



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *BCCA People's Construction Ltd. v. Excellentia Builders Ltd.*
2019 BCCRT 917

B E T W E E N :

BCCA People's Construction LTD.

APPLICANT

A N D :

EXCELLENTIA BUILDERS LTD.

RESPONDENT

A N D :

BCCA People's Construction LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant and respondent by counterclaim, BCCA People's Construction LTD. (PC), says the respondent, EXCELLENTIA BUILDERS LTD. (Excellentia) failed to pay the full amount of PC's invoice for landscaping work. It claims \$3,744.19 for the work plus other expenses for a total of \$4,854.15.
2. Excellentia says PC was paid in full. It also says PC relies on a fraudulent contract. It argues that the alleged fraud issues make the claim too complex and the tribunal should refuse to resolve the dispute.
3. In its counterclaim, Excellentia says PC was late delivering landscaping work, causing a delay in the homeowners' occupancy of their home. It claims \$5,000 for lack of enjoyment of the home, fees and damages.
4. PC is represented by Molly Hou, who is not a lawyer and is a family member of PC's owner. Excellentia is represented by Sarmad Mehrbod, whom I infer is a principal or employee.

JURISDICTION AND PROCEDURE

5. 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.
6. 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, both parties in this dispute call 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 *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions. I have addressed the respondent's argument about the complexity of the dispute below.

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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the Act:
 - 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. Should I refuse to resolve this dispute because the issues are too complex or impractical for the tribunal to resolve?
 - b. Does Excellentia owe PC for work performed under the contract? If so, how much?
 - c. Does PC owe Excellentia for late completion of services?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, each party must prove its claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

Should I refuse to resolve this dispute because the issues are too complex or impractical for the tribunal to resolve?

11. Section 11 of the Act gives the tribunal discretion to refuse to resolve a claim within its jurisdiction. In particular, the tribunal may refuse to resolve a claim if issues in the claim or dispute are too complex for the tribunal's process or otherwise impractical for the tribunal to case manage or resolve. The tribunal may exercise its discretion under section 11 of the Act at any time before the tribunal makes a final decision resolving the dispute.

12. In requesting that the tribunal refuse to resolve this dispute, Excellentia bears the burden of establishing that it is entitled to this remedy. The tribunal set out the factors to consider in *Residential Section of The Owners, Strata Plan VR 1858 v. High Plains Sales Agency Ltd.*, 2018 BCCRT 168. I agree with the former vice chair, who wrote that the applicable factors to consider are the complexity and impracticality of the dispute (section 11(1)(c)), and whether the Supreme Court would order the tribunal not to resolve the dispute based on the interests of justice and fairness (section 16.3).

13. On its face, this dispute involves determination of the terms and conditions of a contract between a general contractor and subcontractor. While each case has different facts, the tribunal has dealt with many cases that can be characterized as contractor disputes. The tribunal has also resolved many disputes involving fraud allegations. Here, while some of the facts are in dispute, the facts are not especially complex. The legal issues raised are also not complex.

14. Turning to the fairness considerations listed in section 16.3 of the Act, I find that while the dispute is undoubtedly important to the parties, there are no issues raised

of such importance that that the claim should be adjudicated by the court to establish a precedent for others.

15. The dispute does not raise a constitutional question or require application of the *Human Rights Code*. The parties are not unanimous that the tribunal should not adjudicate the dispute – I infer that PC wishes the tribunal to resolve the dispute. I am not aware of any related disputes currently before the court.
16. The final consideration listed in section 16.3 of the Act is whether the use of electronic communication tools in the adjudication process would be unfair to a party. Excellentia did not argue that the tribunal's process would somehow be unfair to it. However, I gather that its objection relates to its position that the written contract is a forgery. This raises issues of credibility.
17. The Supreme Court considered section 16.3 (then section 12.3) in *Yas v. Pope*, which I mentioned above. Although that dispute was a strata property dispute, the same principles apply. The court noted that issues of credibility are routinely addressed on written records by various administrative boards and tribunals in BC and elsewhere. Here, I find that the issues of credibility raised here are not so significant that I am unable to fairly resolve them and adjudicate the dispute without an oral hearing. In making that finding, I note that Excellentia did not request an oral hearing.
18. In summary, I find that this dispute is not too complex or impractical for the tribunal to resolve, and there are no other factors suggesting the Supreme Court would order the tribunal not to resolve the dispute. I find that the tribunal should not refuse to resolve this dispute.

