



Civil Resolution Tribunal

Date Issued: August 10, 2020

File: SC-2020-002883

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1095148 B.C. Ltd. v. Davies*, 2020 BCCRT 883

BETWEEN:

1095148 B.C. LTD.

APPLICANT

AND:

LYNN DAVIES and ERIC WOODHOUSE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about payment for painting services. The applicant, 1095148 B.C. Ltd., provided painting services to the respondents, Lynn Davies and Eric Woodhouse. The applicant says that the respondents agreed to pay \$6,150 plus tax for the work, but only paid \$3,000. The applicant asks for an order that the respondents pay the outstanding balance of \$3,457.50.

2. The respondents say there was an estimate but no agreement about the cost of the work. Further, as they say that the applicant damaged their property and did not perform the work properly, the respondents' position is that they do not owe the applicant any more money.
3. The applicant is represented by its principal. The respondents are represented by Ms. Davies.

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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
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.

ISSUES

9. The issues in this dispute are:
 - a. Whether the parties had an agreement for painting services, and
 - b. If so, whether the respondents owe the applicant the \$3,457.50 it claims.

EVIDENCE AND ANALYSIS

10. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
11. In the spring of 2020, Ms. Davies and the applicant's principal exchanged emails about the cost of painting work at the respondents' home. On March 9, 2020, the applicant's principal provided a quote of \$6,150 plus taxes. The estimate was based on the described scope of work and did not contemplate an hourly rate. In a March 10, 2020 email, Ms. Davies stated that she and Mr. Woodhouse "would like you to go ahead with the work as discussed per your estimate of \$6150 plus gst".
12. The applicant's principal and an assistant performed the work over a period of several days in late March 2020. When the job was finished, the applicant provided the respondents with an invoice for \$6,150 plus tax, for a total of \$6,457.50.
13. Ms. Davies was ill and not able to view the results of the applicant's work. Mr. Woodhouse gave the applicant's principal a cheque for \$3,000 and stated that they would consider paying additional money after Ms. Davies could inspect the work. The applicant's principal expected full payment, and was not happy about the respondents' position. The parties disagree about whether the applicant's principal

acted in a threatening or abusive manner when discussing this matter. There is no dispute that the applicant's workers left the property without receiving full payment.

14. The applicant retained a lawyer who wrote to the respondents about the outstanding amount and the possibility of a builder's lien. The parties did not resolve the matter, and the respondents have not paid the applicant any additional money.
15. The applicant says it created the estimate based on the scope of work, the nature of the property, and the equipment that would be required to complete the work safely. The applicant says it would not have performed the work for less than the \$6,150 shown in the estimate. The respondents say the \$6,150 was an "initial estimate" that was "subject to inspection upon completion".
16. Although the respondents suggest that the estimate was not binding and that it was their intention to assess the value of the work, and what they were willing to pay for it, after completion, this is not reflected in the March 10, 2020 email. That email states that the respondents wished to proceed with the work "per your estimate". The respondents did not attempt to negotiate the price or state that the payment terms would be finalized after the work was completed. I find that the applicant's estimate amounted to an offer, and the respondents accepted that offer through the March 10, 2020 email message.
17. So, I find that the parties did have an agreement that the applicant would receive \$6,150 plus tax for the painting work on their property. After the applicant performed the work, I find it was not open to the respondents to unilaterally change the agreement, even if they changed their minds about whether it was worth that cost or if they were dissatisfied with the behaviour of the applicant's principal.
18. This is not the end of the matter. Although the respondents did not file a counterclaim, they say that the applicant's work was "extremely poor" and damaged their property. They say that the applicant left paint spillage around their home and did not paint a recycling cabinet properly. Although not specifically argued, I find that the respondents seek to deduct the costs related to the damage and

workmanship issues against the amount owing to the applicant (see *Wilson v. Fotsch*, 2010 BCCA 226 for the applicable criteria for an equitable set-off). In the case of defective work, the burden of proof is on the party alleging defective work (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124).

19. In a small claims dispute like this one, an applicant bears the burden of proof on a balance of probabilities. However, when considering an equitable set-off, the burden of proof shifts to the respondents.
20. The respondents provided photos that show white splotches on roof areas, pavers on the ground, and what appears to be a rubber mat. They also provided a photo of their wooden recycling cabinet. They say these images prove that the applicant spilled paint in various areas and did not paint the cabinet properly. The applicant says that its workers used drop cloths (as shown in images of its work in progress) and did not cause any damage from spillage. The applicant suggests that these splotches were there prior to it starting work. The applicant also says that the photo of the cabinet provided by the respondents shows the cabinet's prior state, not what it looked like after the work was completed.
21. I accept that there are white splotches around the respondents' property. However, this fact does not, by itself, establish that they represent damage caused by the applicant or an unreasonable quality of work. The respondents did not provide evidence from another painter or industry professional to comment on the quality of the applicant's work and whether it met a reasonable standard, the probable age of any spillage, or the cost to address any deficiencies. Further, the respondents did not provide evidence about any costs they have incurred to remedy the damage allegedly caused by the applicant.
22. Keeping in mind that the respondents bear the burden of proof, I find that they have not established that the applicant's workmanship was not of a reasonable quality, that the applicant caused damage, or the cost to address any issues. Accordingly, I find that the respondents are not entitled to a set-off any costs associated with

damages or deficient work against the amount they owe the applicant, and that they must pay the outstanding balance of \$3,457.50.

23. The applicant is also entitled to pre-judgment interest on the \$3,457.50 under the *Court Order Interest Act*. Calculated from March 21, 2020, this equals \$20.72.
24. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the applicant was successful, I find that it is entitled to reimbursement of \$175 in CRT fees.
25. The applicant also claimed dispute-related expenses of \$191.26 for legal fees and disbursements related to a builder's lien. Under the *Builders Lien Act*, the British Columbia Supreme Court (rather than the CRT) has jurisdiction over builder's liens. These legal expenses were incurred before the CRT application was filed and concerned only the separate lien-related process. I find that they were not directly related to the conduct of the dispute process as contemplated by CRT rule 9.5, and dismiss the applicant's claim for reimbursement of these expenses.

ORDERS

26. Within 30 days of the date of this order, I order the respondents to pay the applicant a total of \$3,653.22, broken down as follows:
 - a. \$3,457.50 in debt under the parties' agreement,
 - b. \$20.72 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
27. The applicant is entitled to post-judgment interest, as applicable.
28. 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.

29. 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.

Lynn Scrivener, Tribunal Member