



Civil Resolution Tribunal

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File: SC-2020-003547

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barss v. Handy Guys Home Renovation and Repair Inc.*, 2020 BCCRT
1177

B E T W E E N :

PETER BARSS

APPLICANT

A N D :

HANDY GUYS HOME RENOVATION AND REPAIR INC., STACEY
MALYSH and PAUL WILSON

RESPONDENTS

A N D :

PETER BARSS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about construction work on a shed being converted into a cabin.
2. The applicant Peter Barss says he hired the respondent Handy Guys Home Renovation and Repair Inc. (Handy Guys) to check his cabin's framing for code compliance and safety, and to finish framing for a refrigerator and three interior doors. Mr. Barss says Handy Guys went beyond the agreed scope of work, overcharged him and that aspects of their work were unsatisfactory.
3. Mr. Barss claims \$2,985.08, broken down as:
 - a. \$590.13 to redo radiant heating PEX pipes in the ceiling,
 - b. \$590.13 to remove 2 by 4 strapping from the ceiling to allow completion of radiant heating and leave ceiling lights at level for dry walling,
 - c. \$53.00 for nail pullers to remove strapping,
 - d. \$637.50 for management fees to correct Handy Guys' carpentry work,
 - e. \$88.32 for travel by car to deal with correction of Handy Guys' carpentry work,
 - f. \$226 in tax,
 - g. \$400 for time spent reviewing this matter with a lawyer, and
 - h. a further \$400 for costs of redoing and "verifying risks of unauthorised work".
4. Mr. Barss also asks for an order reducing Handy Guys' invoice by \$1,925, for additional unauthorized or unsatisfactory work.
5. Handy Guys says it provided satisfactory work for Mr. Barss, under a written agreement that Mr. Barss would direct the work and Handy Guys would bill on a cost-plus basis. Handy Guys invoiced Mr. Barss \$4,352.06 for the work it completed, but Mr. Barss failed to pay. Handy Guys counterclaims against Mr. Barss for the \$4,352.06.

6. Mr. Barss represents himself. Handy Guys is represented by director Ms. Malysh. Ms. Malysh also represents Handy Guys' principal, Mr. Wilson, and herself, in their personal capacities.

JURISDICTION AND PROCEDURE

7. 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.
8. 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, this dispute involves both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
9. 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I find that I can fairly decide this dispute through written submissions.
10. 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.

11. 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.
12. I dismiss the claims against Mr. Wilson and Ms. Malysh personally, because I find no evidence and no submissions to prove they are liable in their personal capacities. The contract for renovation work was between Mr. Barss and Handy Guys, making this a dispute between those parties only.

ISSUES

13. The issues in this dispute are:
 - a. Did Handy Guys overcharge Mr. Barss or do work outside the agreed scope?
 - b. Was any of Handy Guys' work deficient or did it need to be redone, such that Mr. Barss should not have to pay for it?
 - c. Is Mr. Barss entitled to any remedy for time spent on this dispute?
 - d. Did Handy Guys complete its work satisfactorily such that it is entitled to payment of its \$4,352.06 invoice?

EVIDENCE AND ANALYSIS

14. As the applicant, Mr. Barss has the burden of proving his claim on a balance of probabilities. Handy Guys bears that same burden in its counterclaim. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
15. On November 19, 2019, Mr. Barss signed a written agreement (Agreement) with Handy Guys to have them provide:
 - a. Project management as required,

- b. Complete framing to pass framing inspection, and
 - c. Supply of framing materials as required.
- 16. Mr. Barss submits he could not read the Agreement because it was illegible. I find the Agreement was legible and that Mr. Barss signed it voluntarily.
- 17. The Agreement was for billing at specified hourly rates for Handy Guys' employees and cost plus 15% for subcontractors and disbursements. The Agreement includes Handy Guys charging \$60 per hour for travel time to the job site or for material pick up and delivery and any off-site labour needed to finalize the work. The Agreement did not incorporate a total cost estimate. The Agreement included a 24% annual interest charge for overdue accounts.
- 18. Handy Guys worked on the project from October 31 to November 29, 2019. It is undisputed that Mr. Barss was on site, directing the work, throughout. While the Agreement was not signed until November 19, 2019, I find that it reflected the verbal agreement between the parties to that point.
- 19. On January 10, 2020, Handy Guys invoiced Mr. Barss \$4,352.06 (Invoice) broken down as
 - a. \$3,900 in carpentry and labour,
 - b. \$244.82 in materials, and
 - c. \$207.24 in GST.
- 20. Handy Guys filed a "Time Clock" document showing the hours spent on various tasks, produced on December 21, 2019. The breakdown includes billing for 6 hours of project management, 5 hours of jobsite setup and delivery, 38.50 hours of carpentry and 2.25 hours of drywall work. I find that the Time Clock document generally supports Handy Guys' \$3,900 billing for carpentry and labour under the Agreement.
- 21. On January 10, 2020, Mr. Barss replied to Handy Guys and asked for an explanation of what was included in the Invoice. Mr. Barss asked about "1 inch nails you put in to

replace the 160 four inch screws do not meet code and have to be extracted and replaced with longer 4 inch fasteners. That credit is not included in this invoice.”
(quote reproduced as written)

