



Civil Resolution Tribunal

Date Issued: September 24, 2020

File: SC-2020-002028

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CR Design and Build Corp. v. Wang*, 2020 BCCRT 1080

BETWEEN:

CR DESIGN AND BUILD CORP.

APPLICANT

AND:

SEAN WANG

RESPONDENT

AND:

CR DESIGN AND BUILD CORP.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about construction work the applicant (and respondent by counterclaim), CR Design and Build Corp. (CR), did for the respondent (and applicant by counterclaim), Sean Wang. CR claims \$3,901.84 in payment of its final revised invoice #627.
2. Mr. Wang says CR fraudulently double-billed him in the original invoice #627 for certain charges billed in a prior invoice #615. CR says it corrected its unintentional error and its \$3,901.84 claim reflects its revised and correct final invoice. CR denies fraud. Mr. Wang counterclaims for \$4,914.55, for 12% management fees charged by CR in its last 2 invoices, which Mr. Wang says he should not have to pay given CR's allegedly fraudulent double-billing.
3. CR is represented by its principal, Craig Ross. Mr. Wang is self-represented.

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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. The parties' contract has a clause that says the parties agreed to submit disputes to arbitration or under the province's "arbitration statute". The CRT is not arbitration. However, neither party relies on this arbitration clause, and so I will not address it further. The CRT has jurisdiction over this dispute under its small claims jurisdiction over debt and damages.

ISSUES

9. The issues in this dispute are:
 - a. Did CR act fraudulently when it issued its invoices to Mr. Wang?
 - b. To what extent, if any, is CR entitled to payment of \$3,901.84 for its final invoice?
 - c. To what extent, if any, is Mr. Wang entitled to \$4,914.55 as reimbursement of CR's charged management fees?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant CR bears the burden of proof, on a balance of probabilities. Mr. Wang bears this same burden on his counterclaim. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. CR acted as a general contractor for Mr. Wang, under a "cost plus 12%" home renovation contract signed by the parties on January 2, 2019. The project ultimately

cost Mr. Wang about \$200,000. The contract said invoices were due within 20 days of receipt. Under the contract, it is undisputed Mr. Wang was responsible to pay for all project coordination and management of trades, sub-trades and suppliers required to complete the project according to approved drawings.

12. Under the heading “Default by Contractor”, the contract says that if the contractor (CR) does not perform the described work as required under the contract “and has not corrected the default within 14 days of written notice” by Mr. Wang, then CR is not entitled to any further payment under the contract. The stated exception is if the unpaid balance on the contract price exceeds the cost to finish the work, then Mr. Wang must pay CR for such parts of the work as were payable at the time of default. To the extent Mr. Wang relies on this clause, I find CR’s billing error is not a “default”, and in any event I find it does not support Mr. Wang’s position. There is no contractual provision providing for any penalties for billing errors that are later corrected.
13. CR issued 6 invoices to Mr. Wang, beginning on April 14, 2019. Each invoice attached the various suppliers’ invoices and CR’s detailed breakdown. There are 2 invoices at issue in this dispute:
 - a. Invoice #615, dated September 20, 2019, for \$24,234.85, of which \$4,516.40 was identified as the 12% construction management fee. There was no revision to this invoice and it was paid in full.
 - b. Invoice #627, dated December 5, 2019, for \$8,545.10, of which \$864.44 was the 12% construction management fee. On January 2, 2020 this was later reduced to \$3,901.84, of which \$398.15 was the 12% construction management fee.
14. On December 18, 2019, Mr. Wang informed CR of a billing error on invoice #627. In particular, certain supplier invoices billed in invoice #615 were re-billed in invoice #627.

15. On January 2, 2020, CR sent Mr. Wang its revised invoice #627. CR explained that due to inadvertent error, its prior invoice #615 was partly included again as part of the original invoice #627. CR says that once Mr. Wang drew the error to its attention, it corrected it.
16. Mr. Wang refused to pay the revised invoice #627, on the basis he alleges the double-billing error in the first version of invoice #627 was intentional fraud and so a breach of the parties' contract. As noted, Mr. Wang also counterclaims for the 12% management fee on invoice #615 and invoice #627, even though he has to date not paid invoice #627.

