



Civil Resolution Tribunal

Date Issued: June 15, 2020

File: SC-2020-000472

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stirling v. AJB Home Design Ltd.*, 2020 BCCRT 662

B E T W E E N :

REBECCA STIRLING and GORDON STIRLING

APPLICANTS

A N D :

AJB HOME DESIGN LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about home design plans. The applicants, Rebecca Stirling and Gordon Stirling, say that the respondent, AJB Home Design Ltd. (AJB), created deficient home design plans and drawings, in breach of their contract. The Stirlings say AJB did not correct the plans, so they were useless, and they obtained new plans from a different company. The Stirlings claim a refund of the \$2,940 contract

price, and reimbursements of \$38.30 for printing and \$18.80 for postage, which equals \$2,997.10.

2. AJB says it agreed to correct deficiencies in the plans, but the Stirlings refused to cooperate so it was unable to do so. AJB says it owes them nothing.
3. Rebecca Stirling represents the Stirlings. AJB is represented by its principal.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute involves a "they said, it said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. I find I can properly assess and weigh the written evidence and submissions before me, keeping in mind that the CRT's mandate includes proportionality and a speedy resolution of disputes. Therefore, I find that an oral hearing is not necessary, and I decided to hear this dispute through written submissions.
6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether AJB broke the parties' contract, and if so, whether it owes the Stirlings \$2,997.10 or another amount.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the Stirlings must prove their claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
10. The undisputed evidence is that the Stirlings gave AJB drawings and ideas for a house they wished to build on a strata lot, and asked AJB to create an architectural design and drawings. The parties' October 2, 2019 contract included the following terms:
 - a. The house was to be built in a different municipality and regional district than the one where the parties resided, on a strata lot.
 - b. AJB would produce a design and drawings that were of a quality required, expected, and accepted by the municipality to successfully apply for a building permit.
 - c. AJB might, but was not required to, directly consult the municipality about the proposed design at an early stage.
 - d. The Stirlings would supply all documentation required to confirm that the design and drawings conformed to municipal and subdivision requirements.

However, the contract did not say who was responsible for identifying those requirements.

- e. If a building permit application based on the drawings was accepted by the municipality, and the municipality later required changes to the drawings, AJB would complete those changes as extra work for \$75 per hour.
 - f. AJB could charge the Stirlings extra for additional services that were not part of the contract.
 - g. AJB was not responsible for delays caused by additional services, or caused by additions or changes to the drawings required by the client or municipality.
 - h. There was no schedule, due date, or deadlines to complete the drawings, or for the municipality to accept a building permit application containing the drawings.
 - i. The price of the plans and drawings was \$2,940, excluding third party printing costs.
 - j. If the Stirlings decided not to proceed, or the contract was terminated for any reason, the Stirlings would pay AJB for the work completed to that point.
11. The parties agree that AJB did not consult the municipality at an early stage. It is undisputed that the Stirlings paid AJB the full \$2,940 contract price.
12. The Stirlings say they discussed the proposed foundation design with AJB, which they did not think complied with a floodplain covenant on the house's lot. AJB says the Stirlings asked for foundation elements that were problematic. The Stirlings also took issue with the roof design, because they say the strata bylaws contained certain roof restrictions. The Stirlings say, and AJB does not deny, that the strata must approve their house plans before the municipality will issue a building permit. Despite these disagreements, AJB provided plans and drawings to the Stirlings around November 18, 2019, for submission to the municipality and strata. I infer that

AJB intended these drawings to accommodate any strata and municipality requirements.

13. The Stirlings' agent who submitted the plans to the municipality, and a staff member at the municipality's building department, provided witness statements. I find those statements confirm that the municipality did not accept the Stirlings' building permit application, and rejected AJB's plans for being deficient.
14. The Stirlings' agent said she spoke with the staff member in early December 2019, who identified several shortcomings in the drawings. The agent said the staff member marked up a copy of the drawings to show the deficiencies. In his statement, the staff member said that the plans did not reflect the required design and elevation set out in the lot's flood protection covenant. The staff member also said that he later spoke with AJB on January 13, 2020 and explained all the required corrections.
15. I find that the drawings failed to meet the municipality's requirements, and needed changes before a building permit application based on the drawings would be accepted. So, I find the drawings did not meet the contract's requirements.
16. The Stirlings say that when they discovered the application's rejection, they assembled further information about the plans' deficiencies. They notified AJB on December 18, 2019, and sent AJB the further information on December 22, 2019. AJB says it told the Stirlings it would look at the issue after the December holiday season, and I find it did so by January 6, 2020.
17. Based on the parties' correspondence, I find AJB initially believed the Stirlings' requested changes were not municipality requirements, so it would charge \$75 per hour for them. I find AJB's January 13, 2020 email shows he did not at first understand the corrections marked on the drawings. However, after speaking with the municipality staff member, AJB emailed the Stirlings on January 15, 2020 and said it would make several drawing corrections at no charge. I find that the contract's price included these municipality-required drawing corrections.

