



Civil Resolution Tribunal

Date Issued: July 9, 2019

File: SC-2018-007572

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Command Electric Ltd. v. Ghafarzadeh*, 2019 BCCRT 829

B E T W E E N :

Command Electric Ltd.

APPLICANT

A N D :

Shervin Ghafarzadeh

RESPONDENT

A N D :

Command Electric Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about electrical services the applicant Command Electric Ltd. (Command) provided to the respondent Shervin Ghafarzadeh.
2. Command says it completed wiring installation in Mr. Ghafarzadeh's house but was not paid in full. Command asks for an order that Mr. Ghafarzadeh pay \$5,000 it says is outstanding.
3. Mr. Ghafarzadeh denies owing Command \$5,000. Mr. Ghafarzadeh says he overpaid Command. He says some of their work needed to be finished or fixed. Mr. Ghafarzadeh asks that the claim against him be dismissed.
4. In the counterclaim, Mr. Ghafarzadeh says he overpaid Command by \$14,000. Mr. Ghafarzadeh limits his counterclaim to the tribunal's \$5,000 small claims monetary jurisdiction limit. Command denies any overpayment and asks that the counterclaim be dismissed.
5. Command is represented by principal Isaac Saadatmand. Mr. Ghafarzadeh is self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. Under tribunal rule 9.3(2), 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

10. The issues in this dispute are:
 - a. to what extent, if any, Mr. Ghafarzadeh must pay Command \$5,000 for electrical services provided, and
 - b. on the counterclaim, to what extent, if any, Command must pay Mr. Ghafarzadeh \$5,000 as a refund for an overpayment.

EVIDENCE AND ANALYSIS

11. In this civil claim, Command bears the burden of proof on a balance of probabilities. Mr. Ghafarzadeh bears the same burden of proof in his counterclaim. I have reviewed all of the evidence and submissions but refer to them here only to the extent necessary to explain and give context for my decision.

12. On March 21, 2016, both parties signed a document outlining the electrical work to be completed. It contains some handwritten changes to an earlier quote. I find that the March 21, 2016 is a written agreement between the parties for electrical work.
13. The agreement specifies a price of \$12,500 plus GST and an electrical permit for about \$1,000. The work is described as “total electrical indoor wiring and installation according to the 2015 BC Electrical code”. The fixed price job includes wiring for:
 - a. 2 ranges,
 - b. 2 dryers,
 - c. 2 washers,
 - d. 4 fridges,
 - e. 3 microwaves,
 - f. 2 hood fans,
 - g. 2 dish washers,
 - h. 3 garburators,
 - i. 1 central vacuum,
 - j. 1 boiler or furnace, and
 - k. 2 garage openers.
14. Because the agreement calls the \$12,500 the ‘job price’ I find that the indoor wiring listed above was to be completed for this fixed price, except for the items labelled in the agreement as “extra”.
15. For the items labelled as “extra”, I find Command would provide them only if paid an additional fee. For some items, the price of the part is included in the agreement.

16. The hourly rate for additional work is \$85. I find that Command agreed to provide these extras on a time and materials basis.
17. The terms of payment under the agreement are 75% to be paid after the rough-in wiring inspection and 25% to be paid after the final inspection.
18. The agreement includes a 1% per month interest rate on any overdue payments.
19. Command says that it completed electrical work for Mr. Ghafarzadeh in 2018, but that he paid only 50% of their invoice.
20. Command says Mr. Ghafarzadeh had it complete several extras, but then failed to pay for the additional work. Mr. Ghafarzadeh disagrees, and says there was no extra work completed.
21. On October 23, 2016, the parties entered a further written agreement altering the terms of payment as follows (quotes reproduced as written):
 - a. up to 65% of agreement “and additional to be paid during the rough wiring, electrical contractor may issue one or more invoices during this period for labors and electrical materials depends on job progressing”
 - b. “20 % of rough wiring invoice and extra items (if there is any) to be paid before electrical final inspection (all the finish job such as install breaker-potlights trims -install fixtures – and appliances” and,
 - c. “15% of total invoice and extra items shortly after electrical final inspection (within 10 days)”
22. On November 15, 2017, Command issued Mr. Ghafarzadeh invoice No. 1098, for a total of \$8,098.65. Command says this invoice was for extra work that Mr. Ghafarzadeh asked to have completed, over and above the work in for the \$12,500 fixed price.

23. Based on the items described in the November 15, 2017 invoice, I agree that these were extra items. They include wiring for a wine fridge, bar plug, theatre room and other locations that were not included in the fixed price job.
24. As well, the agreement provided that unforeseen issues in the fixed price scope of work would also be charged at \$85 per hour in labour, plus parts. I find that the items in the November 15, 2017 invoice are mainly extras, with some re-installations of items that fall within unforeseen adjustments in the fixed price project, which I find were appropriately charged as additions.
25. Mr. Ghafarzadeh argues that certain of these items were overcharged, and he referred to the price of parts only for some of the extras shown in the agreement. I find that Mr. Ghafarzadeh's argument does not account for labour, which he agreed to pay at a rate of \$85 per hour. I find that the extra charges included parts and labour costs.
26. On February 5, 2018, a final electrical inspection was conducted and approved by building official DF.
27. On February 12, 2018 Command issued a final invoice of \$4,918.00 to Mr. Ghafarzadeh. Command says, and I accept, that this was the amount left owing after a partial payment from Mr. Ghafarzadeh of the November 15, 2017 invoice. In the email attaching the invoice Command says it will still install "1000 w heater with thermostats in garage and get black scoreless cover".
28. In March, August and September 2018 Command followed up by email asking for Mr. Ghafarzadeh to remit payment for the invoiced \$4,919.00. I note that the invoice itself is for \$4,918. I infer the one-dollar difference is a typographical error.
29. Text and email messages filed in evidence show Command asking Mr. Ghafarzadeh for payment in February, March, May and August 2018. Based on the evidence, I find that Mr. Ghafarzadeh did not pay the \$4,918 owing.

