



# Civil Resolution Tribunal

Date Issued: March 14, 2019

File: SC-2018-003892  
and SC-2018-006719

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *projectxhomes Inc v. Shayan et al*, 2019 BCCRT 310

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

projectxhomes Inc

**APPLICANT**

**A N D :**

Pedram Shayan and Pouya Shayan

**RESPONDENTS**

**A N D :**

projectxhomes Inc

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. The applicant and respondent by counterclaim, projectxhomes Inc (Project X), is a tiling and masonry company in Vancouver.<sup>1</sup> The respondent and applicant by counterclaim, Pedram Shayan, is a general contractor (contractor). The other respondent and applicant by counterclaim, Pouya Shayan (client), hired the contractor to perform renovations in his house, including new bathrooms. I will refer to the client and contractor together as the respondents.
2. In Dispute SC-2018-003892, Project X initially named the client as Poyan Shayan. During the course of facilitation, the client's name was amended to Pouya Shayan. In Dispute SC-2018-006719, Project X named the client as Pouya Shayan. The client also refers to himself as "Pouya" in correspondence with the tribunal. I therefore find that the client's name is Pouya Shayan, and I have amended the style of cause accordingly.
3. The contractor hired Project X to help with the renovation of 3 bathrooms.
4. In Dispute SC-2018-003892, Project X claims that the respondents owe it \$3,602.98 because they only paid \$4,200 of its \$7,802.98 invoice. As an alternative, Project X seeks an order permitting them to attend the client's house to finish the project. In Dispute SC-2018-006719, Project X claims that it neglected to include certain materials in its initial invoice and claims a further \$1,088.22.
5. The respondents say that Project X did a poor job, requiring them to hire a new subcontractor to finish the project. The respondents counterclaim \$4,172.96, which they say is the amount they spent as a result of Project X's low quality work. The respondents also seek an order requiring Project X to treat people with respect and provide the community with high quality work.
6. Project X is represented by its owner, Amir Masoud Mohammadi Angha. The respondents are each self-represented.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.
8. 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.
9. 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.
10. 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.

## **PRELIMINARY ISSUE**

11. Initially, only Dispute SC-2018-003892 came before me for a decision. During the facilitation phase of this dispute, Project X alleged that they had discovered that the materials were missing from the initial invoice. Project X asked the case manager to add this claim to Project X's dispute, but the case manager declined.

12. Project X started a new dispute, SC-2018-006719, to claim payment for the materials. I reviewed Project X's Dispute Notice in the new dispute and asked the parties to make submissions about whether the 2 disputes should be joined. Project X submitted that it would be more efficient to have the disputes joined. The respondents both opposed joining the disputes.
13. In a preliminary decision, I found that there is significant overlap in the issues in the 2 disputes. I found that having the 2 disputes proceed separately would be inefficient and uneconomical, both for the parties and for the tribunal. I found that this outweighed any delay caused by joining the 2 disputes. I ordered that the 2 dispute be joined. After my preliminary decision, both parties had an opportunity to provide evidence and submissions about the new issues raised in Dispute SC-2018-006719.

## **ISSUES**

14. The issues in this dispute are:
  - a. Does Project X have a claim against both the contractor and the client?
  - b. Do the respondents owe Project X any further money under the contract, and if so, how much?
  - c. Was Project X negligent in the completion of the project? If so, what are the respondents' damages?

## **EVIDENCE AND ANALYSIS**

15. In a civil claim such as this, the Project X must prove its claims on a balance of probabilities. Along the same lines, the respondents must prove their counterclaims 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.

***Does Project X have a claim against both the contractor and the client?***

16. Before turning to the merits of the dispute, I will address the basis for Project X's separate claims against the contractor and the client.
17. I raise this issue because some of the materials in evidence before me refer to Renovare Construction. In his Dispute Response, the contractor says that Renovare Construction is a registered company, but does not explain its relationship to the parties in this dispute. Renovare Construction is not a party to either dispute.
18. All of Project X's quotes, invoices and receipts are addressed to "Pedram", not Renovare Construction. In his submissions, the contractor does not take issue with the fact that Project X claimed against him personally. Furthermore, I take the fact that the contractor brought the counterclaim on his own behalf to be an admission that he personally contracted with Project X. I therefore find that despite the occasional reference to Renovare Construction in the materials, Project X's contract is with the contractor.
19. As for the client, there is no evidence of any written contracts between the contractor and the client or the client and Project X. That said, in his submissions, the client acknowledges that he was ultimately responsible for paying Project X's invoice.
20. In addition, as discussed below, I find that Project X owed a duty of care to the client to complete the project in a good and workmanlike manner, even though they did not have a contract.
21. I therefore find that Project X has claims against both the contractor and the client. I will now turn to the merits of those claims.