CR's claim

17. I turn first to the fraud allegation. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the judge said that because fraud is a very serious allegation, which carries a stigma, it requires evidence that is clear and convincing proof of the elements of fraud, including the mental element (see also the more recent BC Supreme Court decision in *Jones v. Davidson*, 2020 BCSC 1371). I find there is insufficient evidence before me to establish CR's intention to commit fraud in this case.
18. In particular, I accept CR's original invoice #627 was the result of a mistake, rather than intentional double-billing. CR's invoices and "project income detail" documentation are detailed and as noted above CR enclosed its supporting invoices from suppliers with its invoice to Mr. Wang. To the extent Mr. Wang might suggest it, there is no evidence before me whatsoever that CR altered any documents. I find the supporting invoice documentation, while detailed and complex, was transparent. The fact that a limited number of supplier invoices were included a second time in invoice #627 was there to be seen.
19. Mr. Wang argues CR double-billed in its original invoice #627 for "its undue financial gain" and that he had been deceived for 2 weeks while CR "aggressively pushed me to pay the fraudulent claim". I do not agree that CR was so aggressive such that

this shows intentional fraud. Rather, I find it likely that during the later December 2019 period CR erroneously believed its original invoice #627 was correct and it sought payment.

20. I acknowledge that initially CR's project manager was reluctant to debate the validity of the charges on invoice #627. However, I find Mr. Ross' explanation for his double-inclusion of 2 invoices reasonable. He says they came in late and so were included in invoice #615, which he did not realize when he authorized their inclusion in invoice #627. He apologized to Mr. Wang in a timely way. I find that once CR realized that the specific supplier invoices had been inadvertently double-billed in both invoice #615 and #627, it issued its revised invoice #627. I also find CR did so in a timely way, given the intervening holiday period.
21. For these reasons, I find the evidence before me does not establish fraud by CR.
22. The evidence indicates the renovation project was completed and the relevant permits were issued. Mr. Wang's primary argument against having to pay invoice #627 is his fraud allegation, which I have rejected above. However, to the extent Mr. Wang argues CR's work was deficient, I find he has not proved it. The burden of proving a deficiency is on the person alleging it, here Mr. Wang (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). I find the issue of whether construction work was deficient is a matter outside ordinary knowledge, and so it requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). There is no expert evidence before me and so I find there are no deficiencies proven in CR's work. It is true that CR made the billing error at issue, but the standard is not perfection. I find it was an honest mistake.
23. So, I find CR is entitled to payment of its revised invoice #627, for \$3,901.84, which includes its 12% management fee. I note the validity of invoice #615 is not disputed, save for Mr. Wang's counterclaim for a refund of the 12% management fee that I discuss below.

24. The *Court Order Interest Act* (COIA) applies to the CRT. CR is entitled to pre-judgment interest under the COIA on the \$3,901.84, from January 22, 2020 to the date of this decision. I choose January 22 because that is 20 days after the date CR sent the revised invoice to Mr. Wang, and the contract said invoices were due 20 days after receipt. This interest equals \$37.60.

Mr. Wang's counterclaim

25. Mr. Wang counterclaims for \$4,914.55 plus an order that CR stop trying to collect its fees. I cannot order CR to stop doing something, as that is injunctive relief outside the CRT's small claims jurisdiction. Further, part of this amount is \$398.15 in management fees charged on invoice #627, which Mr. Wang has not yet paid. In any event, I have found above CR is entitled to payment of its revised invoice #627, including the applicable 12% management fee.

26. Further, given my conclusions above and in particular that fraud is not proven, I find no basis to order CR to refund Mr. Wang the 12% management fee paid on invoice #615, which was \$4,516.40. As noted, the invoiced work for invoice #615 is not at issue and there is nothing in the parties' contract that would justify refunding a paid management fee based on a later inadvertent and isolated billing error. I dismiss Mr. Wang's counterclaim.

27. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. CR was the successful party and so I order Mr. Wang to pay CR \$175 for its paid CRT fees. Mr. Wang was unsuccessful and so I dismiss his claim for CRT fees. No dispute-related expenses were claimed.

ORDERS

28. Within 21 days of this decision, I order Mr. Wang to pay CR a total of \$4,114.44, broken down as follows:

- a. \$3,901.84,

- b. \$37.60 in pre-judgment COIA interest, and
- c. \$175 in CRT fees.

29. CR is entitled to post-judgment interest, as applicable.

30. Mr. Wang's counterclaim is dismissed.

31. 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.

32. 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.

Shelley Lopez, Vice Chair

