



Civil Resolution Tribunal

Date Issued: July 30, 2020

File: SC-2020-001014

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Knight v. Wu*, 2020 BCCRT 849

BETWEEN:

MARTIN KNIGHT

APPLICANT

AND:

HAN YONG WU

RESPONDENT

AND:

MARTIN KNIGHT

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Martin Knight, claims payment from the respondent, Han Yong Wu, for upgrading a sewer line at Mr. Wu's property on December 5, 2019. Mr. Knight says Mr. Wu owes him a total of \$959.61 for this plumbing work.
2. Mr. Wu admits that Mr. Knight performed the plumbing work but denies that he owes the claimed amount. Mr. Wu says Mr. Knight overcharged him and breached their contract by not obtaining a municipal permit and causing delay.
3. In his counterclaim, Mr. Wu seeks \$5,158.46 in damages for breach of contract and an order that Mr. Knight "get" a municipal permit. I note that Mr. Wu's damages claim is limited to \$5,000, which is the Civil Resolution Tribunal's (CRT) monetary limit. Mr. Wu also claims \$1,000 in legal fees.
4. The parties are each 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the

circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

7. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is in issue.
8. 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.
9. 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.

ISSUES

10. The issues in this dispute are:
 - a. To what extent, if any, is Mr. Knight entitled to the claimed \$959.61 for the plumbing work?
 - b. Did Mr. Knight breach the parties' contract and if so, what is the appropriate remedy?
 - c. Is Mr. Wu entitled to reimbursement of legal fees?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Knight bears the burden of proving his claims on a balance of probabilities. Mr. Wu carries the same burden on the counterclaims. I

have only addressed the evidence and arguments to the extent necessary to explain my decision.

12. The parties agree they entered into a contract for Mr. Knight to perform plumbing work in Mr. Wu's rental property. The parties had no formal written contract. I find that some of the parties' contract terms were established by text message or agreement in verbal conversations. I find the parties agreed Mr. Knight would perform the plumbing work on Mr. Wu's rental property in 2 stages starting with an upgrade to an exterior sewer line.
13. Mr. Knight upgraded the exterior sewer line on December 5, 2019 and asked Mr. Wu for payment. The parties disputed the amount owing and Mr. Knight says he then "decided to walk from the project". Mr. Wu says that Mr. Knight overcharged him.
14. Mr. Knight claims that Mr. Wu owes him \$959.61 for the upgraded sewer line. It is undisputed that Mr. Wu has not paid for the work. As mentioned above, Mr. Wu says that Mr. Knight caused delay which increased the hours of labour paid to other workers on the property. Further, he says Mr. Knight failed to obtain the required plumbing permit.

To what extent, if any, is Mr. Knight entitled to the claimed \$959.61 for the plumbing work?

15. I find the parties agreed by text that the job would be billed on an hourly basis, plus materials. I find the parties agreed that Mr. Knight would purchase the plumbing materials for the job and Mr. Wu would reimburse Mr. Knight for the materials used for the job.
16. The parties say they discussed the hourly rate in person prior to Mr. Knight starting the job. Mr. Knight says the parties agreed to \$70 per hour for 1 person and Mr. Wu says they agreed to \$70 per hour for 2 persons. I find the parties had no meeting of the mind on the hourly rate per person prior to December 5, 2019. However, I find that the parties negotiated by text on December 6 and 7, 2019 to \$90 per hour for 2

persons (or \$45 each). The courts have held that fresh consideration (something of value given by each party) is not required to enforce a contractual amendment (see *Rosas v. Toca*, 2018 BCCA 191). I find the parties amended their contract to include the payment term of \$45 per person per hour.

17. On December 7, 2019 Mr. Knight requested payment by text of \$270 for labour (\$90 x 3 hours) and \$485.56 in materials. However, in Mr. Knight's follow-up texts he said he "caught a mistake" and added extra time for "detailed billing". Mr. Knight then issued a December 10, 2019 invoice for \$455.00 in labour, \$406.58 for materials, \$12.33 for delivery and \$40 for a "truck charge", plus GST. This is the disputed \$959.61 invoice.
18. I am unclear on the evidence why Mr. Knight increased his labour charge to \$455.00 in the December 10, 2019 invoice considering the parties agreed to the rate of \$90 per hour for 2 persons. On his own evidence, the job took 2 people 3 hours to complete. I find that Mr. Knight has not shown that he is entitled to "extra time" and he had not explained his "mistake". Subject to the contract breach discussed below, I find Mr. Knight is entitled to \$283.50 including tax for labour (\$90 x 3 plus GST).
19. Mr. Knight did not produce his original receipts for the plumbing materials, nor provide an explanation for why he did not. Instead, he submitted a recent supplier's May 2020 quotation of "retail" prices for the materials that he says were used on the job. It shows a total cost of \$338.82 including tax. It is unclear on the May 2020 quotation if they are the exact materials Mr. Knight used on the job. It is also undisputed that Mr. Knight kept some of the purchased materials. Mr. Knight says that he did not charge for the materials he kept. The handwritten note submitted by Mr. Wu dated December 5, 2019 shows that Mr. Wu anticipated the materials would cost him about \$366.49. Since this amount is similar to the supplier's quotation, I accept that it is likely about what Mr. Knight paid for materials. On a judgment basis I will allow \$338.82 for the materials (subject to a reduction for breach of contract discussed below).

