



Civil Resolution Tribunal

Date Issued: August 13, 2019

File: SC-2019-002205

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reeve Huscroft (dba RRAH Gold Standard Rope Access Technicians) v. K-West Construction Corp, 2019 BCCRT 961*

B E T W E E N :

REEVE HUSCROFT (Doing Business As RRAH GOLD STANDARD
ROPE ACCESS TECHNICIANS)

APPLICANT

A N D :

K-WEST CONSTRUCTION CORP.

RESPONDENT

AND:

REEVE HUSCROFT (Doing Business As RRAH GOLD STANDARD
ROPE ACCESS TECHNICIANS)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute arose out of a construction project. The applicant, REEVE HUSCROFT (Doing Business As RRAH GOLD STANDARD ROPE ACCESS TECHNICIANS) (RRAH) says that its subcontractor performed work for the respondent K-WEST CONSTRUCTION CORP. (K-West) for which RRAH has not been paid. RRAH seeks an order that K-West pay it \$2,300.
2. K-West agrees that RRAH's subcontractor performed work, but says that it did not do post-construction cleaning as agreed, and left stucco and paint on the project's windows. By counterclaim, K-West says that it incurred expenses to hire a cleaner to address the problem and spent money on legal fees to deal with a lien filed by RRAH. K-West asks for an order that RRAH pay it \$4,900 in compensation.
3. The applicant is represented by Mr. Huscroft, who is its principal. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

4. 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* (CRTA). 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. 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.

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 make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

8. The issues in this dispute are:
 - a. whether RRAH is entitled to the payment of \$2,300 from K-West for services rendered, and
 - b. whether K-West is entitled to the payment of \$4,900 from RRAH, for cleaning expenses and legal fees related to a lien filed by RRAH.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, an applicant (on a claim or counterclaim) bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
10. In 2018, K-West was building a multi-unit development. It inquired with RRAH about cleaning windows on the project. On May 11, 2018, RRAH provided K-West a quote for “lift access exterior post construction window cleaning and exterior decks post-

construction window cleaning” for a cost of \$3,750 plus GST and lift rental. This quote formed the basis of a contract between the parties.

11. On November 1, 2018, K-West contacted RRAH to schedule the work. As RRAH was fully booked, it arranged to subcontract the job to Pureways Inc. (Pureways). RRAH says that when Pureways attended the site on November 5, 2018, it discovered that it could not use the lift on all sides of the building due to ongoing construction and landscaping. In addition, there was concrete cutting being done in a courtyard that was causing dust. RRAH says that it contacted a representative of K-West, JM, who provided instructions to proceed with the window cleaning using only a water pole. RRAH says that this exchange resulted in a verbal agreement to clean the exterior windows for \$3,250.
12. Pureways reported that it was not able to access all areas of the building. Pureways issued a November 10, 2018 invoice for \$2,310. This invoice described a charge of \$3,250 for “exterior window cleaning”, with a discount of \$1,050 (presumably to reflect the portion of the building that was not completed). RRAH forwarded this invoice to K-West for payment.
13. K-West advised RRAH that it had received complaints about the cleanliness of the windows from occupants of the building. RRAH offered to remedy the problems, but stated that it would not be able to do so during cold temperatures. RRAH estimated that this work could be done in March. K-West indicated that it did not wish to wait. Representatives from RRAH and K-West attended the site to view the deficiencies, which RRAH again offered to address in March. The parties discussed the possibility of partial payment of the Pureways’ invoice, but they did not come to an agreement.
14. In January of 2019, Pureways also offered to “touch up the windows in the first week of March”. If K-West wished to use another company, Pureways stated that it required payment of its invoice.

15. As K-West declined to pay the Pureways invoice, RRAH paid it. RRAH filed a builder's lien against the project, but later removed it after discussions with K-West's lawyer.
16. K-West hired another contractor to clean the building's windows. On April 2, 2019, that contractor provided a quote for "exterior inaccessible window cleaning" for \$4,620 (including tax). On its April 24, 2019 invoice for that amount, the contractor indicated "[i]nspection revealed post construction clean required as not performed by original contractor".
17. I find that RRAH's quote (which was accepted by K-West and formed the basis for the agreement) was for post-construction cleaning, which I infer involves more intensive cleaning than simply spraying and wiping the windows. I also find that the parties' agreement contained an implied warranty that the work would be carried out in a professional manner consistent with the standards of the trade.
18. K-West says that it contracted for post-construction cleaning but did not receive this service, and incurred additional expenses as a result. It says that there was stucco on many of the windows and the frames were not cleaned at all. RRAH submits that, although the quote was for post-construction cleaning, it received verbal instructions from JM to proceed with a regular window cleaning on windows which were accessible to Pureways.
19. There is no dispute that some cleaning work was performed on the building. In order for RRAH to be successful, it must establish that it (through Pureways) performed the work contemplated by the agreement and that K-West breached their agreement by not providing payment. In order for K-West to be successful, it must prove that RRAH breached its warranty such that its work was defective (see *Lund v. Appleford*, 2017 BCPC 91). Further, K-West must prove the costs associated with remedying any deficiencies in RRAH's work.
20. In this case, although the quote was in writing, the details of the contract between the parties appears to have been largely verbal in nature. A series of text messages

