



Civil Resolution Tribunal

Date Issued: September 15, 2020

File: SC-2020-001587

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SJay Home & Commercial Repair Solutions Inc. v. Narayan*,
2020 BCCRT 1036

B E T W E E N :

SJAY HOME & COMMERCIAL REPAIR SOLUTIONS INC.

APPLICANT

A N D :

DEVANDRA NARAYAN

RESPONDENT

A N D :

SJAY HOME & COMMERCIAL REPAIR SOLUTIONS INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for a plumbing renovation project. The respondent, Devandra Narayan, hired the applicant, SJay Home & Commercial Repair Solutions Inc. (SJay), to replace his water supply line.
2. SJay says it completed the work that it was hired to do, but Mr. Narayan paid only \$2,000 of its \$6,825 invoice. SJay claims the \$4,825 balance owing.
3. Mr. Narayan says he agreed to pay SJay only \$1,800 for the job but paid \$2,000 at SJay's demand. He also says SJay's work was deficient, negligently done, and that SJay did not have the proper licensing or city permits to complete the plumbing work, so it had to be re-done. Mr. Narayan counterclaims for \$4,900 for return of the \$2,000 he paid SJay and for the cost of re-doing the work.
4. SJay is represented by its principal or owner, Sena Jayalath. Mr. Narayan is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not

necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, 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.

ISSUES

9. The issues in this dispute are:
 - a. What was the agreed price for the work to replace Mr. Narayan's water supply line and what, if anything, does Mr. Narayan owe SJay for its work?
 - b. Was SJay's work deficient or negligent, and if so, what is the amount of any applicable damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, SJay must prove its claim on a balance of probabilities. Mr. Narayan must prove his counterclaim on the balance of probabilities. I have read all of the evidence and submissions provided, but I will only refer to the evidence and arguments as necessary to explain and give context to my decision.
11. It is undisputed that Mr. Jayalath is a general contractor and that Mr. Narayan had previously hired him to complete a variety of work on his home.

12. It is also undisputed that Mr. Narayan called Mr. Jayalath in June 2019 to investigate why his water utility charges reflected a much higher than average usage. Mr. Jayalath says that he diagnosed a leak located between the city water meter and the main shut off valve in Mr. Narayan's home. Mr. Jayalath says that city officials also visited Mr. Narayan's home, confirmed the water leak diagnosis, and advised Mr. Narayan to complete repairs as soon as possible, after which the city would refund Mr. Narayan's excess utility charges.
13. The parties agree that they entered an agreement for SJay to complete the necessary repairs to Mr. Narayan's water supply line.

What was the agreed price for the work to replace Mr. Narayan's water supply line and is anything still owing to SJay?

14. There is no evidence before me that SJay prepared a written quote for the job. Mr. Jayalath says he discussed with Mr. Narayan his plan to re-route the water supply line from the water meter to the shut off valve in Mr. Narayan's home. Mr. Jayalath says that the existing pipes ran under the home's front entrance and through the house to the shut off valve under the main staircase. So, he suggested re-routing the pipes through Mr. Narayan's front yard and garage to avoid damaging the main façade and entrance to the house and to minimize the amount of cutting through concrete, to keep costs lower. He says that Mr. Narayan agreed, which I infer was a verbal agreement, to his \$6,500 plus tax quote to complete the job prior to starting work.
15. It is undisputed that SJay started the job on June 28, 2019 and completed it on August 1, 2019. The parties agree, and the photographic evidence filed by both parties shows, that the scope of work SJay completed involved digging a 60-foot long trench in which to lay the pipes, including cutting through the concrete along the length of the garage. It is undisputed that in addition to Mr. Jayalath, 2 other SJay employees also worked on the job.

