



Civil Resolution Tribunal

Date Issued: December 20, 2018

File: SC-2018-003883

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *GRB Italian Interiors v. Big Bang Construction Ltd.*, 2018 BCCRT 895

B E T W E E N :

GRB Italian Interiors

APPLICANT

A N D :

Big Bang Construction Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, GRB Italian Interiors, says it provided the respondent, Big Bang Construction Ltd., with goods and services for finishing kitchen and bathrooms. The applicant claims \$4,200 in payment of their outstanding invoice balance.
2. The applicant says the parties agreed upon a “strict deficiency list” of 9 items, and agreed that once those 9 items were fixed, the respondent would make full payment. The applicant says without advising of any concerns, the respondent paid the applicant when the 9 items were completed, but was short, thus voiding an agreed-upon discount. The applicant says the respondent’s later concerns were unrelated to the 9 items.
3. The respondent denies liability, saying the applicant never finished the installation and that the respondent had to hire someone else to complete the job. The respondent says the deficiency list only related to items already installed, and the applicant failed to supply and install vanity mirrors and a guest bathroom cabinet. The respondent also says the applicant’s work was sub-standard, causing further expense.
4. The applicant is represented by Cathie DeForge, an employee. The respondent is represented by Luis Garcia, an employee or principal.

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. Some of the evidence in this dispute amounts to a “she said, he said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.
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.

ISSUE

9. The issue in this dispute is whether the respondent owes the applicant the claimed \$4,200 for its outstanding invoice.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and submissions below as necessary to explain my decision.
11. The parties' August 30, 2016 agreement required the applicant to provide the respondent with cabinetry-making services for certain areas of a house: main floor kitchen, lower floor kitchen, master bedroom walk-in closet, 3 other closets, master bath and 2 other bathrooms plus a powder room. Among other things, the contract stated that all bathroom cabinets include a mirror with light. The agreed price of the cabinetry and installation was \$53,000 plus tax.
12. The materials order for the job was completed in November 2016. On December 8, 2016, the applicant issued a progress billing, which the respondent paid. In February and March 2017, the products arrived and were delivered to Whistler.
13. The applicant says the site was not prepared for installation, despite the applicant attending between February and April 2017, and relies on a March 13, 2017 email exchange about the suite not being ready until the following week. I infer the applicant relies on this evidence to explain why the vanity mirrors were not installed. I find this evidence is insufficient to establish the walls were not ready for mirrors before the applicant issued its "final" billing invoice #15 on March 30, 2017 for \$8,792.70. My further conclusions about the mirrors are discussed further below.
14. On March 27, 2017, the applicant wrote the respondent and advised that it had completed its installation of kitchens, bathrooms and closets, and that the respondent could proceed with ordering countertops. Notably, there is no mention of mirrors or that walls were not ready. The applicant wrote that it had sent the order for needed materials to complete the changes requested by the respondent: island panels, fillers, and drawers. The applicant said the materials should be delivered in about 2 months.

15. On May 1, 2017, following a meeting between the parties, the applicant sent the respondent a “complete list of outlined deficiencies”, which had 9 items on it as set out below, with the significant caveat that “we will discuss and negotiate related costs upon the work completion”:
- a. **Pullout Pantry** – the applicant to replace 3 drawers by May 31, one door to be ordered from Italy.
 - b. **Backing for 6 sink cabinets** – the applicant to arrange with a carpenter.
 - c. **Side panel for wall cabinet.**
 - d. **Bathroom sink cabinet (wall side).** The applicant to fill the gap with coloured caulking and evaluate results by May 31.
 - e. **Bathroom drawers.** The applicant to resize/replace 4 drawers in master bath, 2 in the other bathrooms, and supply 4 drawers – all by May 31, through a local supplier.
 - f. **Wine cooler** – side panel.
 - g. **Corner wall cabinet.** The applicant to change the hinge position, by May 31.
 - h. **Closet upper floor bedroom.** The applicant to reassemble the cabinet, by May 31.
 - i. **Upper floor kitchen hood.** The applicant to order 2 fillers from Italy.
16. The applicant says the parties at the time agreed that the 9-item deficiency list were due to the respondent’s recent changes and delayed finishes. The applicant submits that the parties agreed that once the 9 items were completed, the parties would settle the associated final costs.
17. On June 12, 2017, the applicant issued its invoice #17 to the respondent for \$1,624, for the supply of cabinetry items: 3 pull-out drawers, 1 door for pull-out drawers, 1 panel for island, 1 bathroom cabinet, 4 fillers for main and 2nd floor kitchen, and

labour. The applicant describes its invoice #17 as being for “additional items”, which I find relates to the changes requested by the respondent.