22. When Mr. Barss raised this concern on January 10, 2020, Ms. Malysh replied, “I spoke to Paul regarding your questions regarding the fasteners, and he says that he has already discussed this with you. No credit was issued as they intended to come back, but have been unable to, due to weather and being unable to access the site.” Based on this email, I find that Handy Guys acknowledged that the fasteners needed to be re-done.
23. It is undisputed that Mr. Barss did not pay the Invoice.
24. Since Mr. Barss never paid Handy Guys for its work, many of his claims are essentially a defence to Handy Guys’ counterclaim for payment. Mr. Barss says that Handy Guys wrongly:
 - a. Charged for project management when doing so is “forbidden”,
 - b. Provided 2 workers where only 1 was requested,
 - c. Spent 6 hours on travel time to pick up or return materials,
 - d. 12 hours for product delivery by 2 men,
 - e. 1 hour visiting a cabinet designer at the hardware store,
 - f. 2.5 hours travel from Armstrong to Grindrod to check driveway for snow when heavy snowfall was known and Handy Guys was asked to attend a week earlier,
 - g. Used 1-inch shear proof fasteners for joist hangers instead of 4-inch fasteners, and
 - h. Had to have some of Handy Guys’ work re-done.

25. I find that the hours contested by Mr. Barss do not always match up with the hours on the Invoice. For example, Mr. Barss submits that 6 hours of travel time and 12 hours of product delivery should not be charged, but only 5 hours of total job site setup and delivery time were charged to him. Having said that, I will discuss below the substance of each of Mr. Barss' billing objections.

Project Management Charges

26. Although he signed the Agreement that expressly included charges for "project management", Mr. Barss now objects to the project management charges on the Invoice because, as an owner-builder, a suggestion that he was not the project manager puts him at risk of paying various penalties.

27. I find that these penalty issues, which may never come to pass, arise under the *Homeowner Protection Act* and are outside CRT jurisdiction. I refuse to resolve them under CRTA section 10. I turn to the question of whether these project management charges were included in the parties' Agreement.

28. Handy Guys says its practice is to bill the "project management" billing rate for any administrative tasks completed by Mr. Wilson that do not fall into some other billing category, such as carpentry. Handy Guys does not dispute that Mr. Barss was the overall project manager, responsible for the project's scope and coordinating various trades.

29. Given the evidence that Handy Guys spent the invoiced time on the agreed work, and that project management charges were included in the Agreement, I find that the project management charges on the Invoice are valid.

Number of Workers

30. Mr. Barss submits that he wanted only 1 worker on site, not 2. The Agreement specifies hourly rates for types of trades but does not limit the number of workers for the project. The Agreement says that time costs will be charged for "each employee working on site." As well, as Handy Guys points out, a job would take less time with

more workers, so the overall invoice would be for a similar amount whether there were 1 or 2 workers, apart from travel time. On its face, 2 workers is not unreasonable for the type of project.

31. I dismiss Mr. Barss' submission that the Invoice should be reduced because of the number of workers who participated in the project.

Travel Time

32. In the Agreement, Mr. Barss agreed to pay for travel time to the site and to and from the pick up of materials. Mr. Barss also agreed to pay for off-site time necessary to complete the project.
33. Based on the Agreement, I dismiss Mr. Barss' objections to the charges for travel time to pick up or return materials, product delivery and visiting a cabinet designer. While it was an implied term of the Agreement that time spent would be reasonable, I find that this off-site time was reasonable.
34. The remaining travel time issue is Mr. Barss' request to reduce the Invoice to remove 2.5 hours' travel from Armstrong to Grindrod to the work site. I find these hours were spent on 2-1.25-hour drives on November 13 and 14, 2019, with each arrival thwarted by driveway snow.
35. Mr. Barss says he asked Handy Guys to attend a week earlier but they failed to do so. Mr. Barss also submits that Handy Guys knew of the snow fall and could have called to see if the driveway was passable before driving to the site.
36. TM, a red seal carpenter with Handy Guys, provided a statement that at the initial meeting with Mr. Barss, Mr. Wilson explained that Mr. Barss would need to keep the driveway cleared of snow so that Handy Guys could bring their trailer to the site. Mr. Barss did not directly address this evidence. Instead, as noted above he says he urged Handy Guys to come a week earlier, because of a snowy forecast. TM writes that when he and Mr. Wilson tried to access Mr. Barss' cabin, they could not do so because Mr. Barss had not cleared the snow. I accept TM's evidence because it

accords with Handy Guys' records that site access was weather-sensitive, and Mr. Barss did not directly refute it. I also find that there can be unanticipated weather conditions that make site access impossible.

