotiations, that the contracts were formed between Cubestone and All Star.

9. In civil claims such as this, an applicant bears the burden of proof on a balance of probabilities. This means that Cubestone bears the burden of proving its claims, and All Star bears the burden of proving its counterclaim. The parties provided submissions, and Cubestone provided evidence, in support of their positions. While I have considered all of this information, I will refer to only that which is necessary to give context to my decision.

Issue One - Whether All Star is Responsible for the \$2,730 Completion Costs

10. The parties entered into agreements for All Star, a subcontractor, to perform work relating to a home construction project. The May 10, 2016 quote set out of a scope of work including demolition, excavation, dirt removal, and drain tiles (including a second sump). The quote specifically stated that the removal of trees and drywall, as well as the provision of sand and gravel (with the exception of gravel for the drain tile) were not included. Although referred to as a quote, Cubestone also provided a copy of this document entitled “contract”, and the parties appear to have treated it as such.
11. A second contract dated August 15, 2016 contemplated the provision of blocks and gravel. There was no mention of sumps or drain tiles in this agreement. Neither agreement referred to a gravity well.
12. According to a March 14, 2017 email message from the municipality, the project failed an inspection of the rain water leaders. The message states that the “rain water leaders must go into the gravity storm sump”.
13. Cubestone says that All Star should have known the rules and standards involved with construction project. Cubestone says that All Star did not connect water leads to the gravity well in three locations as required.
14. All Star says that Cubestone was aware that the work with the gravity well was additional work not covered in the agreement or in All Star’s agreed scope of work.

All Star's position is that connecting rain water leaders into the sump is "charged extra" as it is not standard work.

15. The evidence suggests that additional materials would be required to perform the connection of the rain water leaders. An April 20, 2017 email message from the project manager to Cubestone set out the extent of work All Star said would be required to address the gravity well. The message described the work as requiring 1 load of gravel, as well as PVC and ABS piping. All Star did not dispute the accuracy of this description.
16. The materials described by All Star are similar to those used by the third party who completed the work. The July 18, 2017 invoice from the third party states "install raining water drain PVC/ABS pipe to gravity well", for a cost of \$2,730.
17. I am satisfied that the gravity well work required different materials that were not referenced in the contracts between the parties, as well as an additional load of gravel which was not contemplated by the agreements. I am also satisfied that this work would require additional labour and associated costs.
18. Although I acknowledge Cubestone's position that All Star should have known that the issue with the gravity well was required, it does not appear that the scope of work contemplated this. Based on the information before me, I find that the gravity well work was not part of the parties' agreements.
19. As Cubestone has not proven its claim that All Star failed to complete work for which it contracted, I find that All Star is not required to pay the \$2,730 as claimed.

Issue Two – Whether All Star Should Pay Cubestone \$1,500 for “Time and Efforts”

20. Cubestone seeks an order that All Star pay it \$1,500 for its "time and efforts" in addressing this matter, and to compensate for a delay in completing the project. All Star says that Cubestone cannot claim this amount without any proof of damages.

21. Cubestone submits that All Star's conduct delayed the project "at least 10 months". It did not provide specific evidence in support of this position. Although the evidence confirms that there was a failed inspection regarding the gravity well and rain water leaders, this was not the only issue on the project that did not conform with municipal requirements. In documentation dated March 14, 2017 and April 4, 2017, municipal staff identified additional items that required attention, including the sheathing, fire stops, the garage door, the door between the dwelling and the suite, and attic insulation. This was not work that involved All Star.
22. In any event, as discussed above, I have determined that the gravity well work was not All Star's responsibility under the parties' agreements. I find that Cubestone has not proven that All Star's conduct delayed the project or that it incurred damages in the amount of \$1,500, or at all.
23. Cubestone also seeks compensation for its time spent dealing with the dispute process. The tribunal typically does not award a party expenses for their own time in dealing with a dispute. For that reason, I also do not order compensation for this aspect of the claim.

Issue Three – Whether All Star Should Pay Cubestone \$500 for Legal Fees

24. Cubestone asked for a reimbursement of legal fees in the amount of \$500. Rule 132 states that, except in extraordinary cases, the tribunal will not order one party to pay to another party any fees charged by a lawyer or another representative in the tribunal dispute process.
25. Although Cubestone chose to engage a lawyer for assistance in commencing the claim with the tribunal, it did not provide evidence to support the conclusion that its dispute with All Star is extraordinary in nature. In the absence of such evidence, I find that the circumstances of this case are not extraordinary so as to justify an order of legal fees as contemplated in tribunal rule 132. I decline to make the requested order for reimbursement of legal fees.

Issue Four – Whether All Star Should Apologize to Cubestone

26. Cubestone seeks an order that All Star must apologize to it. All Star did not comment on this request.

27. The tribunal generally does not order apologies, as forced apologies are not productive or helpful. I decline to make such an order here.

Issue Five – Whether Cubestone Owes All Star for Outstanding Invoices

28. In its counterclaim, All Star says Cubestone owes it \$1,500 for the work set out in the original scope of work and \$1,500 for agreed-upon additional work. Cubestone says it has paid All Star fully, and there is no outstanding balance.

29. The evidence submitted by Cubestone contains copies of All Star's invoices, as follows: July 23, 2016 (\$10,000); September 9, 2016 (\$25,843.70); October 19, 2016 (\$31,254.50); and October 19, 2016 (\$1,000.00). Cubestone provided evidence of payments associated with these dates and invoice amounts.

30. The evidence before me suggests that Cubestone provided full payment for these invoices. All Star did not provide additional invoices or information to substantiate any outstanding amounts. I find that All Star has not established that there are amounts owing to it by Cubestone. As All Star has not proven its claim, I decline to make the order requested.

Summary

31. I have determined that Cubestone's claims and All Star's counterclaims have not been established.

32. 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. Here, as both parties have been unsuccessful, I find that the parties should bear their own tribunal fees and dispute-related expenses.

ORDERS

33. I dismiss Cubestone's claims.

34. I dismiss All Star's claims by counterclaim.

Lynn Scrivener, Tribunal Member