20. I acknowledge Mr. Knight claims a 20% mark-up on the materials. However, I find the December 10, 2019 invoice is the first time Mr. Knight informed Mr. Wu that he would add a 20% mark-up. While I acknowledge Mr. Knight's argument that the mark-up is needed to make a profit, I find the parties never agreed to it. I also find the parties did not discuss or agree to the truck charge. I find that Mr. Knight was not entitled to unilaterally include additional charges in his invoice when those had not been agreed upon. I dismiss Mr. Knight's claims for the 20% mark-up and \$40 truck charge.
21. As for delivery, there is some text evidence that the co-plumber picked up the materials and charged his time. However, as there is no delivery receipt in evidence, I find Mr. Knight has not proven that he is entitled to reimbursement for the material delivery.
22. In summary, I find that Mr. Knight has proven that he is entitled to a total of \$622.32 (\$283.50 labour + \$338.82 materials) under the contract. This is subject to a \$326.62 reduction for breach of contract as discussed below.
23. I turn now to address Mr. Wu's counterclaim for breach of contract.

Did Mr. Knight breach the contract and if so, what is the appropriate remedy?

Legal Framework

24. For most breaches of contract, the wronged party can claim damages against the other party for the breach. The normal measure of damages is to put the innocent party back in the position they would have been in had the contract been performed.

Early Contract termination

25. The first of the agreed two stages was the external sewer line. Apart from applying for the municipal permit discussed below, I find that Mr. Knight completed the first stage of the job as agreed. There is no evidence that Mr. Wu suffered any loss by Mr. Knight not performing the second stage. I also find the parties' contract was not

specific on whether either party could terminate it early. I find that Mr. Knight did not breach the contract by unilaterally terminating it after completing the first stage.

Permit

26. Mr. Wu says Mr. Knight breached the contract by failing to get a municipal permit. He seeks compensation to completely redo the exterior sewer piping and for lost rent. He says that he cannot rent one of the rooms in his suite due to the unfinished exterior work.
27. I find that Mr. Knight agreed by text that he would apply for a plumbing permit prior to starting work on December 5, 2019. I find Mr. Wu relied on Mr. Knight to do so. There is no dispute that Mr. Knight neither applied for, nor obtained the permit. He also did not inform Mr. Wu that he did not have a permit when he installed the sewer line. I note that Mr. Knight did not charge Mr. Wu for anything related to the permit.
28. Mr. Knight says he “hesitated” on obtaining the permit because once Mr. Wu had the permit, he feared Mr. Wu would refuse to pay. I find this is not a reasonable excuse considering his own evidence was that a permit was required, and that Mr. Knight had agreed to apply for it. I find Mr. Knight breached the contract by failing to apply for the permit.
29. Mr. Knight says the lack of permit makes “no difference” because Mr. Wu immediately backfilled the trench, covered the underground piping, and removed the city’s ability to inspect it. Mr. Knight says he told Mr. Wu that covering the piping would make inspection impossible and to take photographs. Mr. Wu’s photographs of Mr. Knight’s uncovered exterior piping work are in evidence.
30. Mr. Wu says he consulted with the “city planner specialist before the renovation” and that he was familiar with the city’s requirements. He does not explain why he backfilled the trench or if the city told him it would accept photographs instead. Neither party submitted evidence on the city’s permitting or inspection requirements. Mr. Wu does not say he hired a new plumber and he did not retroactively apply for a

permit. However, if he can obtain a permit retroactively, Mr. Wu has not proved that the trench could not be dug to expose the piping for inspection, if required. There is no evidence before me that the city would refuse the permit or refuse to inspect the installed sewer line. There is also no evidence that the sewer line needs to be redone.

31. The evidence before me does not establish that Mr. Knight's failure to obtain the permit fundamentally breached the contract by making further performance impossible or by destroying the purpose of the contract. As there is also no evidence that Mr. Wu must redo the sewer line, I find that Mr. Wu has not proven his claimed damages of \$2,584.46 to replace the sewer line. I dismiss Mr. Wu's claim for the sewer line replacement.
32. As for the lost rent, Mr. Wu claims that no tenant will rent the room because the property is "terrible and unsafe". He says he cannot add concrete over the trenched area until he gets a permitted inspection. Mr. Wu submitted no evidence apart from his own assertion that he is unable to rent the room because of the trenched area or at all. I find Mr. Wu has not proven his \$2,040 claim for lost rent and I dismiss it.
33. Next, Mr. Wu seeks an order that Mr. Knight "get a permit" from the city for the plumbing job. While I could order Mr. Knight to make an application under section 118 of the CRTA (specific performance of an agreement), it is up to the city to issue the permit, and the city is not a party to this dispute. I find the order as requested would be unenforceable. There is no evidence before me another plumber hired by Mr. Wu could not apply for the permit or that it must be Mr. Knight who applies for the permit. Since Mr. Wu has not proven that Mr. Knight must apply for the permit (specific performance), and considering the dissolution of the parties' business relationship, I find it would be inappropriate to make that order.

