Civil Resolution Tribunal

Date Issued: July 11, 2019

File: SC- 2018-009171

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Slip Tube Enterprises Ltd v. Super Soil Inc.*, 2019 BCCRT 841

B E T W E E N :

Slip tube Enterprises Ltd

APPLICANT

A N D :

SUPER SOIL INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about unpaid extra charges for work, parts, and rental equipment. The applicant, Slip Tube Enterprises Ltd, says that the extra charges were justified due to unexpected worksite issues. The respondent says that it paid the price

originally quoted by the applicant and should not pay the extra charges as these were not approved in advance.

2. The applicant is represented by David Pereira. The respondent is represented by Emmanuel Mfonyam. I infer that the representatives are the principals or employees of each party.

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 respondent is liable for the extra charges and if so, what is the appropriate remedy.

FACTS AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

9. The respondent hired the applicant to replace a shelter roof. The applicant priced the expected work in an April 4, 2018 quote. The quote provides a rough breakdown of costs. It states that if the applicant finishes early it will deduct the price of unused labour. However, the quote does not otherwise indicate that the price is subject to change or indicate how any extra work would be approved or priced.

10. The applicant completed its work in June 2018 and billed the respondent extra charges in its June 26 and June 28, 2018 invoices. The applicant submits that these charges were due to three factors. First, the respondent did not close its truck operations during the installation work. This necessitated renting a second manlift. Second, the respondent did not remove wires from pipes as discussed by the parties during a previous site visit. The applicant had to build a new header for the wires. Third, the applicant unexpectedly had to replace some of the pre-existing lumber as several spots would not hold the screws used.

11. The applicant acknowledges that it did not seek preapproval for any of the extra charges. However, it submits that it had no time to email the respondent for instructions as the work had to be done in one day.

12. The applicable legal principles are laid out in *McCrea v. Fournier,* 2017 BCPC 30 and *Sepco Estates Ltd. v. Dy,* 2007 BCSC 1159. In a building contract there is, in the absence of any express provision, an implied term that the owner will do everything reasonable to enable the contractor to complete the work. This includes making the worksite available and not interfering with the contractor's work in a way that might cause delay or extra cost in the completion of the work.

13. The applicant claims for extra work that it says is not part of the April 4, 2018 quote. As noted in *Sepco Estates Ltd.* at paragraph 72, "an extra" is work that is substantially different from, and wholly outside, the scope of the work contemplated by the contract. Whether an item of work is an extra depends on the contract documents, the nature of the work performed, and the surrounding circumstances. If, under the contract, the item of work is one that the contractor is required to perform it cannot be an extra. This is true even if the contractor failed to realize he would be required to perform such work.

14. Additional work claimed as extra will fall into one of three categories. Category 1 is work which the contractor was already required to perform under the contract. It is therefore not truly an extra. In these cases, the contractor must perform the work without additional payment beyond the contract price.

15. Category 2 is work not specifically called for by the contract, but still within the scope of the work as originally planned. There may be a contractual provision governing the performance of, and payment for, this type of extra work. Where there is no provision for payment, the court may infer a promise to pay a reasonable amount for work done.

16. Category 3 is work that is substantially different from, and completely outside, the scope of the work contemplated by the contract. The main difference between this work and the work in the second category is that the owner can compel performance of extra work in the second category. However, they cannot do so for work in this category. Where no price is fixed for the payment of work in this category, the law may infer a promise to pay a reasonable amount for work done.

17. I shall first consider the applicant's claim for extra charges because the respondent did not halt its truck operations during the installation work. The applicant submits that it had to pay for renting a second manlift to avoid the respondent's trucks and to avoid dirt piles at the worksite. The June 26, 2018 invoice shows machine rental and delivery as an extra charge of $1,400.

18. I find that this work fits within category 1 of the categories discussed in *Sepco Estates Ltd.* The use of the second manlift was not substantially different from or wholly outside the parties' contract. The April 4, 2018 quote does not mention the use of the first manlift at all or itemize it as a cost. However, the applicant's submissions indicate that the applicant knew that at least one manlift would be needed for the shelter roof installation. I find that using a second manlift was within the contemplated work. There is also no indication that the respondent agreed to temporarily halt truck operations during the installation. The quote is silent on this issue. The applicant says that it assumed that the respondent would not have its own equipment running at the time as it was told that the job would not start during the busy season. However, I do not find it reasonable to assume that the respondent would run few or no trucks at all during this time. I conclude that using the second manlift was part of the work the applicant was required to perform under the parties' contract, without additional remuneration.

19. I will now consider the applicant's claim that the respondent did not remove the electrical wiring at the worksite that it should have. I find that the applicant has not proven any claim in relation to the wiring. The applicant submits it had to make a new header but the June 2018 invoices before me do not identify this work or how much it cost. Similarly, there is no indication on the invoices that the wiring created extra delay. The respondent denies generally that it failed any of its responsibilities and there is no documentation to support that the applicant identified the wiring as an issue, or that the respondent agreed to remove the wiring. On balance, I find that the applicant has not proved this portion of the claim on the balance of probabilities.

20. Last, I consider the applicant's final claim for replacing some of the existing lumber at the worksite. In its June 28, 2018 invoice, the applicant charged the respondent for 240 pieces of lumber, delivery and installation of the lumber, and GST, for a total of $1,268.40 as extra charges. The applicant submits that it did not realize the pre-existing lumber was problematic until it started putting screws in. The screws would not hold. The applicant says that this was unanticipated in part because some of the lumber was hidden from view during previous worksite visits. In contrast, the respondent submits that the pre-existing lumber was easily seen, and any lumber replacement costs should have been part of the April 4, 2018 quote. It says that the quoted price was part of the reason it picked the applicant for the job.

21. As noted in *McCrea* at paragraph 76, the burden is on the applicant to show that the lumber is an extra and not included in the parties' contract. I acknowledge that the applicant did not expect the pre-existing lumber to be problematic. However, I find it unclear from the evidence why replacing the shelter roof would not normally include replacing some, or all, of the claimed lumber pieces. The only description of the lumber in the June 28, 2018 invoice is that it was "for flap". The applicant's submissions do not discuss it in any detail.

22. The applicant refers to the April 4, 2018 quote in support of its position that this is extra work. The quote does not include any costs for lumber replacement. However, I find that the quote was not meant to itemize all expected costs. For example, there is no mention of the first manlift that the applicant expected to use. On balance, I find that this claim appears to fit within category 1 of the categories discussed in *Sepco Estates Ltd.* It follows that the charges for the lumber and its delivery and installation are not extra work that the applicant can charge the respondent for.

TRIBUNAL FEES

23. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and

reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.

24. The respondent is the successful party. However, I find that it has not paid tribunal fees or made a claim for dispute-related expenses.

25. As the applicant was unsuccessful, I dismiss its claims for reimbursement of tribunal fees. The applicant did not claim for dispute related-expenses.

ORDER

26. I order that this dispute and the applicant's claims be dismissed.

David Jiang, Tribunal Member