



Civil Resolution Tribunal

Date Issued: May 28, 2019

File: SC-2018-006889

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bowen De Marco, dba Blue and Grey Services v. Briggs,*
2019 BCCRT 645

B E T W E E N :

Bowen De Marco (Doing Business As Blue and Grey Services)

APPLICANT

A N D :

Kelly Briggs

RESPONDENT

A N D :

Bowen De Marco (Doing Business As Blue and Grey Services)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant (and respondent by counterclaim), Bowen De Marco, Doing Business As Blue and Grey Services (Blue and Grey), says the respondent (and applicant by counterclaim), Kelly Briggs, has failed to pay the balance owing under the parties' July 24, 2018 contract to relocate his fence and install a gravel driveway and block retaining wall. Blue and Grey claims \$1,736 for the invoice balance, plus \$500 for loss of business, interest, and time spent on this dispute.
2. Mr. Briggs denies liability and in his counterclaim says Blue and Grey installed the retaining wall incorrectly and did not properly level the driveway, along with other concerns. He says Blue and Grey did not finish the job on the deadline date, and contrary to Blue and Grey's position says he should not have had to pay any more until the job was properly completed. Mr. Briggs claims \$1,232, for the additional expenses he says he incurred in hiring another contractor to fix Blue and Grey's work. Blue and Grey says Mr. Briggs acted unilaterally in hiring another contractor to do work it was willing to do.
3. The parties are each self-represented. For the reasons that follow, I dismiss Blue and Grey's claims and allow Mr. Briggs' counterclaim.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.

6. 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.
7. Under tribunal rule 9.3(2), 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.

ISSUES

8. The issues are a) whether or to what extent Mr. Briggs owes Blue and Grey \$1,736 for its outstanding invoice balance, plus \$500 for loss of business, interest, and time spent, and b) whether or to what extent Blue and Grey owe Mr. Briggs \$1,232 as reimbursement of another contractor's fees to finish the job.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove its claims on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. Briefly, in July 2018 Mr. Briggs hired Blue and Grey to relocate a fence and create a gravel area with retaining wall blocks on the garden edge, so that he could have a level area for a greenhouse in the back and his RV in the front, with the relocated

fence dividing the 2 areas. The evidence shows Mr. Briggs explained the timing of the job's completion was important to him.

11. The parties' signed contract is dated July 23, 2018, which on its face adopted the description of the job's scope of work from Blue and Grey's July 20, 2018 proposal. The contract stated that it did not include unforeseen work or concerns, which is not relevant to the dispute before me. The contract stated work would start on July 23 and complete on or before August 1, 2018. While the contract also said dates were subject to change due to the supply of special-order materials and other unforeseen delays, there was no special order and no unforeseen delays argued by Blue and Grey.
12. The July 23, 20178 contract's fixed cost price was \$3,368 plus GST (which equals \$3,536.40), plus any extras or deletions as per verbal agreement or change orders. There were no agreed upon extras or deletions and no change orders, apart from Blue and Grey's assertion that what Mr. Briggs was asking for on August 29, 2018 was an 'extra' or 'additional work'.
13. The contract further stated that changes to the work over \$500 in value required a written agreement. All other changes would be verbal and later electronically agreed to by both parties. Again, there are no such written agreements. Interest applied at 10% per year. A one-year warranty from completion applied, if full payment was received within 31 days following delivery of the invoice. More on the contract's payment terms below.
14. The July 20, 2018 quote included the following relevant job descriptions: removing and re-installing a fence, cutting down fence posts and installing new ones, excavation of the driveway area to slope and grade, compacting and raking completed areas, supplying and laying gravel crush, and a "major" clean-up.
15. I find it was an implied term that Blue and Grey would complete the work to a professional standard, and in particular that the back gravel area was to be level

and the blocks would be properly seated and not shift or tilt. I find Blue and Grey failed to meet that standard, which as discussed below, it admits.

16. First, I find that Blue and Grey did not do the job according to the agreed-upon timeline. Blue and Grey says it finished the job on August 5, 2018, after the agreed upon deadline. For reasons that are not entirely clear, while Mr. Briggs raised concerns on the phone by August 7, Blue and Grey did not attend Mr. Briggs' home until August 29, even though Blue and Grey acknowledges much of Mr. Briggs' concerns were due to work it had not done properly.
17. Second, I find that the work Mr. Briggs wanted fixed all fell within the parties' contract, contrary to Blue and Grey's assertion. In its August 30, 2018 letter Blue and Grey said the following are outside the contract's scope: realignment of the retaining wall, addition of corner blocks to the rear corner of the slop, remove and reinstall plastic curbing design at rear, changing curbing alignment between gravel and river rock threshold at front. Blue and Grey said all those things were 'additional work' for which Mr. Briggs would have to pay extra. I disagree as I find all those things were what Mr. Briggs expressly hired Blue and Grey to do in the first place.
18. In any event, based on an audio recording of the parties' conversation on, I infer, August 29, 2018, I find Blue and Grey agreed that Mr. Briggs' concerns related to work that improperly done. In that discussion, Blue and Grey agreed that it would re-locate 17 blocks and straighten the balance of them. It agreed to backfill, remove dirt that had been dumped on Mr. Briggs' garden beds, clean up spilt concrete, add "a few more" corners and caps. It agreed to address improperly done edging and put more river rock down to level the gravel area. It was clear Mr. Briggs' main concern was that the RV pad and foundation for the greenhouse were not level and the retaining wall was not solid. In its submissions, Blue and Grey now says the work was in part done by an inexperienced worker. Its focus is that Mr. Briggs should have let Blue and Grey fix the deficiencies. More on this below.
19. Significantly, at no point in that August 29 discussion did the parties agree to additional charges. However, towards the end of the conversation, Blue and Grey