Delay

34. Before the work began, Mr. Wu texted Mr. Knight that he hired an excavator with an operator to dig the trench on December 5, 2019. He also told Mr. Knight that the

operator would backfill the trench after Mr. Knight upgraded the sewer line. Knowing this information, I find that Mr. Knight agreed to start the job on December 5, 2019 at 10:00 am but was concerned Mr. Wu's excavation work might run late. I find he agreed to come by about 10:30 but would call Mr. Knight at 10:00 in case Mr. Wu's excavation was running late.

35. On December 5, 2019, Mr. Wu texted Mr. Knight at 8:35 am, sent a photograph of the open trench, and told Mr. Knight he could come. Mr. Wu informed Mr. Knight that the water was shut off for his tenants, the excavator operator was waiting, and he wanted to arrange the workers' time. Mr. Knight told Mr. Wu he was on another job and agreed to arrive in "an hour", which I find was 9:35 am.
36. Mr. Wu's December 6, 2019 texts in evidence states that Mr. Knight and his co-plumber worked from 12:50 pm to 3:50 pm. Mr. Knight does not say when he arrived. I find that Mr. Knight likely arrived at 12:50 pm.
37. I find that the timing was important for this particular job. Mr. Knight did not tell Mr. Wu in advance that he might be delayed due to another job. Had he told him this would likely have allowed Mr. Wu the opportunity to decide whether he wanted to take the risk. Mr. Knight knew Mr. Wu's excavator was waiting. In the circumstances, I find Mr. Knight should have reasonably been at the job by 10:30 am. I find that Mr. Knight breached the contract by arriving 2 hours and 20 minutes late.
38. Mr. Knight says that the delayed start did not matter because he brought on a second plumber and performed the work quicker. I do not accept his assertions. I find on the use of the word "we" in the texts before me that Mr. Knight had not planned to work alone. I find that prior to December 5, 2019 Mr. Knight had likely intended to perform the work with another plumber. The evidence also does not establish that he performed the job quicker.
39. The receipt for the excavator shows it was a daily charge, so I find Mr. Wu suffered no loss on that item. However, I accept on the receipts in evidence that Mr. Wu paid

2 labourers \$30 each per hour and the operator \$80 per hour for 10 hours to excavate and fill the trench. Mr. Knight says the labourers were doing other work around the property, which I find is unproven. The receipt in evidence states that they were paid for the trench work. I find that Mr. Wu has established on a balance of probabilities that he unnecessarily paid these workers about 2 hours and 20 minutes of labour due to Mr. Knight's delay. I find Mr. Wu has proven \$326.62 in damages for the delay.

Conclusion

40. I find that Mr. Wu owes Mr. Knight a total of \$622.32 including tax for the December 5, 2019 work and materials, less \$326.62 as compensation in damages for delay. This equals \$295.70
41. The *Court Order Interest Act* applies to the CRT. I find Mr. Knight is entitled to pre-judgement interest on the \$295.70 unpaid plumbing work from the December 10, 2019 invoice to the date of this decision. This equals \$3.33.

Is Mr. Wu entitled to reimbursement of legal fees?

42. As mentioned above, Mr. Wu seeks an order for reimbursement of \$1,646.98 in legal fees. The CRT's rule 9.5(3)(b) says that the CRT will not order one party to pay another party any fees charged by a lawyer in a small claims dispute, unless there are extraordinary circumstances. I find this is not a situation where the issues were particularly complex or novel or that other extraordinary circumstances apply. I dismiss Mr. Wu's claim for legal fees.

Dispute-Related Expenses and CRT fees

43. 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. I find that each party was partially successful on their respective claims and so, I find they are responsible for their own CRT fees. Mr.

Knight did not claim any dispute-related expenses. Mr. Wu claimed legal fees, which I have already dismissed.

ORDERS

44. Within 30 days of the date of this order, I order Mr. Wu to pay Mr. Knight a total of \$299.03, broken down as follows:
 - a. \$295.70 for the plumbing work, and
 - b. \$3.33 in pre-judgment interest under the *Court Order Interest Act*.
45. Mr. Wu and Mr. Knight's remaining claims are dismissed.
46. Mr. Knight is entitled to post-judgment interest, as applicable.
47. 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.
48. 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.

Trisha Apland, Tribunal Member