



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goldfinch Small Home Design Ltd v. Mew*, 2020 BCCRT 475

B E T W E E N :

GOLDFINCH SMALL HOME DESIGN LTD.

APPLICANT

A N D :

NATASHA MEW

RESPONDENT

A N D :

GOLDFINCH SMALL HOME DESIGN LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over payment for home design and drafting services.
2. The applicant and respondent by counterclaim, Goldfinch Small Home Design Ltd. (Goldfinch), performed design and drafting for the respondent and applicant by counterclaim, Natasha Mew. The parties agree that Ms. Mew paid Goldfinch a total of \$1,218 for its services. Goldfinch claims that Ms. Mew still owes it for 37 hours of labour, which is approximately \$2,898.75 more.
3. Ms. Mew claims that Goldfinch breached their contract and she does not owe it any money. In her counterclaim, Ms. Mew seeks a refund of the \$1,218 she already paid. Ms. Mew also asks for an order terminating the parties' contract and for Goldfinch to stop asking her for payment.
4. Ms. Mew is self-represented. Goldfinch is represented by an 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* (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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy

dispute resolution, I decided I can fairly hear this dispute through written submissions.

7. Under section 61 of the CRTA, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
8. Goldfinch is a company incorporated in BC under the *Business Corporations Act*. The BC Company Summary from BC Registry Services shows Goldfinch's corporate name as, "Goldfinch Small Home Design Ltd.". However, the initial Dispute Notice and Response do not include the period after "Ltd". I find the lack of period was likely a typographical error. I also find the parties proceeded on the understanding that they were using the correct legal name. The correct legal name was used in the counterclaim against Goldfinch. For these reasons, I have exercised my discretion under section 61 of the CRTA, to direct the use of Goldfinch's corporate legal name in these proceedings. Accordingly, I amended Goldfinch's name above.
9. 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.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. What were the terms of the parties' contract?

- b. Did Goldfinch breach the contract?
- c. To what extent, if any, must Ms. Mew pay Goldfinch \$2,898.75 for its services, or alternatively, is Ms. Mew entitled to any refund?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Goldfinch bears the burden of proving its claims on a balance of probabilities. On the counterclaim, Ms. Mew bears the same burden. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. Goldfinch designs and builds small homes. It also has pre-designed, customizable “kits” for its customers to buy. I infer that a “kit” describes a set of small home materials that are pre-packaged for assembly.
14. In April 2019, the parties agreed by email that Goldfinch would design Ms. Mew’s small home, and that it might complete the full build using a kit. Based on Ms. Mew’s sketched drawings, Goldfinch quoted a \$79,000 price for “kit to lock-up”, plus labour and interior finishes.
15. As for the payment terms, I find the parties agreed to the terms set out in Goldfinch’s “Client Deposit and Payment Terms” document. According to these terms, Goldfinch agreed to provide up to 10 hours of free design work at \$75 per hour with a kit purchase, plus 8 hours of free communication. The terms required Goldfinch to notify Ms. Mew when it completed the first 5 hours of free work. Ms. Mew agreed to pay for any design work in excess of the “free” hours and all other work at \$75 per hour. Further, Ms. Mew agreed that if she did not purchase the kit, she would pay Goldfinch for all its services at the \$75 hourly rate. I find it was an implied term of the contract that Goldfinch would perform work to a professional standard.
16. Goldfinch commenced its design work in about April or May 2019. The parties’ emails show that they discussed floor plan ideas, rooflines and finishing options.

After Goldfinch drafted several floor plans and started the building permit design plans it billed Ms. Mew \$1,218 for 16 hours of work in progress. (I note that it billed 2 hours at only \$55 per hour. I find nothing turns on this.) The payment invoice in evidence shows that Ms. Mew paid the \$1,218 on July 26, 2019. The emails show that the parties further discussed design options and Goldfinch continued its design work for the building permit.

