Civil Resolution Tribunal

Date Issued: December 24, 2019

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shakibafar v. Blazevic*, 2019 BCCRT 1440

BETWEEN:

PARINAZ SHAKIBAFAR and ANDREW KWIATKOWSKI

APPLICANTS

AND:

ALEXANDER VICTOR BLAZEVIC, VICTOR BLAZEVIC, and ALEXANDER VICTOR BLAZEVIC (Doing Business As YEOMANRY CONSTRUCTION)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a roof reconstruction.

2. The applicants, Parinaz Shakibafar and Andrew Kwiatkowski, say the respondents completed their roof reconstruction but have failed to provide the proper documentation needed to apply for a BC Hydro rebate and have failed to complete deficiencies. The applicants seek an order for production of various documents and compensation of $5,000, including $1,392.94 for a lost BC Hydro renovation rebate, $183.49 they paid to change their locks, and $3,423.57 for "warranty and completion of unfinished work". The respondents say the project ended when it was completed and that they do not owe the applicants any money.

3. The respondent, Alexander Victor Blazevic (Alex), is the son of the respondent, Victor Blazevic (Victor). Alex is the sole owner of the respondent, Alexander Victor Blazevic (Doing Business As Yeomanry Construction) (Yeomanry). Neither Victor or Yeomanry filed a Dispute Response, as required, as discussed further below. Without meaning any disrespect, as the two individual respondents share the same last name, to avoid confusion, as noted, I will refer to them simply as "Alex" and "Victor".

4. The applicants and Alex 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

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 by 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

9. The issues in this dispute are as follows:

    a. To what extent, if any, are the applicants entitled to the requested documents,

    b. Whether the applicants are entitled to $1,392.94 for a lost BC Hydro rebate,

    c. Whether the applicants are entitled to $183.49, the cost of changing their locks, and

    d. Whether the applicants are entitled to $3,423.57 for warranty work.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. At the outset, I note Yeomanry is in default for failing to file a Dispute Response, as required. However, given Yeomanry's principal is Alex, who did file a Dispute

Response, in the circumstances below I find nothing turns on Yeomanry's default status. I say this in part because there is no evidence the applicants' agreement was with Yeomanry. The payment cheques were made out to either Victor or Alex personally, and there is no agreement or other document in evidence that ties Yeomanry to the claims in this dispute. So, I dismiss the claims against Yeomanry.

12. Victor is also in default for failing to file a Dispute Response. However, it appears on their face that the submissions made under Alex's name were made by both Alex and Victor. Given this, I am satisfied Victor knew of the claim and participated in the evidence and submission phases of the tribunal process. Therefore, I find nothing turns on Victor's technical default status.

13. It is undisputed that at some point before September 2018, the applicants hired Victor to renovate their roof from a flat to pitched roof. Although the applicants say they hired Victor, Alex and Yeomanry, Alex says, and I find the evidence supports, that the applicants hired Victor specifically for the work. I say this based on my findings above about Yeomanry's ownership and involvement, and based on the parties' communications in evidence, which were all between the applicants and Victor. Specifically, the text messages from Victor advised the applicants that Alex was not experienced enough to do certain jobs that required his own expertise. On balance, I find the applicants' contract was with Victor alone.

14. It is also undisputed that Victor started the work in mid-September 2018 and it was completed and final payment was made on February 2, 2019. Prior to the start of the work, the parties agreed to $12,000 for labour, plus the costs of materials. Although the applicants had originally agreed to source the materials, this was ultimately done by Victor and charged back to the applicants. The applicants ended up paying $12,700 in labour, including a $700 increase for additional work in the applicants' garage. The applicants say they also paid $13,037.19 in materials, and the respondents say it was $12,887.19 for materials and $450 in gas, for a total of $13,337.19. For the purposes of this dispute, I find nothing turns on the $300 difference in materials' cost.

15. It appears there was no written or formal agreement between the parties about how the work would be done, its scope, timing or how it would be invoiced, other than for the fixed cost of labour, plus materials costs, to be paid by the applicants.

Are the applicants entitled to the various requested documents?

16. The applicants request an order that the respondents provide all warranty documentation, details of items purchased with full receipts, detailed invoices, certificate of completion and the return of building blueprints.

17. As for the blueprints, the applicants submit that the respondents claim they "have blueprints" of the applicants' project and say these are properly the applicants' property and should have been returned when the project was completed. They seek an order for the return of the blueprints. I note the applicants provided copies of drawings in evidence, as did the respondents. It is not clear to me whether these drawings are the same blueprints the applicants refer to. Given the lack of evidence about what the "blueprints" refer to, or their whereabouts, I find the applicants have not proven they are entitled to them. I dismiss the applicants' claim for the blueprint documents.

18. As for the materials invoices/receipts, as noted above, there is no agreement that set out how invoicing would be done. In fact, what would happen is Victor would send the applicants a detailed spreadsheet listing each line item materials' cost, plus GST, and the applicants would pay that amount. When the applicants had questions about the spreadsheet, they followed up with Victor for an explanation. The applicants did not request any receipts, despite noting on January 30, 2019 that it was "difficult" for them to reconcile the spreadsheet with the materials listed without receipts, but that they "take [his] word on it".

19. Given the parties' agreed upon (through their past conduct) invoice and payment method, I find that neither party expected the source receipts would be required at a later date. Further, there is no evidence before me about whether the respondents

still have the receipts in their possession. I dismiss the applicants' claim for the materials receipts/invoices.

20. As for the warranty documentation, detailed invoices of work done, and certificate of completion, I find the applicants have not proven they are entitled to such documents. Neither party provided submissions on the presence of any warranty of the work done, or an agreement that detailed invoices or a certificate of completion was to be given. As noted above, there is no formal agreement in evidence, and given the parties' past conduct of invoicing and payment, I find no evidence that the agreement to renovate the roof included providing specific detailed invoices of work done, as now requested by the applicants. Similarly, I find no evidence that any warranty documentation or certificate of completion were contemplated or requested until after the project was completed on February 2, 2019.