37. Because Handy Guys found the driveway inaccessible on November 13, I find it would have been reasonable for them to phone Mr. Barss to check before driving up the very next day. I find that the first 1.25-hour drive was likely made on the reasonable understanding that the driveway would be passable. I agree with Mr. Barss that the second 1.25-hour drive could have been avoided by a phone call. I order a 1.25-hour deduction of travel time from the Invoice for the November 14, 2019 drive, at \$60/hour, which is \$75.

Alleged Deficiencies in Work

38. Where an allegation of deficient work is based on a claim that the work's quality fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency: see *Bergen v. Guliker*, 2015 BCCA 283. I find that Mr. Barss needs independent expert evidence to prove deficiencies in the work, except where Handy Guys made an admission as discussed below.
39. I find that Mr. Barss has not proven his submission that "most" of the work done by Handy Guys had to be re-done. There is no independent expert evidence to this effect, nor any independent evidence that Mr. Barss hired or paid anyone to re-do the work, such as a contract or invoice. TM gave evidence that, after two days of work, Mr. Barss seemed pleased with Handy Guys' work, and asked them to stay to work on further projects, consistent with Handy Guys' notes. I find that Mr. Barss has not proven deficiencies in Handy Guys' work, subject to one issue discussed below.
40. The exception is the claim that Handy Guys used 1-inch shear proof fasteners for joist hangers where 4-inch ones were required. I have found that Handy Guys agreed that the fasteners needed re-doing but did not return to fix them. I do not need expert evidence to find that Mr. Barss is entitled to a discount for the incomplete fastener

work. No one gave evidence about how long this replacement work would take. Extrapolating from the time sheets, on a judgement basis, I find that Mr. Barss should receive a 2-hour carpentry credit, at \$75/hour, which is \$150.

Time Spent

41. I dismiss Mr. Barss' claim for \$400 for time spent discussing this dispute with a lawyer. The CRT generally does not order a party to pay another party compensation for time spent, except in extraordinary circumstances: see Rule 9.5(5). The CRT also does not generally compensate for lawyer's time. Mr. Barss has not proven he paid a lawyer, such as through an invoice or receipt. I find this dispute about quality of work and payment under a construction contract is not extraordinary.

Remaining Claims

42. Mr. Barss also failed to prove that Handy Guys' negligence caused his alleged 2-\$590.13 losses, and he failed to prove what these losses were for or that he paid anyone these amounts. Mr. Barss did not prove how he arrived at his \$637.50 management fee claim, whether he paid this to anyone, or why Handy Guys' should be responsible to pay it.
43. I dismiss Mr. Barss' remaining claims as unproven, on the evidence before me.

Counterclaim

44. I have found that Mr. Barss must pay Handy Guys \$4,127.06, which is the Invoice amount of \$4,352.06 less \$225 for the deductions described above.

Contractual Interest, CRT Fees and Dispute-Related Expenses

45. I find that Handy Guys is entitled to 24% contractual interest per year on the \$4,127.06, under the parties' Agreement. Calculated from January 10, 2020, the date of the Invoice, to the date of this decision, this equals \$770.69. While Mr. Barss submits that the contractual interest is "extortionate" and "non-legal", I find he was

aware of interest rate when he signed the Agreement and that it was not illegal or improper.

46. 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. Handy Guys was largely successful and is entitled to reimbursement of \$125 in CRT fees. Handy Guys did not claim dispute-related expenses. As Mr. Barss was unsuccessful, I dismiss his claim for reimbursement of CRT fees or expenses.

ORDERS

47. Within 30 days of the date of this order, I order Mr. Barss to pay Handy Guys a total of \$5,022.75, broken down as follows:

- a. \$4,127.06 in debt for construction services under the Agreement,
- b. \$770.69 in contractual interest, and
- c. \$125 CRT fees.

48. I dismiss Mr. Barss' claims and the remaining counterclaims.

49. 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.

50. 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.

Julie K. Gibson, Tribunal Member