between RRAH and Pureways document access issues on the jobsite and the contents of a November 5, 2018 telephone conversation with JM. According to these texts, Pureways alerted RRAH to access issues, and RRAH advised JM. JM reportedly told RRAH “the windows will be fine with just pole work because they are not that dirty so just cleaning them normal will be okay”, and they reached a new agreement of \$3,250 plus tax for “exterior only with pole excluding balconies” as opposed to the original agreement of \$3,750. In addition, Pureways provided a statement that “onsite personnel” instructed them to proceed with the cleaning work they did. K-West did not provide a statement from JM to the effect that this conversation did not occur, or that offers a contrary view of the contemporaneous reporting of the conversation documented in the text messages.

21. Images of the jobsite taken on the date of Pureways’ attendance show ongoing concrete and other work. Based on the evidence before me, I find that it is more likely than not that JM instructed RRAH to modify the work contemplated by the original agreement due to access issues. I also find that the work could not be completed as anticipated due to these issues, which is reflected in the discount in the Pureways invoice.
22. Through Pureways, I find that RRAH performed work as contemplated by the parties’ agreement for which it is entitled to compensation. The amount owing to RRAH is dependent upon any deductions for deficiencies. The parties agree that there were some deficiencies in the work performed by Pureways, but they disagree as to the extent of the problem.
23. The evidence shows that both RRAH and Pureways were willing to address deficiencies but K-West did not allow them to. There appears to have been a concern about timing, as both RRAH and Pureways felt that the work could not be performed in cold temperatures, but K-West did not want to wait until the weather improved in March. However, K-West did not explain why it engaged its new contractor in April of 2019, rather than giving RRAH an opportunity to address the deficiencies at no additional cost to K-West.

24. Although there is no doubt about what they spent on the new contractor (\$4,620), I find that K-West did not establish which portion of this cost was attributable to the deficiencies created by Pureways for which RRAH would be responsible. This is particularly significant as Pureways did not clean the entire building (as reflected in the discount in its invoice). The evidence contains discussions about debris on the windows, but does not contain any images or documentation to show the amount of debris or the specific number of windows and/or frames affected. Further, K-West did not address the fact that concrete work was still happening at the time of the original work, and the impact that dust from this work plus several additional months of exposure to the elements may have had on the work done by the new contractor. Based on the evidence before me, I am unable to determine the extent of the deficiencies or what portion, if any, of the contractor's invoice is attributable to remedying them. As the claim has not been proven, I dismiss K-West's counterclaim for damages.
25. K-West also claimed reimbursement for legal fees it says it incurred as a result of the builder's lien filed and later withdrawn by RRAH. K-West did not provide any documentation to establish this amount. As the amount has not been proven, I do not find it necessary to consider whether expenses related to a builder's lien are within the exclusive jurisdiction of the British Columbia Supreme Court. I dismiss this portion of K-West's claim.
26. In summary, I find that RRAH is entitled to payment of the \$2,300 it claims. I dismiss K-West's counterclaims.
27. I find that RRAH is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from the due date of the invoice, this amounts to \$29.66.
28. Under section 49 of the CRTA, 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. Neither party claimed dispute-related expenses. I find that RRHA is entitled to

reimbursement of \$125.00 in tribunal fees. I dismiss K-West's claim for reimbursement of tribunal fees.

ORDERS

29. Within 30 days of the date of this order, I order K-West to pay RRAH a total of \$2,454.66, broken down as follows:

- a. \$2,300 for work performed,
- b. \$29.66 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125.00 in tribunal fees.

30. RRAH is entitled to post-judgment interest, as applicable.

31. K-West's counterclaims are dismissed.

32. Under section 48 of the CRTA, 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.

33. Under section 58.1 of the CRTA, 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.

Lynn Scrivener, Tribunal Member