***Do the respondents owe Project X any further money under the contract, and if so, how much?***

22. In early March 2018, one of Project X's employees met with the contractor at the home to assess the project. On March 13, 2018, the contractor asked Project X to give them a quote. On March 14, 2018, Project X provided a quote for \$7,319.98.
23. On March 23, 2018, the contractor asked Project X to send an updated quote, but there is no evidence about what needed to be updated or whether Project X sent a new quote. The contractor provided a \$4,200 deposit on March 23, 2018. I find that by paying the deposit, the contractor accepted the initial quote of \$7,319.98, which became the parties' written contract.
24. Project X started working on the project on March 23, 2018. The scope of the Project X's role in the project was tile setting, edging, and related work in the client's 3 bathrooms. Initially, the contractor expected Project X to complete its work within 2 weeks.
25. On April 12, 2018, the client says that Project X's truck damaged 2 Shaw cables. The contractor claims that Shaw will invoice the respondents approximately \$500 for each cable.
26. During construction, the respondents each had concerns with the quality of Project X's work. The contractor says that he had to get Project X to redo some of the tiling work, causing wasted time and wasted tiles. Project X did not dispute this evidence with a statement from any of its employees who worked on the project.
27. Project X says that the project was substantially complete on April 19, 2018. At that time, Project X believed that there was only one final issue, the installation of an air cap vent.
28. Project X tried to make arrangements to fix install the air vent cap on May 28, 2018. Instead, the contractor told Project X that the client had decided to fire Project X. The same day, Project X sent the contractor its invoice for \$7,802.98. The invoice

was higher than the quote because Project X removed a \$400 charge for levelling a subfloor and added a charge of \$860 for reinstalling tiles. Project X did not mention the \$400 charge in its submissions so I find that it removed the charge because it did not end up performing that work. After applying the \$4,200 deposit, the total amount due was \$3,602.98.

29. The contractor emailed Project X on June 2, 2018. The contractor outlined the respondents' concerns with the quality of Project X's work. The contractor said that they would withhold final payment until they received the invoices from Shaw for the damaged cables and would "adjust" Project X's initial quote to account for what they considered poor workmanship.
30. I find that Project X has proven that it performed the work it was hired to do except for the installation of the air cap vent, which I accept was a minor matter. I find that it is appropriate to deduct \$100 from the invoice to account for this minor deficiency. The respondents' primary complaints relate to the quality and speed of Project X's work, not its completion.
31. However, I find that Project X has not proven that it was entitled to add \$860 to the initial quote for reinstalling tiles. The invoice says that it was at the client's request but does not explain the charge further. The contractor questioned this charge in his submissions and Project X provided no explanation, despite having the opportunity to do so in reply. I note that Project X had to re-tile some areas because their work was not to a high standard, which may explain the charge. In any event, I find that Project X has not proven that it is entitled to this additional charge. I therefore find that it is appropriate to deduct \$860 plus GST from Project X's invoice, which is \$903.
32. Project X also claims \$1,088.22 in materials that it neglected to include in its initial invoice. Project X realized its error in December 2018. Project X says that their accounting software made an error when they revised the estimate. Upon reviewing the estimates and invoices in evidence, it appears that although the materials are listed at a rate of \$971.63 plus tax in the initial estimate, Project X failed to put a

quantity in the line item for the materials and therefore this charge was not reflected in the total amount of the estimate.

