



Civil Resolution Tribunal

Date Issued: November 25, 2019

File: SC-2019-002855

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kiwicana Stone Works(2017) Ltd v. Saxena*, 2019 BCCRT 1321

B E T W E E N :

KIWICANA STONE WORKS(2017) LTD

APPLICANT

A N D :

MANOJ SAXENA and CONARMS HOLDINGS INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Kiwicana Stone Works(2017) Ltd says it installed countertops at two job sites for the respondent Conarms Holdings Inc. (Conarms), for a total cost of \$14,810.25. Kiwicana claims a \$4,510 balance it says remains outstanding.

2. Conarms says that Kiwicana agreed to do both jobs for a maximum of \$11,000. Conarms says it is not obliged to pay more than \$11,000.
3. The respondent Manoj Saxena says he gave the contract to build the house to Mr. Gulati, of Conarms. Mr. Saxena says that he does not know what agreement Kiwicana and Conarms had between them. He asks that the dispute be dismissed against him.
4. Kiwicana is represented by business contact Tiffany Lee. Mr. Saxena is self-represented. Conarms is represented by director Rajat Gulati.

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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Specifically, the parties here disagree about whether there was an agreement to limit the price of the two countertop installation jobs to \$11,000. 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 the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

7. 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. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
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, 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

10. The issue in this dispute is whether Conarms or Mr. Saxena, or both, are responsible to pay the claimed \$4,510.00 that Kiwicana says is owed for countertop installations.

EVIDENCE AND ANALYSIS

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
12. In early July 2019, Kiwicana reached an agreement with Mr. Gulati, a builder with a company that later became Conarms, to install countertops at an address on

Nootka Street in Vancouver. This was the first of the two jobs mentioned above. The price was \$8,300.25. Mr. Gulati paid a \$7,000 deposit by cheque. Kiwicana says the \$1,300.25 balance was paid on the “owner’s” VISA card. In any event, I accept Kiwicana’s evidence that it received full payment for this Nootka Street job.

13. On July 17, 2019, Kiwicana completed the second countertop installation job, at a home on Earles Street. The price for this job was \$6,510. It is undisputed Mr. Gulati paid a \$2,000 deposit by bank draft. No one paid the \$4,510 balance, which is the amount Kiwicana claims in this dispute.
14. There are two matters in dispute. First, the parties disagree about whether Mr. Saxena or Conarms was the party to the countertop installation contracts with Kiwicana. Second, the parties disagree about whether there was an agreement to limit the prices for the Earles Street and Nootka Street jobs, together, to \$11,000.
15. Mr. Saxena says the Earles Street contract was between Kiwicana and Mr. Gulati at Conarms. Mr. Saxena says he contracted with Mr. Gulati for him to build the house, and that Mr. Gulati was then responsible to subcontract for the countertop installation.
16. Mr. Gulati and Conarms say that Ms. Lee verbally assured Mr. Gulati that both jobs would be done for under \$11,000.
17. Conarms also says that Mr. Gulati told Ms. Lee that Mr. Saxena was “supposed to pay the money” for the countertops, and that Mr. Gulati had imposed an \$11,000 limit for both projects. Mr. Gulati says he told Ms. Lee that “if anything goes over i will not be able to pay you as he (Mr. Saxena) wont pay me to pay you...” (quote produced as written).
18. Based on the admissions from Mr. Gulati and Conarms, I find that Conarms, through Mr. Gulati, contracted with Kiwicana for countertop installation at Earles Street. I find these were the same parties as for the Nootka contract.

19. I turn now to the other central question about whether there was any agreement between Conarms and Kiwicana to complete both jobs for \$11,000 or less.
20. In July 2019, Kiwicana prepared a written quote for the Earles Street job. The quote document has several handwritten notes on it. It is unclear when each of these notes was made or by whom. However, the typewritten portion of the quote, which I find was the content of the quote when it was first prepared, listed a predicted price of \$6,000 plus GST on labour and PST on materials. Based on this typed quote, I find that Conarms agreed to have countertop installations done at Earles Street for about \$6,000 plus tax. I find the other handwritten notations irrelevant to my decision.
21. I also find that Conarms agreed to 26.8% annual interest on overdue payments, as listed on the quote that I find became the parties' contract for the Earles Street job.
22. On July 23, 2018, Kiwicana issued an invoice to Mr. Galati and Mr. Saxena for \$4,510.00, the balance owing on the Earles Street job. I find that Kiwicana contacted both Mr. Galati and Mr. Saxena because it wanted to be paid and was not as concerned about the source of payment.
23. The documents filed in evidence all reflect the agreed \$6,000 plus tax price for the Earles Street job. Aside from Mr. Gulati's assertion about a verbal discussion with Ms. Lee, there is no evidence that Kiwicana agreed to cap costs for the two jobs at \$11,000. Ms. Lee denies saying the jobs could be done together for less than \$11,000. She points out that even materials costs would make this impossible.
24. For these reasons, I prefer Kiwicana's evidence and find that there was no agreement to limit the price to \$11,000 for the two jobs.
25. I order Conarms to pay the \$4,510.00 owing to Kiwicana, within 30 days of this decision. I dismiss the claim against Mr. Saxena. Nothing in this decision prevents Mr. Gulati from attempting to recover those funds from Mr. Saxena, depending on any agreement between them and any applicable limitation period.

26. Kiwicana is entitled to contractual interest at the agreed 26.8% annual rate, on the \$4,510.00, from July 23, 2018, the date of the invoice, to the date of this decision. This amount of contractual interest which would place the claim over \$5,000. The courts have held that contractual interest is part of the substantive claim (see *Telus Services Inc. v. Hussey*, 2016 BCPC 41 and *Canadian Tire Bank v. Konkin*, 2018 BCPC 151). The tribunal only has jurisdiction to award a total of \$5,000. Kiwicana agreed to abandon the amount of its claim over \$5,000. I therefore award Kiwicana \$490 in interest, bringing the total to \$5,000 before tribunal fees and dispute-related expenses.
27. 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. I find Kiwicana is entitled to reimbursement of \$175 in tribunal fees and \$10.50 in dispute-related expenses for registered mail to serve the Dispute Notice, which I find reasonable.

ORDERS

28. Within 30 days of the date of this order, I order Conarms Holdings Inc. to pay Kiwicana Stone Works(2017) Ltd a total of \$5,185.50, broken down as follows:
- a. \$4,510.00 in money owing for countertop installation,
 - b. \$490.00 in pre-judgment interest at the contractual rate of 26.8%, to a limit of \$5,000 for the total damages award, and
 - c. \$185.50, for \$175 in tribunal fees and \$10.50 for dispute-related expenses.
29. Kiwicana Stone Works(2017) Ltd is entitled to post-judgment interest, as applicable.
30. I dismiss the claims against Manoj Saxena.
31. 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.

32. 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.

Julie K. Gibson, Tribunal Member