30. On September 23, 2018, Mr. Ghafarzadeh emailed Command saying he had overpaid, and asking for a refund of the overpayment to be given to his parents.
31. Mr. Ghafarzadeh says the GST charged in the final invoice is incorrect. I agree. The invoice shows a 5% charge for GST on \$4,342 as \$576 which is wrong. I find that the GST owing is \$217.10, 5% of \$4,342.
32. I find the amount owing on the final invoice should be \$4,559.10, not \$4,918.
33. On June 5, 2018, Mr. Ghafarzadeh paid Command \$500 by cheque. Command says this payment was for an air conditioning connection, separate from the outstanding charges of \$4,342 which I have found were for other electrical work.
34. Command did not provide an invoice or details of an air conditioning charge of \$500. As such, I prefer Mr. Gharazadeh's evidence that this \$500 was a payment on the February 12, 2018 invoice.
35. With the final invoice total of \$4,559.10, I subtract \$500 for the payment, giving \$4,059.10. I find the \$4,059.10 is outstanding for Command's electrical work before considering any deficiencies.
36. I now turn to whether there should be any reduction on the amount owing based on Mr. Ghafarzadeh's argument that the work was incomplete or that it was deficient.
37. On January 10, 2019, Mr. Ghafarzadeh emailed Command to say that he would allow until Monday January 14, 2019 for the deficiencies to be addressed before hiring someone else to fix the issues. He itemized the deficiencies as follows:
 - a. Strip LED light in one bathroom does not work,
 - b. Strip LED light in accessory building drops not installed,
 - c. One plug outside upper floor not installed,
 - d. One plug outside deck area not installed,
 - e. Heater in garage not installed,

- f. Some plugs do not work
- g. Light under staircase not installed,
- h. Fuse for fridge shared with other appliances.

38. Mr. Ghafarzadeh provided photographs of some deficiencies, namely the LED lighting, garage heater issue and outdoor deck plug. I have no evidence of the value of the deficiencies, except for Mr. Ghafarzadeh's assertion that they are of more value than the final amount owing. He did not provide any invoice showing that he hired anyone to fix the deficiencies. I do not accept Mr. Ghafarzadeh's submission as to the value of the deficiencies.

39. On January 11, 2019 Command responded saying that if Mr. Ghafarzadeh paid the final invoice, he would have a one-year workmanship warranty after final inspection.

40. Based on this email, I find that Command did not return to consider or attend to the incomplete items, because its final invoice went unpaid. However, I find that these deficiencies were items that Command should have completed. As I have no precise evidence of their value, but I have found that some items were incomplete, on a judgement basis I find that \$500 should be deducted from the amount owing. I set this figure because the description of the items appears to reflect minor deficiencies that would be fixed without significant labour.

41. In the main claim, I find that Mr. Ghafarzadeh must pay Command \$3,559.10 for electrical services provided.

42. I find that the agreed contractual interest on the overdue payment of 1% per month or 24% per year applies to this overdue amount, calculated from March 12, 2018 to the date of this decision. I calculate contractual interest for this period to be \$1,132.67.

Counterclaim

43. Turning to the counterclaim, Mr. Ghafarzadeh wrote that he had a witness, AM, who would provide evidence proving the overpayment. Yet, Mr. Ghafarzadeh did not file a witness statement from AM.
44. In submissions, Mr. Ghafarzadeh says he overpaid by \$15,006. I find that he did not prove this overpayment by reference to invoices and payments.
45. Although Mr. Ghafarzadeh filed a September 23, 2018 email to Command in which he refers to an overpayment, the email attachment was not filed in evidence.
46. Since I have no statement from AM, I find that Mr. Ghafarzadeh has not met the burden of proving his counterclaim on a balance of probabilities.
47. I dismiss Mr. Ghafarzadeh's counterclaim. I also dismiss his claim to tribunal fees for the counterclaim.

Tribunal Fees and Expenses

48. 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 Command is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

49. Within 30 days of the date of this order, I order Mr. Ghafarzadeh to pay Command a total of \$4,866.77, broken down as follows:
 - a. \$3,559.10 in payment for electrical services,
 - b. \$1,132.67 in interest at the agreed contractual rate of 24% per year, and
 - c. \$175 in tribunal fees.

50. Command is entitled to post-judgment interest, under the *Court Order Interest Act*, as applicable.
51. I dismiss Mr. Ghafarzadeh's counterclaim and his related claim for tribunal fees.
52. 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.
53. 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