33. Despite the error, I find that the initial quote clearly showed that the respondents would have to pay for the materials, even though the amount was not reflected in the total amount of the estimate. I find that there is no reasonable interpretation of the initial quote that Project X would bear the cost. The respondents have not disputed that the respondents purchased these materials, but point out that the itemized list of materials, which includes each item's cost, adds up to \$955.52, not \$971.63. Project X does not explain the discrepancy, despite having the opportunity to do so in reply. I find that Project X has proven that it is entitled to \$955.52 plus tax for a total of \$1,070.18 for the materials because they were included in the initial quote, which became the parties' written contract.
34. As mentioned above, the respondents' remaining concerns are not about whether Project X completed the project, but the quality of Project X's work. I find that the appropriate way to address the respondents' concerns about Project X's workmanship is to address these concerns separately as an equitable off-set to the amount that the client owes Project X under the contract. I find that the respondents' counterclaims are reasonably connected to the debt under the contract. I also find that this approach is consistent with the respondents' expectations as outlined in the contractor's June 2 email.
35. Therefore, I find that subject to my findings below about Project X's negligence in the completion of the project, Project X has proven that it is entitled to \$3,670.16 under the contract, which is \$3,602.98 (initial invoice) minus \$903 (additional tile installation) minus \$100 (incomplete air vent cap installation) plus \$1,070.18 (materials). As discussed above, I find that both respondents are responsible for the debt.



***Was Project X negligent in the completion of the project? If so, what are the respondents' damages?***

36. Project X says that the only reason that the client refuses to pay is because of the air cap vent.
37. However, it is clear that the client's issues with Project X's work go far beyond Project X's failure to install the air vent cap. The client says that the contractor had tried to identify problems with Project X's work as they went, but ultimately gave up. The contractor hired a new tiler to fix Project X's work as much as possible. The client also says that some aspects of the poor tile work, such as uneven cutting of the tiles, could not be fixed and he simply settled for substandard work.
38. The counterclaim essentially alleges that Project X was negligent in the work it did on the project. The general elements of a negligence claim are:
  - a. Project X owed the respondents a duty of care.
  - b. Project X failed to meet a reasonable standard of care.
  - c. Project X's failure caused the respondents to suffer reasonably foreseeable damages.
39. I find that Project X owed each of the respondents a duty of care, even though Project X did not have a contract directly with the client. The question is whether Project X met a reasonable standard of care.
40. The respondents each submitted photographs that they say show Project X's low quality work. I agree with the client that the photographs depict uneven tiles that are somewhat unsightly and could reasonably bother the client to look at. I find that it is reasonable for the client to have expected the tiling to be straight and consistent. I find that Project X failed to meet a reasonable standard in installing the tiles.
41. The client claims the following damages caused by Project X's negligence, totaling \$4,172.96:

- a. \$522.36 in additional tile purchases.
  - b. \$1,050 to buy and deliver the additional tiles.
  - c. \$63 in additional dumping costs.
  - d. \$100 for labour and a truck to dispose of the tiles.
  - e. \$1,000 for the repair of the Shaw cables.
  - f. \$200 for the cost of handling the Shaw cables situation.
  - g. \$700 in extra management fees.
  - h. \$537.60 for the new contractor to fix Project X's mistakes.
42. The client and the contractor say that because of Project X's mistakes, they needed to purchase considerably more tile than would normally be necessary. They say that the market standard for tile waste is 7-10%. The project required 3 types of tile. They say that Project X wasted 73%, 57% and 20% of the 3 types, respectively. The contractor calculates the cost of the additional tiles at \$522.36. I infer that the respondents rely on the same evidence to justify the \$63 in additional dumping costs and additional labour of \$1,150 for buying, delivering and disposing of tiles.
43. In response, Project X says that any waste was the result of changes to the scope of the project. However, there is no objective evidence of any changes in the scope of work, such as emails, text messages or change orders.
44. I accept that Project X wasted extra tiles by retiling certain areas. That said, I do not accept that it is possible to calculate the amount of waste generated by Project X with the precision that the contractor alleges. The contractor acknowledges that waste will vary project to project. On a judgment basis, I find that \$300 is a reasonable sum to award the respondents for additional tile purchases. I find that \$40 is a reasonable sum to award the respondents for additional dumping costs. I find that \$500 is a reasonable sum to award for the additional labour of buying, delivering and disposing of tiles. This totals \$840.