17. On about September 6, 2019, Goldfinch gave Ms. Mew a copy of the design plans, which she submitted to the municipality for a building permit. It is undisputed that the municipality never approved Goldfinch's plans because they were missing several items, including an engineer's stamp.
18. By this point in the project, Ms. Mew had decided not to purchase the kit or use Goldfinch for the final build. Goldfinch asked Ms. Mew to pay for all its outstanding hours as agreed under the contract's payment terms. Goldfinch told Ms. Mew she owed 33 hours at \$75 per hour, which it said included a 4-hour "good will" discount. Ms. Mew disputed that she owed the claimed hours and asked Goldfinch to send her an itemized invoice, which it never provided. As shown in the parties' emails, Ms. Mew refused to pay and so, Goldfinch refused to give her ownership of the design plans. Ms. Mew hired someone else to restart the process and create a new set of plans. I find the parties mutually agreed to end their contract.
19. In this proceeding, Goldfinch claims 37 hours at \$75 per hour, which equals \$2,775 plus tax.
20. Despite carrying the burden of proof, Goldfinch provided no invoice to support its claim. Instead, it relies on the hours it sent Ms. Mew by email at various stages in the project, which I discuss further below. As I understand Goldfinch's argument, it says that its claimed hours are justified and payable because Ms. Mew agreed to proceed without complaint after receiving its emailed hours. I find the emails show that Ms. Mew did proceed with the project after knowing Goldfinch's running totals in June and July 2019. However, they also show that Ms. Mew told Goldfinch she was new to the process, she did not know what to expect, and she questioned the

length of time Goldfinch was taking to complete the work. I find Goldfinch did not give Ms. Mew much explanation of its hours. In the circumstances, I find that Goldfinch has not proven that Ms. Mew tacitly agreed to pay all Goldfinch's hours by proceeding with the project. I find that Goldfinch still needs to establish here that its hours are justified and payable.

21. As a professional company billing hourly, I find Goldfinch should have been able to provide an itemized invoice reporting specifics of the time it spent and tasks completed if it had been tracking its hours. Without explanation, Goldfinch did not provide an invoice in this proceeding. It also provided no timesheets and very little explanation of its work in progress. I find the total hours in its emails are not a substitution for timesheets because they are not regular or descriptive of the work done (not itemized). I also find that Goldfinch's email totals are internally inconsistent with its own estimates and work product. There is no explanation before me as to the discrepancies. I find that if Goldfinch kept a detailed record that supported its hours at the time of completing the work, it would have submitted the documents in this proceeding. I find that Goldfinch had either not tracked its hours, or its tracked hours did not support its claim. I summarize some of the relevant emails and issues below:

- a. April 18, 2019 – Goldfinch stated that it would take “around 6 hours work to detail” Ms. Mew's drawings for the building permit and make the changes she wanted.
- b. May 29, 2019 – Goldfinch said it ended up “with the layout just like” Ms. Mew's original designer, but with a couple of differences. No total hours or revised estimate given.
- c. June 18, 2019 – Goldfinch said it spent a total of 20 hours on the design and estimated 12 more hours to complete the elevations and building permits once the floor plan and roof lines are “nailed down”. On the parties' emails up to this date, I find Goldfinch had likely drafted several floor plans and elevations, spoke with the municipality and an electrician, and started the

building permit plans. Goldfinch's hours at this stage well exceed the original estimate. If there was a change in the complexity of the project, I find it is not explained in the parties' documents. This was also Goldfinch's first notification of hours spent on the design. In its submissions, Goldfinch says it had not notified Ms. Mew earlier because it was "surprised how many hours had been spent" by this point.

- d. June 24, 2019 – Goldfinch says it spent a total of 33 hours on design. However, the emails suggest that between June 18 and July 24 Goldfinch had done little work. It updated the elevations and modified two simple floor plan layouts. There is no explanation why this work would have taken 13 more hours. I find Goldfinch's hours are inconsistent with its estimates and work product.
 - e. August 12, 2019 – Goldfinch says it will take approximately 12 more hours to complete the building permit drawings. It provided no total hours but apologized for its delay. I find it is not clear why the design would take 12 more hours considering the completed work to date and the earlier estimates.
 - f. August 20, 2019 – Goldfinch told Ms. Mew it would invoice her and give a \$600 (8 hours) discount because it "wished it responded" to her revisions more quickly in July. At this point, I find the design work was several months behind the "proposed" schedule. No total hours, total amount owing, or invoice was provided.
 - g. September 6, 2019 (approx.) –Goldfinch charged Ms. Mew for 33 hours of work with a 4 hour "goodwill" discount. It said nothing about the 6-hour discount it offered earlier for its delay. This means Goldfinch claims that it spent 53 total hours on the small home design (33+4+16=53).
22. Considering the original 6-hour estimate in April 2019 for the small home design plans, I am not prepared to accept, without a detailed explanation and supporting records, that the design should have reasonably taken 53 total hours. Overall, I find there are too many inconsistencies and not enough information to assess the

validity of Goldfinch's claimed hours at any point in the project. Put differently, Goldfinch has not met the burden of proving that it completed the work in the hours as claimed.

