Civil Resolution Tribunal

Date Issued: June 20, 2019

File: SC-2019-001963

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0459478 BC LTD v. Tiearney*, 2019 BCCRT 756

B E T W E E N :

0459478 BC LTD

APPLICANT

A N D :

LAFE G. TIEARNEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about an unpaid invoice. The applicant, 0459478 BC Ltd, says that it did emergency mitigation work for the respondent, Lafe G. Tiearney, at his strata lot. The respondent says that he did not authorize the applicant to work at his strata lot and therefore should not have to pay.

2. The applicant is represented by David McLeod, whom I infer is a principal or employee. The respondent is self-represented.

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 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.

4. 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 of this dispute, I find that I am properly able to assess and weigh the 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.

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 9.3(2), in resolving this dispute the tribunal may make an order 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.

ISSUE

7. The issue in this dispute is whether the parties had a contract for emergency mitigation work and if so, whether the respondent must pay the applicant the claimed invoice for this work.

EVIDENCE AND ANALYSIS

8. The respondent owns a strata lot. He submits that on January 19, 2019, his strata lot's roof was damaged.

9. The applicant does business as Paul Davis Greater Vancouver, a repair and restoration company. According to its January 2019 preliminary report, the applicant received an insurance claim about the strata lot from an insurer on January 21, 2019. The report named the owner's strata corporation as the client and noted that the client's insurance claim had not yet been approved.

10. The applicant submits that the respondent confirmed a site visit with one of its technicians on January 22, 2019. This appears to be the first contact between the parties. The preliminary report states that on that same day, the applicant did a site inspection at the respondent's strata lot and concluded that the wind blew some shingles off the respondent's roof. The report includes exterior and interior photos of the strata lot. These photos show water damage including carpet and ceiling stains, as well as related moisture mapping and readings taken by the applicant to measure the scope of damage.

11. The applicant also provided a work authorization and agreement dated January 22, 2019, which appears to be signed by both the respondent and by the applicant's authorized signatory, CC. It is also apparently initialed by the respondent in another area. The copy provided was also in an electronic format.

12. The respondent submits that he never signed or initialed this work authorization and described how his usual signature and initials markedly differ. He acknowledges signing an agreement electronically on CC's phone but submits that it only allowed

the respondent to enter the strata lot to make sure the insurer would cover the repair work.

13. On balance, I find that when the respondent signed the agreement on CC's phone, he did in fact sign the January 22, 2019 work authorization agreement. I find it implausible that CC would have provided a different agreement on his phone and no other agreement is before me in evidence.

14. In a civil claim such as this, the burden of proof is on the applicant to show, on a balance of probabilities, that it satisfied the terms of the contract and should be paid. The January 22, 2019 work authorization agreement states that the respondent authorizes the applicant to perform all "necessary repairs and restoration work" at the strata lot.

15. According to the respondent's invoice and breakdown of the work done, the applicant set up and installed a dehumidifier and fans, collected samples for testing, and assessed the strata lot for necessary repairs. Site visits occurred on January 22, 23, and February 4, 2019. The work results were further documented in a roof inspection report, complete with photographs, that recommended reroofing of all sloped sections. Unlike the preliminary report, the invoice did not name the strata corporation as the client. Instead, it named the respondent. The applicant's invoice shows $1,380.95 as the amount owing.

16. The respondent does not dispute that the applicant did this work. However, he submits that the applicant said that it would only assess the water damage and report to the insurance adjuster.

17. In this case, the parties signed a written contract outlining the parties' obligations. I therefore place greater weight upon the January 22, 2019 work authorization and agreement than the respondent's submission. The respondent's submissions suggest that he did not read this agreement. However, a failure to read a contract is not determinative of whether a person is bound by its terms: *D2 Contracting Ltd. v. The Bank of Nova Scotia*, 2015 BCSC 1634, aff'd 2016 BCCA 366. I find that the

respondent is bound by the January 22, 2019 work authorization as he had the opportunity to read it when he signed it.

18. The January 22, 2019 work authorization states that the applicant is authorized to conduct tasks including the preservation, drying, deodorization, and decontamination of the strata lot and personal effects. Given this wording, I find that the invoiced work fits within the terms of this agreement.

19. The respondent also submits that there was no need for the applicant to set up and run fans and a humidifier at the strata lot. He submits that by January 22, 2019, the roof was already tented, his carpets dry, and only one wall was damp. However, I am unable to place significant weight upon this submission. As stated in *Burbank v. R.T.B.*, 2007 BCCA 215, where the standard of a competent member of a trade or profession is at issue, evidence of those carrying on that occupation is necessary unless the matter is on non-technical matters or those of which an ordinary person may be expected to have knowledge. I have no evidence to conclude that the applicant conducted its work in a substandard manner by doing more than necessary.

20. The next question that arises is who should pay for the invoice. Section 6 of the January 22, 2019 agreement states that Paul Davis will direct its invoices to the respondent's insurance representative for full payment. However, section 7 of the form says that if the respondent's insurer or property manager "should deny full payment for the invoice(s)" for any reason, the respondent (and any co-respondent, though here there was none) will be "jointly and severally" liable for the work invoices.

21. The applicant referred to section 7 as its basis for directing its invoice to the respondent. The applicant submits that its invoice was "not covered by Strata". The respondent did not raise this as a disputed issue. The applicant's preliminary report also indicates that the applicant was originally in contact with the respondent's insurer and named the strata corporation as the client. The later work authorization was directed to the respondent, who I have found signed it. On balance, I conclude

that the respondent's insurer or property manager denied full payment of the applicant's invoice. I therefore find that the applicant is entitled to the invoiced amount of $1,380.95.

22. The applicant also claimed pre-judgment contractual interest in an amount to be determined. Section 7a of the January 22, 2019 agreement states that overdue invoices are subject to interest charges to 2% per month or 24% per annum. No further specifics are provided. The applicant submits it sent its invoice to the respondent on February 14, 2019 by email. The invoice does not specify when payment is due, though I find it clear from the January 22, 2019 agreement and invoice that payment of the invoiced amount could not be delayed indefinitely. The reference to monthly interest suggests to me that the invoice should have been paid within a month.

23. I find that the applicant is entitled to 24% per year pre-judgment contractual interest, which calculated from March 14, 2019, totals $88.99.

TRIBUNAL FEES AND EXPENSES

24. As the applicant was successful in this dispute, I find the applicant is entitled to reimbursement of $125.00 in tribunal fees and $11.97 in postage expenses.

ORDER

25. Within 30 days of this decision, I order the respondent to pay the applicant a total of $1,606.91, broken down as follows:

    a. $1,380.95 in debt,

    b. $88.99 in pre-judgment contractual interest at 24% per year, and

    c. $136.97 as reimbursement of tribunal fees and dispute-related expenses.

26. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*.

27. 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.

28. 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.

David Jiang, Tribunal Member