



Civil Resolution Tribunal

Date Issued: December 14, 2018

File: SC-2018-004499

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1074698 BC LTD. v. Fair Trade Work Ltd.*, 2018 BCCRT 852

B E T W E E N :

1074698 BC LTD.

APPLICANT

A N D :

Fair Trade Work Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about invoices from a renovation project. The applicant, 1074698 BC LTD., says that it performed work as a sub-contractor and that invoices in the amount of \$4,643.07 have not been paid. The respondent contractor, Fair Trade Work Ltd., says that it is entitled to retain this amount.

2. The applicant is represented by Brian Herbst. The respondent is represented by Anna Su and Jim Perkins.

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 issue is whether the applicant is entitled to payment of its invoices in the amount of \$4,643.07.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their positions. While I have considered all of this information, I will refer to only what is necessary to give context to my decision.
9. The applicant entered into subcontracts with the respondent to perform work on a renovation project in Vancouver. The parties formed 2 separate subcontracts, with a change order on the second. Subcontract 18 dated March 20, 2018 is associated with invoice 2016164 in the amount of \$2,340.36. Subcontract 32 dated March 29, 2018 relates to invoice 2016167 for \$2,071.71. Subcontract 32 was modified on April 5, 2018 with a change order, resulting in invoice 2016168 for \$231.00. The work in each contract was set out in detail in a purchase order issued by the respondent.
10. The respondent does not dispute that the applicant performed the work covered by the identified invoices, and there is no suggestion that there are issues with the quality of that work. Instead, the respondent says that it is entitled to not pay the invoices as the applicant's work on an earlier project in Whistler contained deficiencies which the respondent says it had to fix. The respondent's position is that it is attempting to recover the costs associated with those deficiencies. The applicant says it was not contacted by the respondent in a timely manner about deficiencies on the Whistler project, or given an opportunity to address them. It says that the respondent cannot hold back monies on an unrelated job, and that the invoices should be paid.

11. The parties are separate entities whose relationship is defined by the terms of the subcontracts. It would appear that a project could involve more than one subcontract, as is the case here. Each of the subcontracts contains an appendix with the respondent's terms and conditions. Section 2 provides that the subcontract represents the entire agreement between the parties. This section does not contemplate an ongoing relationship outside of the agreement.
12. Section 8 states that a subcontractor is responsible for all deficiency repairs and charges. The section allows that the respondent may "deploy alternative resources to repair defects", and that the subcontractor would be responsible for the costs incurred by the respondent. Section 8 also states that the respondent "reserves the right to hold back all monies owed to the Sub-Contractor for any and all identified deficiencies that have not been repaired to the Contractors [sic] satisfaction".
13. The respondent is holding back funds owing to the applicant in the Vancouver project due to alleged deficiencies in the Whistler project. These projects are not the subject of the same subcontracts. My interpretation of section 8 is that it allows the respondent to hold back funds owing under that agreement only. The section does not contemplate the ability to hold back funds owing under other agreements into which the parties may have entered.
14. I am satisfied that the terms and conditions in subcontracts 18 and 32 (along with the associated change order) do not permit the respondent to hold back funds from those subcontracts to address issues with another project. Accordingly, the applicant is entitled to the payment of the identified invoices totaling \$4,643.07.
15. The respondent did not file a counterclaim. The dispute over the alleged deficiencies in the other job is not before me and I make no finding as to whether the respondent may be entitled to the payment of funds under the associated subcontract or subcontracts. Nothing in this decision prevents the respondent from pursuing a claim against the applicant for the Whistler job.

16. 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. There is no claim for dispute-related expenses.
17. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). The 3 invoices have different payment due dates, and the interest must be calculated accordingly. The \$2,340.36 owing under invoice 2016164 was due on May 16, 2018, which attracts interest of \$19.07. Invoice 2016167 involved a payment of \$2,071.71, which was due on May 28, 2018, and results in an interest calculation of \$16.06. Interest of \$1.74 is attributed to invoice 2016168 in the amount of \$231.00, which was due on June 4, 2018. The total amount of pre-judgment interest is \$36.87.

ORDERS

18. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$4,854.94, broken down as follows:
 - a. \$4,643.07 as payment for the outstanding invoices,
 - b. \$36.87 in pre-judgment interest under the COIA, and
 - c. \$175 for tribunal fees.
19. The applicant is entitled to post-judgment interest, as applicable.
20. 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.

21. 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.

Lynn Scrivener, Tribunal Member