18. The Stirlings emailed AJB on January 6, 2020 and gave it until January 13, 2020 to make the requested drawing changes. The Stirlings refused further drawing work on January 14, 2020 and demanded a refund from AJB. I find that AJB did not agree to a deadline. The Stirlings say they engaged another designer on January 15, 2020 to develop house plans and drawings. The Stirlings appear to argue that AJB broke their contract by not correcting the drawings by January 13, 2020. I disagree, for the following reasons.
19. First, I find that the lack of detail in the municipality's drawing annotations resulted in AJB misunderstanding what the drawing deficiencies were, which caused some delay. Further, I find the Stirlings have not shown that they required acceptable drawings by a specific date or for a particular reason, in the contract or elsewhere. The contract says AJB is not responsible for any delays caused by the municipality requiring changes to the submitted drawings. The contract did not require AJB to create municipality-acceptable drawings on its first attempt. Also, I find AJB never accepted the Stirlings' mid-January 2020 contract repudiation, and remained available to change the drawings.
20. I also considered whether the contract contained an implied term that the work would be completed within a reasonable timeframe. On balance, I find that demanding completion less than 4 months from the contract date, and less than one month after drawing changes were first requested, was not a reasonable timeframe in these circumstances, where there is insufficient evidence of a work schedule or due date.
21. So, on the evidence before me, I find that neither party broke the contract. I find the Stirlings decided not to proceed with the contract, given that they hired a different house plan designer. The contract says that if the Stirlings decided not to proceed, they would pay AJB for the work it had completed to that point.
22. The question is, what is the value of the work AJB completed by mid-January 2020? I find AJB provided drawings, but they were not yet in the municipality-acceptable state required by the contract. The Stirlings say AJB's plans and drawings are

useless to them, but the Stirlings do not deny that many aspects of the drawings were correct. The Stirlings also do not expressly deny that the drawings could be corrected, or that AJB could make those corrections, given more time. I find the evidence does not show how much time was needed to correct the drawings.

23. Having weighed the evidence, on a judgment basis I find that AJB provided 50% of the value of its contracted work by the time the Stirlings opted not to proceed. So, I find that AJB owes the Stirlings a refund of half the \$2,940 paid, which equals \$1,470.
24. The Stirlings also seek \$38.30 for printing and \$18.80 for postage, for creating and mailing copies of the drawings to the strata and the municipality in November 2019. I find that the contract did not require AJB to pay for the Stirlings' printing and postage, and that these are not CRT dispute-related expenses. So, I order no reimbursement of the claimed printing and postage amounts.

CRT FEES, EXPENSES, AND INTEREST

25. The Stirlings are entitled to interest under the *Court Order Interest Act*. I find that interest on the \$1,470 refund is calculated from the date of their final payment to AJB, November 19, 2019, until the date of this decision. This equals \$16.49.
26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. AJB was unsuccessful and did not claim any expenses, so I order no CRT fees or expenses for it. The Stirlings were partly successful in their claims, so I find they are entitled to reimbursement of half their CRT fees, which equals \$62.50. I find the Stirlings are also entitled to half of the \$62.72 expense for two witness summons payments and related registered mail fees, which equals \$31.36.

ORDERS

27. Within 30 days of the date of this order, I order AJB to pay Rebecca Stirling and Gordon Stirling a total of \$1,580.35, broken down as follows:
- a. \$1,470 in debt for overpayment for home design plans,
 - b. \$16.49 in pre-judgment interest under the *Court Order Interest Act*,
 - c. \$62.50 in CRT fees, and
 - d. \$31.36 in dispute-related expenses.
28. The Stirlings are entitled to post-judgment interest, as applicable.
29. I dismiss the Stirlings' other claims.
30. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
31. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT

order has the same force and effect as an order of the Provincial Court of British Columbia.

Chad McCarthy, Tribunal Member