stated we are getting to a point where “do I even do it. We are getting pretty crazy here”. It is clear that Blue and Grey was realizing that Mr. Briggs’ level of dissatisfaction was amounting to a lot of work for Blue and Grey to re-do: “I have to either eat a significant cost or walk away from it”. However, Blue and Grey also said to the effect “your option is to get somebody else to do it, I have right of first refusal, to do my corrections”. Yet, there is nothing in the parties’ contract that addresses how deficiencies would be addressed. Blue and Grey said it would put together the cost on the repair work to know what its additional cost would be, “which is not important to you”. I find all of this supports the conclusion that the necessary repairs were for Blue and Grey to fix under the parties’ contract and did not amount to additional work for which Blue and Grey could charge extra.

20. In further support of this conclusion, Blue and Grey does not argue it should get paid extra for work that it now admits needs to be done. Instead, its central position is that it was reasonable to ask Mr. Briggs to pay half the balance owed, \$868, and then the rest on completion. In their August 29 discussion, Blue and Grey refused to put it in their schedule to do the repair work unless Mr. Briggs paid that \$868.
21. The contract’s “payment schedule” states that Mr. Briggs would pay \$1,800 as pre-payment for “material & coordination” before start of work. While the specific evidence is not before me, it is uncontested that at some point in July Mr. Briggs paid this sum. The payment schedule stated that “on completion” the \$1,736 balance was due as a “full and final” payment.
22. So, I disagree with Blue and Grey. The contract was clear: Mr. Briggs was not obliged to pay anything more until he paid the \$1,736 final balance “on completion”.
23. Third, Blue and Grey argued in its August 30, 2018 letter that the Allan blocks were a ‘warranty’ item and it would repair them, but only if Mr. Briggs paid the invoice first. First, the contract said warranty work would be done if the invoice was paid within 31 days of delivery. The 31-day period had not yet passed at that point. Second, I do not agree that fixing the incorrectly installed Allan blocks fell within

'warranty' work. I note Blue and Grey does not particularly make that argument in this dispute.

24. Given Blue and Grey's statements during the August 29, 2018 conversation, I find it was reasonable for Mr. Briggs to hire another contractor to repair the job. This is because I find it was unreasonable and in breach of the parties' contract for Blue and Grey to require payment of \$868 before it would fix the work it did improperly in the first place.
25. I note that Mr. Briggs also provided a statement from Mr. McGoldtrick, the contractor Mr. Briggs hired to fix the deficiencies. Mr. Briggs described the statement as being critical of the work done by Blue and Grey. I was not able to view that witness statement through the tribunal's online portal. I have decided it is not necessary for me to see it. I say that because Blue and Grey did not address it in its arguments and because I am satisfied from the video and photos that the work was not done properly, which for the most part Blue and Grey expressly admits. In particular, Blue and Grey admits the block retaining wall and the levelling of the gravel parking areas were done poorly.
26. Given my conclusions above, I dismiss Blue and Grey's claims. I find it has not proved it is entitled to any further payment. I find Mr. Briggs was not required to allow Blue and Grey to fix the job, because Blue and Grey improperly required payment of \$868 first. Even if I had found Mr. Briggs liable, I would not have allowed the loss of business claim for some amount under \$500, as no evidence was provided to support that claim. I also would have disallowed any claim for "time spent" on this dispute, which is inconsistent with the tribunal's rules that say legal fees are to be awarded in only extraordinary cases. This is not an extraordinary case.
27. What about the counterclaim?
28. As noted, Mr. Briggs hired another contractor, Chris McGoldtrick, to repair the deficiencies left by Blue and Grey. Based on the photos and video, this involved

completely re-doing much of Blue and Grey's work. Mr. McGoldtrick's October 1, 2018 invoice was for \$2,660. In this dispute, Mr. Briggs counterclaims for the \$1,232. which he says is reimbursement for the additional expenses he incurred to fix Blue and Grey's errors. Given the amount, Mr. Briggs has factored in the \$1,736 balance outstanding on Blue and Grey's invoice that I have agreed he should not pay, as set out above.

29. I find Mr. Briggs has proved he is entitled to the \$1,232 claimed. I say this because it was reasonable for him to hire Mr. McGoldtrick rather than paying Blue and Grey more in advance, contrary to their contract's terms. While Blue and Grey says the value of the \$1,232 "can be disputed", I find the amount is reasonable and I allow it.
30. Mr. Briggs is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,232, from October 1, 2018, the date of Mr. McGoldtrick's invoice.
31. In accordance with the Act and the tribunal's rules, I find Mr. Briggs is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

32. Within 14 days of this decision, I order Blue and Grey to pay Mr. Briggs a total of \$1,371.24, broken down as follows:
 - a. \$1,232 in damages,
 - b. \$14.24 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
33. Mr. Briggs is entitled to post-judgment interest, as applicable.
34. Blue and Grey's claims are dismissed.
35. 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.

36. 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

Shelley Lopez, Vice Chair