Does Excellentia owe PC for work performed under the contract? If so, how much?

19. PC says it completed landscaping work for a construction project at a residential address in Vancouver (4373), according to a December 1, 2016 written contract

with Excellentia (contract). PC says that when settling the final payment, Excellentia tried to reduce the agreed-upon rates.

20. Excellentia says PC has “forged” the contract and increased the rates “to abuse [non-existence] of the contract.”
21. PC says it did not witness the signature from Excellentia’s representative but received the contract, signed, from one of Excellentia’s employees.
22. Excellentia says the parties’ agreement was that PC would be paid by the square foot, based on previous jobs PC had completed and been paid for. Even if that is true, it does not help me determine the terms of the parties’ agreement, because Excellentia has not stated what the previous square footage rates were. It provided no evidence in support, such as previous contracts with PC, or previous PC invoices.
23. Elsewhere in its submissions, Excellentia states that the parties’ agreement was for a flat rate of \$15,000. I find that this inconsistent evidence about the parties’ agreement undermines Excellentia’s credibility.
24. On April 10, 2018, attempting to obtain payment for its work, PC sent a photo of the contract to Excellentia by text message. Excellentia did not comment on the contract, and the parties continued to discuss payment, ongoing work, and other issues. I agree with PC that if it had created a false contract, one would expect Excellentia to have challenged the photo of the contract sent by text message. Instead, it allowed PC to continue working on the project.
25. In the absence of reliable evidence of a different agreement, and considering the surrounding evidence, I accept the contract as valid evidence of the parties’ agreement. Nothing prevented Excellentia from providing evidence to support its assertion the signature or the entire contract was a forgery, such as evidence of other signatures from that person or evidence from a handwriting expert. Excellentia provided nothing to support its allegation.

26. Of course, contracts may be modified by mutual agreement. Based on the parties' text messages, I find that they met in late March 2018 and agreed to a price of \$1.50 per square foot of gravel, rather than the \$3 originally stated in the contract. PC did not challenge Excellentia's text message confirming the new rate "as agreed." I find that the parties modified their contract. This was not the only way the parties modified their contract. For example, the original contract stipulated a deposit of \$3,000 followed by payment in full upon completion. There is no dispute that Excellentia paid a deposit of \$5,000 and several partial payments along the way. The courts have held that there is no need for "fresh consideration" to enforce a change in an agreement (*Rosas v. Toca*, 2018 BCCA 191).
27. Excellentia paid PC 6 cheques as set out in the table below. The parties agree that 4 of the cheques, which total \$16,000, were for 4373. PC says the other 2 cheques, which total \$903, were for different jobs and should not count toward what Excellentia has paid for 4373.

Cheque Date	Cheque Amount	Memo Line	Disputed?
November 28, 2016	\$503.00	Final balance on [4373]	Yes
December 7, 2016	\$5,000.00	Deposit for [4373]	No
Unclear – January 2017?	\$400.00	Extra work landscaping 4373	Yes
August 1, 2017	\$4,000.00	Mid-balance for [illegible] [4373] pavers	No
Undated – deposited April 5, 2018	\$2,000.00	[4373] pavers turf & gravel	No
May 6, 2018	\$5,000.00	Final balance on [4373] Deposit of this chq means all accounts settled	No