21. Given the above, I find the applicants have not proven their entitlement to the warranty documentation, detailed invoices or certificate of completion, and I dismiss their claim for those documents.

22. I also note that even if I had found the applicants were entitled to any of the requested documents, I would not have been able to order their production in any event. An order requiring someone to do something, like produce documents, is known in law as "injunctive relief". Injunctive relief is outside the tribunal's small claims jurisdiction, except where expressly permitted by section 118 of the CRTA. There is no relevant CRTA provision here that would have permitted me to grant the injunctive relief sought.

Are the applicants entitled to $1,392.94 for a lost BC Hydro rebate?

23. The applicants' say that due to the respondents' failure to provide them with the requested documentation, they were unable to apply for, and receive, a BC Hydro rebate for making energy-efficient upgrades. The applicants estimate this rebate's value at $1,392.94.

24. The applicants further say they were only entitled to apply for the rebate within 6 months of receiving an invoice for the completed work, which the respondents refuse to provide them. As noted above, I have found there was no agreement as to a specified form of invoice, and the parties proceeded on the basis that a spreadsheet of itemized costs was enough. The applicants now say that is insufficient for them to apply for the BC Hydro grant, and therefore want additional documentation.

25. Similar to my findings above about the applicants' entitlement to warranty documentation, I find there is no evidence that a successful rebate application was a term of the parties' agreement. There is no indication that the respondents knew the applicants' intention was to ultimately apply for a BC Hydro rebate. There is also no indication the applicants intended to apply for a rebate at any time before the project was completed. Additionally, I am not satisfied the applicants have proven, on a balance of probabilities, that they would have successfully received the rebate in any event. I dismiss the applicants' claim in this regard.

Are the applicants entitled to $183.49, the cost of changing their locks?

26. The applicants request $183.49, the cost of new locks on their home, because the respondents at one point had keys to their house and they said they no longer felt safe. The respondents say the applicants had no previous issue allowing the respondents to access their home unsupervised, and described their usual course of business of calling when entering a home, and calling again when leaving to let the home owner know everything was locked up.

27. It is undisputed that the respondents returned the applicants' keys sometime in January 2019. There is no indication the respondents made any copies of the keys, or have returned to the applicants' home since the last day of the project, February 2, 2019. The applicants have not proven that there is any reasonable concern that would require a lock change. I dismiss the applicants' claim for $183.49 for new locks.

Are the applicants entitled to $3,423.57 for warranty work?

28. The applicants say that the respondents have failed to fix deficiencies in their work and have left some of the job incomplete. The applicants seek $3,423.57 for the unfinished work. Although the total quote to repair the work is $4,100, the applicants agreed to abandon $676.43 to bring the entire dispute within the tribunal's $5,000 small claims monetary limit. The respondents say the work was completed, paid in full, and the applicants gave them praise for a job well done. The respondents further say the applicants never brought any deficiencies to their attention and question the credibility of the contractor who performed the inspection leading to the $4,100 quote.

29. In support of their position, the applicants provided an invoice from a contractor, ABL, and photos of the various alleged deficiencies. ABL's May 25, 2019 quote includes repairs to soffits, such as fixing bent or loose soffits, fixing joints in fascia boards, painting roof siding, and stain removal of brown drips from improper caulking. The quote also includes changing bolts and screws on the balcony support columns to galvanized or coated bolts. ABL estimated $4,100 plus GST for this work, but did not break down the quote by item/project.

30. In response, Victor says the screws used are galvanized and properly used. Victor further states all fascia board was purchased primed and later painted by him and Alex.

31. The photos provided in evidence show a few areas of paint that has rubbed or worn off, one photo of a small piece of exposed fascia board, some minor misaligned fascia boards, pictures of what ABL says were incorrect bolts, brown drip markings, and a crooked chimney extension.

32. Given the photos in evidence, I find there are some minor deficiencies remaining. However, I am not satisfied ABL's $4,100 quote is reasonable for the identified repairs. I say this in part because the parties' initial agreement, for the entirety of the roof renovation project, was for $12,000 in labour. Based on the evidence, I am not

satisfied that the deficiencies comprise 1/3 of the project's overall labour cost. Further, the respondents provided several photos of the work while it was underway and it is undisputed the applicants were very happy with the work during construction and at completion. This is supported by the fact the applicants paid Victor in full, with no holdback, despite acknowledging the common practice to keep a holdback.

33. That said, there are deficiencies present and it is clear the parties' relationship has soured such that the applicants may not wish to have the respondents repair the deficiencies. On a judgment basis, I find the applicants are entitled to $500 for deficiency repair work. I order Victor to pay this amount, as the applicants' agreement was with him. As there is no indication any money for deficiencies has yet been paid, I make no order for pre-judgment interest on this amount.

34. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicants were only partially successful in their claims, I find that they are entitled to reimbursement of half of their tribunal fees, for a total of $87.50. No dispute-related expenses were claimed.

ORDERS

35. Within 30 days of the date of this decision, I order the respondent, Victor Blazevic, to pay the applicants a total of $587.50, broken down as follows:

    a. $500 in damages for remaining deficiencies, and

    b. $87.50 in tribunal fees.

36. The applicants are also entitled to post-judgment interest under the *Court Order Interest Act*.

37. I dismiss the claims against Alexander Victor Blazevic and Alexander Victor Blazevic (Doing Business As Yeomanry Construction).

38. I dismiss the applicants' remaining claims.

39. 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.

40. 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.

Andrea Ritchie, Vice Chair