45. With respect to the Shaw cable, Project X says it was not its fault that the cable was damaged. Project X says that they offered to deal with Shaw directly if the client ever got an invoice for repairing the damage. There is no evidence of an invoice and in the counterclaim it is still referred to as an expected expense and an estimated cost. The client provided additional evidence on October 25, 2018, more than 6 months after Shaw attended. I find that if Shaw was going to invoice the client for the damage, it likely would have already done so. The amount of the respondents' claim is also speculative. In addition, the respondents do not provide any evidence in support of its claim for \$200 to handle the Shaw situation. I dismiss these aspects of the counterclaim.
46. The contractor says that because of Project X's poor workmanship, Renovare Construction charged the client an additional management fee of \$670. The contractor says that the client refused to pay the invoice and that he wants Renovare Construction to be paid directly. Because Renovare Construction is not a party to the counterclaim, I dismiss this claim. In addition, the contractor provides no explanation of how the contractor or Renovare Construction arrived at the sum of \$670 as an additional management fee. The client also claims \$700, not \$670, and does not explain the discrepancy. Therefore, even if the client had paid this invoice and claimed against Project X, I find that there is insufficient evidence to prove that this was a reasonable charge that Project X should have to pay.
47. As for the new contractor to fix Project X's mistakes, the respondents provided an invoice from the new contractor, which includes a charge for \$480 for "repairs". Based on the photographs, I find that it was reasonable for the respondents to hire a new contractor to fix what they could. I find that \$480, plus GST, is a reasonable sum for that work. This equals \$504. The respondents' claim for \$537.60 appears to have added PST as well as GST even though the new contractor did not charge PST.
48. Therefore, I find that the client has established direct costs of \$1,344 arising from Project X's negligence:

- a. \$300 for additional tile purchases.
  - b. \$40 for additional tile dumping.
  - c. \$500 for buying, delivering and disposing of tiles.
  - d. \$504 for the new contractor.
49. While the respondents do not list the lower value of the tile work as a specific loss in their counterclaim, the respondents argue in their submissions that Project X's invoice should be reduced because of the quality of the finished product. Project X also provided submissions about its workmanship, arguing that the client had an unreasonable expectation of precision. I therefore find that it is appropriate to consider the respondents' argument.
50. Based on the photographs that the client provided, I agree that Project X delivered a final product that was below the standard reasonably expected by the client. As the contractor points out, it would require a new contractor to demolish the current tiling and start over to fix the aesthetic issues with the tile, which would be unreasonable and impractical. While upon close inspection there are aesthetic issues with the tiles, I find that on casual inspection it would be difficult to see them. On a judgment basis, I assess damages in the amount of \$500 to compensate the client for the lower aesthetic quality of the work.
51. In summary, I have found that the respondents are entitled to an offset of \$1,844 from the \$3,670.16 owing from Project X's invoice. I order the respondents to pay Project X \$1,826.16.
52. Given my findings, and the amount of time that has passed since the client fired Project X, I find that it would be impractical to order the client to allow Project X an opportunity to finish the project. In addition, orders to force a party to do something, also called specific performance, are not appropriate when money will adequately compensate a party. I dismiss this claim.

53. The respondents also sought an order that Project X treat people with respect and do high quality work. I find that this requested order would be unenforceable and meaningless. I dismiss this claim.
54. 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 find that Project X had mixed success in Dispute SC-2018-003892. I find that Project X is entitled to reimbursement of half of its tribunal fees of \$175 for a total of \$87.50. Project X was successful in Dispute SC-2018-006719. I find that Project X is entitled to reimbursement of its tribunal fees of \$75.
55. I dismiss the respondents' claims for reimbursement of their tribunal fees in Dispute SC-2018-003892.
56. None of the parties claimed any dispute-related expenses.

## **ORDERS**

57. Within 14 days of the date of this order, I order the respondents to pay Project X a total of \$2,011.54, broken down as follows:
  - a. \$1,826.16 in debt
  - b. \$22.88 in pre-judgment interest under the *Court Order Interest Act*, calculated from May 28, 2018, and
  - c. \$162.50 in tribunal fees.
58. Project X is entitled to post-judgment interest, as applicable.
59. The respondents' remaining counterclaims are dismissed. Project X's remaining claims are dismissed.
60. 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.

61. 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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Eric Regehr, Tribunal Member

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<sup>i</sup> The name of the applicant is capitalized slightly differently in the 2 Dispute Notices. I have used this capitalization as it was how the applicant identified itself in the first Dispute Notice.