16. SJay produced 2 versions of its August 1, 2019 invoice. Both invoices are for \$6,500 plus tax. The only difference between them is that one reflects a flat rate for the job, and the other separates out the costs for labour (\$3,500), equipment (\$1,500), and materials (\$1,500). It is undisputed that Mr. Jayalath prepared the more detailed invoice at Mr. Narayan's request, so that Mr. Narayan could use it to make a home insurance claim for the work SJay completed.
17. Mr. Narayan says that the agreed all-inclusive price for the job was \$1,800. However, he provided no evidence to support this other than his bare assertion that there was a verbal agreement. He says that he ultimately paid \$2,000 rather than the agreed \$1,800 because Mr. Jayalath had "under-quoted" him. Mr. Narayan says that SJay only raised the price from \$1,800 to \$6,500 plus tax when Mr. Jayalath learned about his insurance claim. SJay denies this and says the insurance claim had nothing to do with the amount charged.
18. Given the scope of the work, and that SJay had 3 people working on the job for approximately one month, I find it is very unlikely that the agreed price for the job was only \$1,800. There is no evidence that the job went over time or over budget. SJay's \$6,500 plus tax invoice is dated the day the work was completed, and Mr. Narayan undisputedly used the invoice to make a successful insurance claim.
19. SJay says that Mr. Narayan promised to pay the invoice once he received the insurance payout. After several months of following up, Mr. Jayalath says Mr. Narayan paid him \$2,000 on December 6, 2019 and promised to pay the balance by December 30, 2019. SJay says the only issue that Mr. Narayan raised about its work at that time was a small 2-foot square area that needed an additional layer of cement, which SJay agreed to do upon full payment of its invoice. SJay says that Mr. Narayan failed to pay the balance of its invoice as promised and did not respond to several later attempts to contact him. There is no evidence before me that Mr. Narayan objected to paying the full amount of the invoice until SJay filed this dispute more than 6 months later.

20. Considering all the evidence, on balance, I find that the agreed price for SJay to replace Mr. Narayan's water supply line was \$6,500 plus tax, which is \$6,825. Given that the parties agree Mr. Narayan has paid \$2,000, I find that Mr. Narayan owes SJay \$4,825, which is the amount SJay claims in this dispute.

Was SJay's work deficient?

21. Construction contracts, such as the agreement between Mr. Narayan and SJay, contain implied terms about the quality of work to be performed: see *Morgan and Gaiga v. Pacific Coast Floor Covering Inc.*, 2018 BCPC 236, citing *Pavestone v. Kuentzel*, 2013 NSSC 199. I find that it is an implied term of this agreement that SJay's work be performed in a good and professional manner, that the finished work be fit for its intended purpose, and that the work be completed to the industry standard.

22. Mr. Narayan makes the following allegations about how SJay's work was deficient:

- a. SJay's work should have been completed by a licensed plumber,
- b. SJay failed to get a plumbing permit or an inspection from the city,
- c. The water supply line froze the following winter,
- d. Re-routing the water supply line cost more,
- e. SJay left the work incomplete, and
- f. SJay used Mr. Narayan's gravel rock without permission.

23. Mr. Narayan also claims that some of the alleged deficiencies constitute negligence. To succeed in a claim for negligence against SJay, Mr. Narayan must prove SJay owed him a duty of care, that SJay breached the applicable standard of care, that the loss or damages was reasonably foreseeable, and that SJay's failure to meet the standard of care caused his loss. I find that SJay owed Mr. Narayan a duty of care in replacing Mr. Narayan's the water supply line. The issue here is whether

SJay breached the standard of care of a reasonable general contractor in the circumstances and whether such breach caused Mr. Narayan's claimed damages.

24. Whether Mr. Narayan argues that SJay breached their contract or was negligent, the burden is the same and Mr. Narayan must prove the deficiencies he alleges: *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91.
25. I find that the alleged deficiencies listed as a. through d. in paragraph 22 above each involve issues outside the knowledge and experience of an ordinary person and, therefore, require expert evidence of the standard of care for a general contractor or plumber in these circumstances: *Bergen v. Guliker*, 2015 BCCA 283.
26. Mr. Narayan provided no evidence, and particularly no expert evidence, to show a licensed plumber should have completed the work, that a city permit or inspection was required, that any faulty work caused the pipes to freeze over the winter, or that SJay should have used the existing water supply line route. Further, Mr. Narayan did not provide any evidence to support his submission that any of these alleged deficiencies resulted in him having to re-do SJay's work. So, I find these claimed deficiencies are unproven.
27. I turn next to Mr. Narayan's claim that SJay failed to complete the job.

