Civil Resolution Tribunal

Date Issued: November 8, 2019

File: SC-2019-003410

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *PD Moore Homes Inc. v. Price et al*, 2019 BCCRT 1274

B E T W E E N :

PD MOORE HOMES INC.

APPLICANT

A N D :

KEVIN PRICE and BONNIE PRICE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This is a dispute over payment for a home construction management project.

2. The applicant, PD Moore Homes Inc., managed the construction of a home for the respondents, Kevin and Bonnie Price.

3. The applicant claims $4,000, which the parties previously agreed was the outstanding balance for the project. The respondents say they have discovered deficiencies and damage in excess of $4,000, so they refuse to pay.

4. The applicant is represented by Perdip Moore, whom I infer is an employee or principal. The respondents are self-represented.

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* (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.

6. 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.

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 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.

ISSUE

9. The issue in this dispute is whether the respondents owe the applicant $4,000 as agreed, or are entitled to any set-off because of deficiencies and damages.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant 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.

11. On October 22, 2015, the respondents entered into a home construction contract with the applicant. The respondents moved into their home on December 1, 2016. Over the next several months, the parties negotiated the final payments and the deficiencies to be addressed. In a June 12, 2017 email, Ms. Price offered final payment of $8,148.58, payable in 4 installments due upon correction of specified deficiencies, such as the master shower tile, garage door, gutters and cabinets. As the applicant relies on this email, I find that the applicant accepted Ms. Price's offer and that it was binding on all parties.

12. It is undisputed that the respondents paid the first 2 of those 4 installments, totaling $4,148.58, leaving a balance of $4,000. As there was no suggestion that the applicant failed to address the deficiencies identified, I find that it addressed all of the deficiencies, including those that entitled it to the final $4,000, which is the amount the applicant claims in this dispute.

13. The respondents argue that they should not have to pay the final $4,000 because of additional deficiencies, damage and other breaches of contract. The respondents have not filed a counter-claim. However, I find that the respondents' claimed damages are sufficiently connected to the parties' contract that the damages, if proven, may form an equitable set off to the applicant's claim. This is consistent with the Vice Chair's reasoning in *Larix Landscape Ltd v. Raynor*, 2018 BCCRT 363, and the cases cited therein. Although the decision is not binding on me, I find the

reasoning persuasive. When defective work is alleged, the burden of proof is on the party asserting the defects, so here the respondents must prove on a balance of probabilities that the applicant breached their agreement: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at para 124.

Accounting services

14. The respondents say they are entitled to deduct $2,000 for accounting services that they did not receive. The contract provided for 'administrative / bookkeeping services', and obliged the applicant to track invoices and balances owed to suppliers and trades, and to provide monthly updates and a complete portfolio upon project completion. The contract says the fee for this service is $2,000. The respondents say they did not receive any monthly updates or a complete portfolio.

15. The failure to provide accounting services is a potential breach of contract. The June 12, 2017 email shows that the respondents raised other potential breaches of the contract, including the applicant's failure to provide clean-up and pressure washing, and failure to address outstanding construction deficiencies. Despite those potential breaches, the respondents concluded that $8,148.58 "is what we calculate we owe [the applicant]." June 12, 2017 was 6 months after the respondents moved in. I find that as of that date, the respondents were aware of what accounting services the applicant provided throughout the project. If they thought the breach of contract for accounting was serious, I would expect them to have mentioned it in their June 12, 2017 email. The respondents did not provide any reason why they would not have discovered the accounting-related breaches before June 12, 2017. I find that the respondents are not entitled to any set-off for the accounting charge.

Inappropriate account charges

16. The respondents say that Mr. Moore and his subcontractors billed items to the respondents' Standard Building account inappropriately and without authorization. They list tools and clothing as examples. They say they did not discover these

charges until after the June 12, 2017 email, when they sought help from a Standard Building account manager.

17. The parties' contract says the respondents will pay the cost of all materials and labour directly to all vendors as per vendors' invoice terms. There is no explanation of how specific purchases are authorized. That said, it is reasonable to infer that a homeowner will be obliged to pay for materials and supplies used in the construction of their home, but not tools and equipment the contractors are expected to own or will re-use at other job sites. The applicant made no submissions about the disputed purchases, so I find it is appropriate to draw an adverse inference against the applicant on this point. I find that there were unauthorized purchases on the respondents' account for which the respondent should not be responsible.

18. The respondents provided a copy of an itemized sales order showing a rain jacket purchase ($105), but nothing else they identified as inappropriate. They say the sales order is a sample, and many more are available upon request. Parties are told during the tribunal process that they must provide all relevant evidence to the tribunal. It is not sufficient for the respondents to say that they have evidence available upon request. The respondents had the opportunity to provide more sales orders but failed to do so. I find the respondents are entitled to set off of $110.25 ($105 + GST) for the rain jacket.

Clean-up and repair of neighbours' property

19. The respondents claim $1,500 for window cleaning, power washing, and final detailing and cleaning ($1,500), I find that Ms. Price identified these issues in her June 12, 2017 email. She said they would forgo those items in exchange for having the damage to neighbours' property repaired. It is undisputed that the applicant's workers broke decorative pins from one neighbour's iron fence, and punctured another neighbour's deck with metal debris. The respondents additionally claim $1,000 for the neighbours' repairs.

20. Because the applicant relied on the June 12, 2017 email, I find that the applicant accepted the respondents' offer to forgo the cleaning if the applicant fixed the neighbours' property damage. I therefore find that the respondents are not entitled to set-off of both the cleaning costs and the repair costs.

21. It is undisputed that the applicant did not repair the neighbours' property. The respondents say they paid contractors $1,000 cash to complete the repairs, so there are no invoices or receipts. They say they paid cash because the contractors did not want Mr. Moore to know they were doing the work. On a judgment basis, taking into consideration that both parties valued the repairs as roughly equivalent to the value of the window cleaning, power washing and other cleaning, I find it is appropriate to set off the respondents' debt by $1,000 for the neighbour's repairs.

Other amounts

22. The respondents say they are entitled to deduct $500 for a mismatched countertop and $800 for a BC Hydro charge "as agreed". There is no evidence that the applicant agreed to these deductions, and the respondents do not say when this conversation took place or explain why the applicant would have agreed to this. There is also no evidence, such as invoices, to substantiate either amount. I find that there is no basis for a set-off for these amounts.

Conclusion

23. The amount of the respondent's set-off is $1,110.25. Deducting from the $4,000 owing to the applicant, I find that the respondents must pay $2,889.75.

24. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the amount owed from March 4, 2019 when the applicant formally demanded payment, to the date of this decision. This equals $36.13

25. 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. The applicant was partly successful. I find the applicant is

entitled to reimbursement of half of its $175 in tribunal fees, or $87.50. It did not claim any dispute-related expenses.

ORDERS

26. Within 14 days of the date of this order, I order the respondents to pay the applicant a total of $3,013.38, broken down as follows:

    a. $2,889.75 in debt,

    b. $36.13 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $87.50 for half of its tribunal fees.

27. The applicant is entitled to post-judgment interest, as applicable.

28. 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.

29. 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.

Micah Carmody, Tribunal Member