18. Part of the money the respondent refuses to pay relates to mirrors it says should have but were not installed. It is clear the parties’ contract included bathroom mirrors. I have found above that the applicant has not proved the walls were not ready before it issued its “final” invoice on March 30, 2017.
19. The respondent says it never expected the applicant to fail to supply a cabinet (which I infer refers to the guest bedroom bathroom vanity) or to fail to provide the bathroom mirrors. The evidence shows the respondent was not particularly mindful of what should have been delivered until later in the project. I find this explains the respondent’s failure to address mirrors and the missing bathroom vanity at the time the 9-item deficiency list was agreed upon.
20. However, the applicant says it “can confirm” the mirrors and cupboard (bathroom vanity) were delivered, but provided no evidence in support. On balance, I find the applicant did not supply and install the bathroom mirrors and vanity. The applicant did not provide evidence of their delivery and installation despite saying it could “confirm” it, and the respondent provided a March 22, 2017 invoice for \$1,092.57 that it paid for a replacement bathroom vanity.
21. I find the applicant’s “final” billing invoice on March 30, 2017, followed by the parties’ discussion and meeting about deficiencies, likely led to the May 1, 2017 9-item deficiency list. However, I find the materials related to the changes reasonably were expected to fall outside the 9-item deficiency list. I say this because the materials ordered or the changes were not going to arrive until the end of May 2017, with installation to occur afterwards. Further, on the whole of the evidence before me, I cannot agree that the 9-item deficiency list was “strict” as alleged by the applicant. In other words, I cannot find that it defined all of the items the applicant had to fix. Also, the 9-item list covered the outstanding concerns as of May 1, 2017, but the applicant’s own email stated that the price for the related correction and invoicing was to be determined.

22. In late February 2018, the respondent alleged there were deficiencies on the cabinet in the suite because the applicant's carpenter did not return to fix the trim between the countertop and the drawers. The respondent apparently sought to back-charge about 5% of the applicant's bill, to repair the inside of 7 drawers when the applicant says it could have ordered them at a fraction of this cost. At that point, the applicant said it "reluctantly" offered to pay a \$1,800 invoice plus \$500 for drawer repairs, "to settle all matters". The respondent's \$1,800 invoice relates to a third party contractor AI that it hired to install "most of the kitchen and cabinets".
23. I further find that the evidence shows the applicant failed to complete the drawers to a reasonable standard, which is not particularly disputed. The respondent's photos show drawer edges that are not properly adhered and are coming apart. I also find the evidence shows the applicant failed to complete most of the cabinet installation, which is also not particularly disputed. As noted above, the cost for the deficiency completion was to be negotiated.
24. On balance, I find the applicant has not proved it is entitled to the \$4,200 claimed. This is consistent with the \$2,576 credit the parties agreed to and my findings above the mirrors and vanity were not provided. As for the \$1,624 billed for the changes, they were implemented after the May 1, 2017 deficiency list and the applicant has not proved the work was reasonably completed, based on the evidence before me.
25. There are 2 further potential agreements to consider.
26. On March 1, 2018, the respondent emailed the applicant and among other things wrote, "please let me know what the balance is and I will send the cheque as soon as I get your final invoice". In this email, the respondent insisted the walls were ready for the bathroom mirrors, but also denies ever having mirrors from the applicant at all. Given the context of this email, I am unable to find this was a binding agreement that required the respondent to pay the applicant's full invoice as later presented.

27. On March 16, 2018, the applicant's administrator Ms. DeForge wrote the respondent about the parties' "agreed upon settlement" for \$7,840.70. Ms. DeForge noted she had received the respondent's cheque for \$6,216.70, which was a shortfall of \$1,624, and asked for an explanation. In this dispute, the applicant says the \$7,840.70 invoice reflected the \$2,576 credit against invoices #15 and #17, but since the respondent short-paid by \$1,624, it should not benefit from that credit. That is why the applicant claims a total of \$4,200 in this dispute (\$1,624 plus \$2,576).
28. I find the applicant's evidence is insufficient to prove a binding agreement that the respondent would pay \$7,840.70. There is no supporting documentation of this, other than Ms. DeForge's email referenced above, which was sent after the fact.
29. Given my conclusions above, I find the applicant's claims must be dismissed. The applicant has not proved it is entitled to any further payment on its contract with the respondent.
30. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find it is not entitled to reimbursement of tribunal fees.

ORDER

31. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair