Civil Resolution Tribunal

Date Issued: July 30, 2020

File: SC-2020-001301

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1079539 BC Ltd v. O'Connell*, 2020 BCCRT 842

B E T W E E N :

1079539 BC LTD

APPLICANT

A N D :

MAUREEN O'CONNELL

RESPONDENT

A N D :

1079539 BC LTD

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about roofing services provided by the applicant, and respondent by counterclaim, 1079539 BC Ltd, doing business as Golden Rule Roofing (GRR). The respondent, and applicant by counterclaim, Maureen O'Connell, hired GRR to perform roofing services on her home.

2. The parties agree Ms. O'Connell paid GRR's $3,000 claim for unpaid roofing services shortly after GRR submitted its application for dispute resolution with the Civil Resolution Tribunal (CRT). GRR still claims for reimbursement of its CRT fees and the cost of an expert report as a dispute-related expense.

3. Ms. O'Connell counterclaims for $5,000 in damages resulting from GRR's work: $1,300 for the value of repairing damage to a plastic awning, handrails, and a fence, $100 for the replacement value of broken windows, $1,100 for the value of relocating roof vents, $1,300 for the value of replacing steel hardware with copper, and $1,200 for the value of defective project management services. GRR acknowledges damaging Ms. O'Connell's awning, but says she did not allow GRR to repair the damage. GRR also says Ms. O'Connell did not allow it to replace the steel hardware with copper at no additional labour cost, or to relocate the roof vents. GRR denies owing Ms. O'Connell anything.

4. GRR is represented by an employee or principal in this dispute. Ms. O'Connell is self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.

6. 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 "she 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 CRT 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. Keeping in mind that the CRT's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to hear this dispute through written submissions.

7. 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.

8. 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.

9. As noted above, the parties agree that GRR's claim for $3,000 in unpaid roofing services has been paid, so that issue is not before me in this dispute.

ISSUES

10. The issues in this dispute are:

    a. Did GRR damage Ms. O'Connell's plastic awning, handrails, and fence, and if so, does GRR owe her $1,300 or another amount?

    b. Is GRR responsible for Ms. O'Connell's broken windows, and if so, does GRR owe her $100 for their replacement value or another amount?

c. Did GRR improperly position roof vents, and if so, does GRR owe Ms. O'Connell $1,100 or another amount for their relocation?

d. Did GRR breach its contract with Ms. O'Connell by using steel hardware instead of copper, and if so, does GRR owe $1,300 or another amount for its replacement?

e. Did GRR provide insufficient project management services under its contract with Ms. O'Connell, and if so, does GRR owe $1,200 or another amount?

f. Is GRR entitled to reimbursement of $75 in CRT fees and the cost of an expert report as a dispute-related expense?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, GRR must prove its claims on a balance of probabilities, and Ms. O'Connell must prove her counterclaims to the same standard. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

Did GRR damage Ms. O'Connell's plastic awning, handrails, and fence, and if so, does GRR owe her $1,300 or another amount?

12. Ms. O'Connell hired GRR to re-roof her house. GRR provided an estimate for its proposed roofing services to Ms. O'Connell, which she signed on May 15, 2019. I find the parties treated this signed estimate as a contract, although later they also agreed to install more expensive shakes, and copper hardware such as flashings, nails, and attic exhaust vents.

13. The contract said GRR would set up tarps and plywood as necessary to protect Ms. O'Connell's house and grounds and to collect falling roof debris. The contract also said GRR was not responsible for damage to components related to the roof, such as structure, decking, chimneys, gutters, fascia boards, or skylights. In context, I

find this damage exclusion only extended to components attached to and forming part of the roof being replaced, and not to awnings or other items below the roof.

14. Ms. O'Connell's house features a second-story plastic awning over a porch and outdoor staircase. It is undisputed that GRR deposited a significant amount of construction debris on the plastic awning, which cracked the awning and created several holes in it.

15. GRR says it offered to replace the awning, but that Ms. O'Connell refused to let its personnel do the work. In contrast, Ms. O'Connell says that she urged GRR's work crew to replace the awning, but they refused because the required materials were not present, because they said the awning design "did not make sense," and because they said some of the porch wood was rotten and they did not want to cause further damage. I find the evidence before me does not show that the porch or awning were dangerous for professional roofers to work on, or that they were structurally unsound. Ms. O'Connell submitted photos of her husband, JM, on a ladder replacing the plastic awning panels, apparently without incident. Further, GRR did not clearly describe why or how Ms. O'Connell refused to let GRR replace the awning. I prefer Ms. O'Connell's clearer and more specific account of this issue.

16. On balance, I find GRR breached its contractual obligation to protect Ms. O'Connell's home and is responsible for the awning damage. I find GRR failed to repair this damage despite having a reasonable opportunity to do so. Ms. O'Connell provided two receipts for awning materials of $54.43 and $222.14, which equals $276.57. I find GRR owes this amount for awning materials. Ms. O'Connell also claims 6 hours of labour to replace the awning, using GRR's rate of $85 per hour. However, GRR did not perform any awning repairs, JM did. There is no evidence that JM charged Ms. O'Connell any amount for his awning-replacement labour, so I find GRR does not owe anything for JM's labour.

17. Turning to the chain-link fence between Ms. O'Connell's property and her neighbour's property, Ms. O'Connell says GRR damaged the end of the fence with a vehicle, although no one saw a vehicle drive into it. GRR says the fence could

have been damaged by anyone. I find that photos in evidence showed a bent fence post set back from a sidewalk. The parties agree that GRR attempted to fix the fence, although Ms. O'Connell says the repair did not entirely restore the fence to its original condition. However, there are no post-repair photos of the fence or other evidence showing an incomplete fence repair, or showing how much work and expense was required to complete the repairs. I find Ms. O'Connell has not met her burden of proving that GRR is responsible for un-repaired damage to the fence, so I find GRR owes her nothing for it.

18. Ms. O'Connell also claims the value of replacing handrails on the steps below the plastic awning, that she says GRR damaged when it dropped roofing material through and beside the awning. GRR says the handrail damage is wear and tear, as they are used daily and have not been repainted in years. Photos show flaked handrail paint, but also larger gouges consistent with material being dropped on the handrails. On balance, I find the gouges were caused by GRR dropping roofing materials on the handrails, which it failed to protect as required by the contract. However, I find all the handrail damage is cosmetic, so I dismiss Ms. O'Connell's claim for handrail replacement costs. On a judgement basis, I allow her claim for $60 in materials to prime and paint the handrails. I dismiss her claim for 2 hours of painting labour, as there is insufficient evidence supporting the length or value of labour required.

19. In summary, I allow Ms. O'Connell's claim for $276.57 for awning materials and $60 for paint and primer, which equals $336.57. I dismiss her other claims about the awning, fence, and handrails, including her unproven claims for related waste disposal costs.

Is GRR responsible for Ms. O'Connell's broken windows, and if so, does GRR owe her $100 for their replacement value or another amount?

20. Ms. O'Connell claims $100 for the value of spare windows situated in her driveway next to where GRR placed a construction disposal bin. She says that GRR removed the bin in breach of the contract, and during the time it was not present, construction

debris was piled against the windows and broke them. GRR says the "old" windows had been in the driveway for many months, that it is not aware that its workers broke them, and that they could have been broken by anyone because they were left unsecured and could be seen from the street.

21. The single close-up photo of the broken windows in evidence shows they had been previously repaired, and does not show any construction debris stacked against them. I accept that the windows had been left out in the elements for at least many months, and I find Ms. O'Connell did not take steps to move them away from the area where debris was being deposited in a construction bin. So, I find GRR was not responsible for protecting the windows from damage, because I find a reasonable person would have assumed the windows, placed where they were while disposed materials accumulated, were trash. Further, there is no evidence before me showing that the windows were of any use or had any value before being broken. I dismiss Ms. O'Connell's claim for $100 for the windows and related waste disposal.

Did GRR improperly position roof vents, and if so, does GRR owe Ms. O'Connell $1,100 or another amount for their relocation?

22. Ms. O'Connell says GRR installed 4 lower roof vents and 4 upper roof vents. She says GRR incorrectly located the 4 upper roof vents, contrary to the BC Building Code (BCBC). She says that 3 of the upper vents are on the east side of the building, and one is on the north side. Ms. O'Connell says BCBC section 9.19.1.2.3(a) says required vents must be distributed uniformly on opposite sides of the building, and that the upper vents are not distributed uniformly.

23. However, Ms. O'Connell also says that there are 2 west lower roof vents and 2 east lower roof vents. Further, a roof diagram created by or for Ms. O'Connell shows that the 3 east upper roof vents are, in fact, located in the north, east, and south quadrants of the house. I find the questions of how many vents are required in Ms. O'Connell's roof, and whether the distribution of required vents was sufficiently uniform under BCBC section 9.19.1.2.3(a), are not within ordinary knowledge and

require expert evidence under the CRT's rules (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119). Ms. O'Connell did not submit any expert evidence on this point, or provide any other proof that the GRR-installed roof vents, as shown on her diagram, were not sufficiently "uniform". In particular, Ms. O'Connell did not provide a building inspection report or other information showing that the roof vents do not conform to the BCBA.

24. GRR says the house has an irregular attic space, and has to be vented to ensure airflow can reach every area, including some areas that are cut off from others. GRR says this resulted in an irregular-looking placement from the outside.

25. On balance, I find Ms. O'Connell has not met her burden of proving that the roof vents were incorrectly located. I dismiss her claim for $1,100 to relocate the vents.

Did GRR breach its contract with Ms. O'Connell by using steel hardware instead of copper, and if so, does GRR owe $1,300 or another amount for its replacement?

26. I find the parties' May 15, 2019 contract says GRR would install metal "W valleys" as required, and all new flashings including pipe boots, an exhaust fan, and attic exhaust vents. I find the contract did not say that drip edge flashings or trim would be installed.

27. Before the roofing work started, the parties discussed additional roof options. In an April 2, 2019 email, Ms. O'Connell inquired about the cost to "upgrade all flashing to copper", including copper nails. GRR responded on May 30, 2019 saying that it had obtained a quote of "around $4500" for "all the metal to be copper." Ms. O'Connell interpreted this as the price for all roof hardware being copper, including drip edge flashing or trim. GRR says this price was only for upgrading the "flashing" to copper, as Ms. O'Connell requested, and for which GRR obtained parts quotations. GRR says drip edge trim is not "flashing" because it does not prevent water from entering the structure, but only covers the ends of wooden boards, mostly for appearance. Ms. O'Connell disagrees, and says that drip edge trim is "flashing".

28. The undisputed evidence is that the parties agreed to use metal flashing and nails on the roof, for which GRR later invoiced Ms. O'Connell $4,142.00 plus tax. Ms. O'Connell does not deny she paid the invoiced cost of the installed copper hardware. GRR installed copper flashing, except for the drip edge flashing or trim, which was painted steel. Ms. O'Connell expressed dissatisfaction about the steel hardware, saying she expected copper. GRR acknowledged there had been some miscommunication about what was included in the copper upgrade, and offered to replace the painted steel with copper drip edge trim at no charge for labour, but with Ms. O'Connell paying for the copper trim as she had paid for the other copper items. Ms. O'Connell declined, because she assumed the quoted price included copper drip edge trim, and was unwilling to pay for those parts.

29. Based on emails and text messages between the parties and Ms. O'Connell's agent, JM, I find they agreed to use copper flashing for the quoted price. This dispute comes down to whether the parties thought drip edge trim was "flashing" included with the quoted price for copper flashing. Ms. O'Connell says the shake roof installation manual and section 8.1.2 of the Roofing Contractors Association of BC's *Roofing Practice Manual* refer to similar edge trim as "flashing." However, there is no evidence that either party adopted, or was aware of, these uses of the term when they agreed to install copper "flashing". I also find the sections of both manuals Ms. O'Connell refers to are consistent with GRR's statement that drip edge trim does not prevent water from entering a structure. GRR's statement is also consistent with the alleged Google definition submitted by GRR, that flashing is used to direct water away from areas where the roof plane meets a vertical surface like a wall or a dormer, which I find drip edge trim does not do. So, I find GRR reasonably considered that drip edge was not "flashing".

30. Further, I find that the May 15, 2019 contract did not specifically include the installation of drip edge flashing or trim, and the parties' later communications and agreements did not specifically say copper drip edge material would be installed. On balance, I find that there was no agreement between the parties about installing

copper drip edge trim. I find Ms. O'Connell paid for the installation of all the mutually-agreed copper hardware, which did not include drip edge trim.

31. As noted, GRR offered to provide free labour for replacing the drip edge trim with copper, which Ms. O'Connell refused. However, I find GRR's offer of free labour was not required under the parties' agreement, which did not include installing copper drip edge trim. So, I find GRR does not owe Ms. O'Connell anything for replacing the steel drip edge trim with copper. Even if I had found that GRR was responsible for replacing the drip edge trim, I would not have awarded any damages because Ms. O'Connell has not proven the value of the parts and labour required through receipts, professional estimates, or other reliable evidence. Ms. O'Connell does not claim to be a roofing professional, so I place no weight on her estimate of the cost of replacing the drip edge trim. There is no other estimate in evidence showing the itemized cost of replacing that trim. I dismiss Ms. O'Connell's claim for damages for replacing the drip edge trim.

Did GRR provide insufficient project management services under its contract with Ms. O'Connell, and if so, does GRR owe $1,200 or another amount?

32. Ms. O'Connell says GRR did not properly order parts and schedule its work, and that resulting roofing work delays caused her stress and anxiety. She seeks a project management fee based on 3.5% of the entire project value of $35,713 before tax, which equals $1,249.96, although she only claims $1,200.

33. Ms. O'Connell says that following several months of discussions, the roof was replaced over a period of slightly more than one month, although she estimates the work performed only took about one week in total. She says GRR took longer than is typical to replace the roof, but the evidence before me does not show what a typical amount of time would have been. The parties did not agree to any deadlines or work schedules, and they do not deny that some delays were caused by the custom copper hardware manufacturer. I find the contract did not require GRR to provide project management services, other than an implied agreement to perform

the roofing work in a reasonable amount of time. On balance, I find that GRR performed its work in a reasonable amount of time in the circumstances, and that Ms. O'Connell did not suffer any proven damages or costs due to unreasonable roofing delays. I dismiss Ms. O'Connell's claim for insufficient project management services.

CRT FEES, EXPENSES, AND INTEREST

34. Ms. O'Connell claims 18% interest, because that is the interest rate for any late payments she may have made under the parties' contract. I find this interest rate does not apply to GRR or to the damages awarded to Ms. O'Connell, because the parties did not agree she would receive interest. However, she is entitled to pre-judgment interest under the *Court Order Interest Act* on the $276.57 reimbursement for awning materials, calculated from the February 8, 2020 purchase date until the date of this decision. This equals $2.23. I find no interest applies to the $60 awarded on a judgment basis for paint and primer, as the evidence does not show Ms. O'Connell has purchased those materials.

35. 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. Ms. O'Connell was partially successful in her claims, so I order reimbursement of half her CRT fees, which equals $87.50. She claimed no CRT-related expenses.

Is GRR entitled to reimbursement of $75 in CRT fees and the cost of an expert report as a dispute-related expense?

36. GRR claimed reimbursement for the cost of an expert report of unspecified value. I see no such report in evidence, or proof of the value of a report, so I decline to order any reimbursement. GRR filed its $3,000 claim with the CRT on February 7, 2020, the same day it sent an email to Ms. O'Connell demanding payment by February 14, 2020. Photos of a cheque, a letter, and registered mail receipts show Ms. O'Connell sent this payment to GRR on February 9, 2020, and it was delivered

on February 11, 2020, before the February 14, 2020 deadline. I find it was not reasonable for GRR to file its application for CRT dispute resolution before its payment deadline had passed, so I find GRR is not entitled to reimbursement of its CRT fees.

ORDER

37. Within 30 days of the date of this order, I order GRR to pay Maureen O'Connell a total of $426.30, broken down as follows:

    a. $276.57 in damages for awning materials,

    b. $60 for paint and primer on a judgment basis,

    c. $2.23 in pre-judgment interest under the *Court Order Interest Act*, and

    d. $87.50 in CRT fees.

38. Ms. O'Connell is entitled to post-judgment interest, as applicable.

39. I dismiss Ms. O'Connell's other claims, and GRR's claims.

40. 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.

41. 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