Incomplete work

28. Mr. Narayan submits that SJay left the job incomplete. He submitted a picture showing some cracked cement around the city water meter cover, which I infer is the 2-foot square area referred to above that Mr. Jayalath agreed to re-cement. Mr. Narayan also submitted an undated picture of the inside of his garage showing soil covering the cut concrete section, which he says should have been re-paved, and photos of a concrete debris pile and dirt left in his front yard. Mr. Narayan says he removed the dirt from his yard himself, but that the concrete debris is still there. Mr. Narayan said his neighbor could attest to the job being unfinished, but he did not file any statements from this neighbor.

29. As noted above, SJay says that it would have returned to fix the cracked cement around the water meter cover once Mr. Narayan paid its invoice. SJay says that Mr. Narayan did not complain about any of the other alleged deficiencies before he filed this dispute, and it denies that it failed to complete the job. SJay says that all areas where concrete was removed were re-done to Mr. Narayan's satisfaction at the time.
30. I find that Mr. Narayan's single undated photograph of his garage is insufficient to prove that SJay failed to re-pave the cut concrete in his garage. I also find the dirt that Mr. Narayan removed from his yard himself was insignificant and did not constitute a deficiency. Further, there is no evidence about what the parties agreed to regarding clean-up, and I find that Mr. Narayan has not proven that SJay agreed to remove the dirt or the concrete debris pile shown in the photographs.
31. Therefore, I find that the only incomplete work that Mr. Narayan has proven is the 2-foot square area around the water meter cover that needs re-cementing, to which Mr. Jayalath agreed. Mr. Narayan did not provide any estimates for what it would cost him to remedy this issue. Mr. Jayalath submitted the area needed $\frac{1}{2}$ inch of concrete and could be fixed within 30 minutes. In the absence of any cost estimate, on a judgment basis, I find \$100 is reasonable to compensate Mr. Narayan for this deficiency.

Gravel rock

32. Finally, Mr. Narayan says that SJay used some of his gravel rock without permission. SJay admits that it used about 3 cubic feet of Mr. Narayan's gravel, but denies it did so without permission. SJay says they used the gravel to fix a problem that was outside its agreed scope of work but did not provide further explanation.
33. I find I am left with an evidentiary tie on this issue. Given that Mr. Narayan bears the burden of proof, I find he has failed to prove that SJay used his gravel without permission.

34. In conclusion, I find that Mr. Narayan owes SJay \$4,825 for the outstanding portion of its August 1, 2019 invoice. From this I deduct the \$100 for re-cementing the area around the water meter cover. I dismiss the balance of Mr. Narayan's counterclaim. Therefore, I find Mr. Narayan must pay SJay \$4,725.

Interest, fees, and expenses

35. The *Court Order Interest Act* applies to the CRT. SJay is entitled to pre-judgment interest on the \$4,725 from August 1, 2019, the date of the invoice, to the date of this decision. This equals \$89.04.

36. 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 see no reason in this case not to follow that general rule. I find SJay was substantially successful in its claim and is entitled to reimbursement of \$175 in CRT fees. I find Mr. Narayan was substantially unsuccessful in his counterclaim and so I dismiss his claim for CRT fees.

37. SJay claimed \$336 for legal costs to draft the initial claim. However, it provided no evidence to support this expense and no explanation for why legal advice was necessary to draft his claim. Therefore, I deny SJay's \$336 claim for dispute-related expenses.

ORDERS

38. Within 14 days of the date of this decision, I order Devandra Narayan to pay SJay Home & Commercial Repair Solutions Inc. a total of \$4,989.04, broken down as follows:

- a. \$4,725 for unpaid services rendered,
- b. \$89.04 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

39. The successful portion of Mr. Narayan's counterclaim is addressed in my order above. The balance of his counterclaim is dismissed.
40. SJay is entitled to post-judgment interest, as applicable.
41. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
42. 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.

Kristin Gardner, Tribunal Member