28. I find that the dated November 28, 2016 for \$503.00 was, as Excellentia argued, for a previous job. By all accounts the parties did not have a contract and had not started work at 4373 as of November 28, 2016. Excellentia paid a deposit for 4373 one week later. I find that the phrase “final balance” also suggests the cheque was more likely for a different project, and the reference to 4373 was an error.
29. The second disputed cheque is for \$400.00. The deposit date from the stamp on the back of the cheque is January 26, 2017. Although PC says this cheque was for a previous project, it did not provide any relevant details. The cheque was issued during work on 4373, and references 4373 in the memo line. On balance, I find the cheque was intended to cover work performed at 4373.
30. I find that Excellentia paid PC \$16,400 for work performed at 4373.
31. I have considered the effect of the memo line on the May 6, 2018 cheque (shown in the table above), stating that deposit of the cheque means all accounts are settled. Excellentia submits that this statement means PC is not entitled to any further payments. I do not agree. A unilateral statement written on the memo line of a cheque does not bind another party. There is no evidence that the parties mutually agreed that \$5,000 would settle the matter. PC was entitled to deposit the cheque in order to receive at least some of the money it understood was owed.
32. So, what does Excellentia owe PC? On May 21, 2018, PC gave Excellentia a detailed invoice for \$19,744.19, less \$16,000.00 paid, leaving a balance of \$3,744.19. It says Excellentia measured the work upon completion, and Excellentia did not dispute that, so I find the square footage measurements (for gravel, turf, pavers and allan blocks) from the invoice are correct.
33. The only change that must be made to the invoice is to reduce the unit cost for gravel from \$3.00 to \$1.50 per square foot, based on my finding above that PC agreed to this price. This brings the gravel charge to \$415 and the invoice total to \$18,389, plus GST of \$919.45, totaling \$19,308.44.
34. As I have found that Excellentia paid PC \$16,400, the balance owing is \$2,908.44.

Does PC owe Excellentia for late delivery?

35. The crux of Excellentia's counterclaim is that PC was late providing or completing the landscaping services. It says the parties entered into a contract around December 2016 or January 2017 and the home was completed and received an occupancy permit on April 25, 2017. The work was not completed until May 2018.
36. PC says the parties' contract did not specify timing of delivery, and in any event the delays were caused by Excellentia's failure to complete other construction work and clean up on time. It also says the occupancy date is irrelevant because landscape work is outside the house.
37. PC says two factors prevented it from completing the work sooner. First, there was too much debris on the site in 2017. Second, Excellentia was still working on the garage in early 2018, which prevented PC from finishing its work. Based on the text messages and photos exchanged between the parties, I agree that there was debris on the site that slowed PC's progress. Although Excellentia submits that it was PC's job to clean up the construction waste, there was no evidence of agreement on this and no explanation as to why as the landscaper PC would be tasked with cleaning up construction waste created by other trades.
38. In any event, there is no evidence before me that Excellentia suffered financial consequences from PC's late completion of the work. It submitted that the homeowner was unable to occupy the home "and resulted in excessive fees and damages." Excellentia was the general contractor and presumably not the homeowner. It has not explained whether Excellentia incurred fees or damages, and in what amounts.
39. I therefore find that PC was not responsible for the delays in completing the landscape work. I order Excellentia to pay PC the full balance of its invoice, less the reduction for gravel discussed above, which amounts to \$2,908.44.

40. Although PC claimed a contractual interest rate of 19.99%, there is no evidence of agreement on an interest rate. PC is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from May 21, 2018, the date of PC's invoice.
41. 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. Given that PC was largely successful, I find that it is entitled to reimbursement of \$175 in tribunal fees. I also allow its claim for \$45.26 in dispute-related expenses, for a company search and registered mail, which I find reasonable. I dismiss Excellentia's claim for tribunal fees as its counterclaim was unsuccessful.
42. I dismiss PC's other claims of \$100 for "consultant" and \$250 for "work hour compensation". These claims appear to relate to costs incurred in dealing with this dispute. Tribunal's mandate includes providing informal, accessible and economical dispute resolution. Section 20 of the Act says that parties are generally expected to represent themselves in a tribunal proceeding. Accordingly, I see no reason not to follow the tribunal's general practice of not awarding compensation for a party's time dealing with a dispute, or reimbursement of fees charged by lawyers or other representatives.

ORDERS

43. Within 30 days of the date of this order, I order Excellentia to pay PC a total of \$3,186.30, broken down as follows:
- a. \$2,908.44 in payment of PC's final invoice,
 - b. \$57.60 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$220.26, for \$175 in tribunal fees and \$45.26 for dispute-related expenses.
44. I dismiss the balance of PC's claims.
45. I dismiss Excellentia's counterclaims.

46. PC is entitled to post-judgment interest, as applicable.
47. 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.
48. 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.

Micah Carmody, Tribunal Member