23. Further, Goldfinch never released the permit design plans to Ms. Mew. So, while she did not pay more than the initial invoice, she also did not retain the benefit of the permitting plans. On balance, I find that Goldfinch has not established that Ms. Mew owes it anything more than the 16 hours she already paid. In making this finding, I have also taken into account the acknowledged delay.

24. On the counterclaim, Ms. Mew argues that Goldfinch should refund the \$1,218 for breach of contract. Ms. Mew argues that Goldfinch breached the contract by not notifying her of its hours at the 5-hour point, by causing delay, and by producing work that was allegedly below an acceptable standard. Ms. Mew also argues that she is entitled to a refund under the principle of "*quantum meruit*" (value for work done). I note that where the parties have an enforceable contract payment is normally determined on basis of the contractual payment terms and not based on *quantum meruit* (*Kosaka v. Chan*, 2009 BCCA 467).

25. Turning to Ms. Mew's breach of contract allegation, the emails show that Goldfinch did not notify Ms. Mew of its hours until it reached 20-hours of work. I find that Goldfinch breached the parties' contract in failing to notify Ms. Mew at 5-hours as required. I acknowledge Ms. Mew's submission that she felt "stuck between a rock and a hard place". By the 20-hour point Ms. Mew risked losing \$1,575 (75 x 20 + GST) by not purchasing the kit as opposed to \$393.75 (5 x \$75 + GST) at the 5-hour point. However, I find Ms. Mew could have ended the contract and refused to pay any more than the 5 free hours. Yet, Ms. Mew decided to proceed. I find she cannot rely on the breach now to claim a refund.

26. As for delay, I find that Goldfinch's design plans took longer than its original estimated timeline and it acknowledged the delay. I assessed a reduction for delay when dismissing Goldfinch's claim above. In the circumstances, I do not find that the delay was so unreasonable as to set aside the contract for a full refund. I find

the parties never agreed to a firm deadline and some of the delay was outside Goldfinch's control. At certain stages in the project, I find Goldfinch was waiting on Ms. Mew's decisions. Therefore, I find Ms. Mew has not established her claim for a refund for delay.

27. I find the fact that the municipality did not approve Goldfinch's plans does not necessarily mean the plans were below an acceptable standard. A designer is not held to a standard of perfection but to a standard of reasonableness. Generally, I find the quality of a designer's work is outside a person's normal knowledge and expertise. Ms. Mew provided no expert opinion stating that Goldfinch's work was deficient. Instead, Ms. Mew submitted an email from a municipal building inspector criticizing a set of design plans. I find it is not clear that the inspector's criticism was directed at Goldfinch's plans. The email does not name Goldfinch and it is dated after Ms. Mew submitted new plans by a different designer. On balance, I find Ms. Mew has not established that Goldfinch's design plans fell below the applicable professional standard.
28. Ms. Mew relies on one of my earlier decisions, *Wang v. JRS Engineering Ltd.*, 2019 BCCRT 678, for her refund claim. In *Wang*, I found the applicant proved that they received no benefit from the contract and I allowed the applicant a refund of their retainer. While I find Ms. Mew did not benefit from Goldfinch's actual permit design plans, I find that she likely benefited from Goldfinch's preliminary work and advice on the floor plans, elevations, and finishing features. I find she has not proven that she is entitled to a discount on what she paid.
29. For all the reasons explained above, I find that neither party has met the burden of proof on their respective claims. On the one hand, I find that Goldfinch has not proven on a balance of probabilities that it is entitled to any more than Ms. Mew already paid. On the other hand, I find Ms. Mew has not proven that it is entitled to any less. Therefore, I dismiss both Goldfinch's claims and Ms. Mew's counterclaims.

30. Ms. Mew also asked for an order that the parties' contract be terminated and for Goldfinch to stop asking her for payment. In the circumstances here, the tribunal does not have jurisdiction to declare the contract terminated or to order Goldfinch to stop doing something (an injunction). Therefore, I decline to grant these two requested remedies.

31. 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. Since both parties were unsuccessful on their respective claims, I dismiss their claims for tribunal fees and dispute-related expenses.

ORDER

32. Goldfinch's claims, Ms. Mew's counterclaims, and this dispute are dismissed.

Trisha Apland, Tribunal Member