



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Extreme Glass Ltd. v. YUANHENG NWB 955 DEVELOPMENTS LTD.*,
2019 BCCRT 408

B E T W E E N :

Extreme Glass Ltd.

APPLICANT

A N D :

YUANHENG NWB 955 DEVELOPMENTS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Extreme Glass Ltd. says it installed doors for the respondent Yuanheng NWB 955 Developments Ltd., but the respondent failed to pay its full invoice. The applicant says the respondent owes it \$5,000.

2. The respondent says the applicant installed doors deficiently. Specifically, the respondent says that the doors have the wrong hardware, will not remain open, and that the installed glass partitions are not flush. The respondent asks that these defects be remedied and that the costs to do so be paid out of the disputed \$5,000.
3. The applicant is represented by employee or principal Diana Felber. The respondent is represented by employee or principal Michael Liang.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

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 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

9. The issues in this dispute are:
 - a. Whether the respondent owes the applicant the claimed \$5,000 for glass partition and door installation?
 - b. Has the respondent proven any offsetting deficiencies that should be deducted from the \$5,000 charged?

EVIDENCE AND ANALYSIS

10. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
11. On January 15, 2018, the respondent signed a Purchase Order with the applicant for the supply and installation of interior glass partitions and doors.

12. The glass partitions, doors and hardware were installed. The parties agree that the invoice was paid, except for \$5,000 the respondent withheld due to its concerns about the quality of the installation.

Door Hardware

13. The parties disagree about whether the installation agreement specified brushed stainless door hardware or polished stainless hardware.

14. The applicant says the Purchase Order specifies brushed stainless, but that the respondent subsequently requested chrome (polished) handles.

15. I disagree. The Purchase Order specifies that all door hardware, including the top and bottom hinges and the door handles, shall be polished finish stainless.

16. However, the applicant's March 21, 2018 quote for the same job, which is marked "revision", describes brushed stainless hardware for handles and hardware.

17. Based on the photographs filed in evidence, I find that, after installation, the door handles are polished stainless while the top hinge detail is brushed stainless.

18. The most recent document (March 21, 2018) shows a request for all brushed finish stainless. The applicant says the respondent ultimately chose chrome (or polished) finish for the door handles, though not in a written communication.

19. The respondent sought an offset for the two types of hardware finishes but failed to show it was a discrepancy from what was agreed. As well, the respondent failed to provide evidence of the value of this discrepancy, if it is one. Therefore, I find that the hardware was installed to the respondent's specifications. I decline to order any offset for the two different finishes.

Doors Closing

20. The respondent says the glass doors swing closed and will not stay open. They say this is because the floor was not level. The respondent says the applicant should have checked the condition and levelness of the floor prior to installation.
21. The applicant says the respondent asked for “free swinging doors” without closers. That is, the product requested and installed does not allow the doors to stay open on their own. The applicant also says they do not level the floor in a property. They point out that their quotation does not guarantee engineer drawings, stamps or approvals.
22. Based on the evidence, I find that the applicant installed the doors as requested. There is no provision in the Purchase Order requiring the applicant to level the floor prior to installation. The respondent argued that the condition that the applicant check the “substrate” prior to installation, implied a requirement to check whether the floor was level. I do not agree. The evidence does not allow me to draw that inference.
23. I find that the applicant installed the doors correctly and fulfilled the terms of the Purchase Order with respect to this issue.

Doors Not Flush

24. When the doors close, the parties agree they are not totally flush where they meet. However, the applicant says they are within industry tolerances or standards. The respondent disagrees and describes the slight margin between the doors as a defect.
25. On my review of the photographs filed in evidence, the margin between the doors is very slight. I was not offered any evidence on how much of a margin is acceptable. In the circumstances, I find that the applicant installed the doors to a reasonable standard with respect to them being flush.

26. Since the respondent failed to demonstrate any material deficiency in the installation of the glass doors, partitions and hardware installed, I find that it owes the applicant the \$5,000 that is outstanding. I will calculate pre-judgement interest from March 21, 2018, which was the date on which the remaining part of the invoice was to be paid.
27. 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 and \$25 in dispute-related expenses for courier expenses to provide the Dispute Notice to the respondent.

ORDERS

28. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$5,261.77, broken down as follows:
 - a. \$5,000 in payment of the outstanding invoice,
 - b. \$61.77 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$200 for \$175 in tribunal fees and \$25 for dispute-related expenses.
29. The applicant is entitled to post-judgment interest, as applicable.
30. 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.

31. 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.

Julie K. Gibson, Tribunal Member