



# Civil Resolution Tribunal

Date Issued: December 18, 2020

File: SC-2020-004532

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0949732 BC Ltd. v. G.M.S. Landscaping Ltd.*, 2020 BCCRT 1432

B E T W E E N :

0949732 BC LTD

**APPLICANT**

A N D :

G.M.S. LANDSCAPING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about concrete framework services. The applicant corporation, 0949732 BC Ltd (094), hired the respondent corporation, G.M.S. Landscaping Ltd. (GMS), to perform framing work for new concrete walls. The owner of the property is not involved in this dispute.

2. 094 says the walls were damaged because GMS did not frame them properly. Although 094 does not specifically say this, I find that 094 is claiming that GMS was negligent and it breached the contract. 094 claims damages of \$5,000 for the repair costs.
3. GMS denies the claim and says that it performed its services properly. GMS says the damage could have been caused by the concrete pouring contractors. GMS also says that 094 has not suffered a loss because the property has already been sold.
4. Both parties are represented by business agents.

## **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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
7. Section 42 of the CRTA says 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. Did GMS negligently perform framing work which caused 094 to suffer damages? If so, how much must GMS pay 094?
  - b. Did GMS breach the contract by failing to properly perform framing work which caused 094 to suffer damages? If so, how much must GMS pay 094?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant, 094, must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. It is undisputed that 094 is a builder that hired GMS to perform framing work for new concrete walls being built on the north and east sides of a property in May to June, 2019. The owner of the property is not a party in this dispute. After the concrete was poured and the framing lumber was removed, 094 paid GMS \$3,360.00 on June 27, 2019.
12. Subsequently, GMS performed additional framing work for 094 at the job site. GMS issued an invoice for \$3,999.55 on December 31, 2019 for the additional services.
13. 094 says that it reviewed GMS' work when it received the December 31, 2019 invoice and 094 says it discovered that the initial framing work performed in May and June

2019 was poorly done. 094 says the walls were uneven and lacked the proper waterproof membrane between the wood and concrete. 094 also says that GMS' December 31, 2019 invoice was excessive for the work performed.

14. The parties exchanged multiple emails from March to May, 2020 discussing the invoices. 094 generally said that it wanted to do a site inspection before it paid the last invoice but 094's representative was unable to return to Canada because of COVID-19 travel restrictions.
15. At an unspecified date, GMS put a builder's lien against the property for the unpaid December 31, 2019 invoice. 094 says the owner was trying to sell the property so it needed to remove the builder's lien. It is undisputed that 094 paid the December 31, 2019 invoice, the lien was removed and the property was sold.

### ***Negligence***

16. To prove negligence, 094 must show that GMS owed it a duty of care, GMS breached the standard of care, 094 sustained damage, and the damage was caused by GMS' breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).
17. I accept that as a paid framing contractor, GMS owed 094 a duty of care to ensure that its framing work did not damage the walls.
18. 094 says GMS breached the standard of care by improperly framing the concrete forms and not installing a waterproof membrane between wood and concrete. GMS says it properly performed the framework. GMS did not address the allegation that waterproof membranes were not installed.
19. 094 provided an inspection report from an engineer dated September 17, 2020. Since the report was prepared by a licensed engineer, I find the engineer had sufficient education and training to submit the expert report as required under CRT rule 8.3.
20. The engineer says the concrete walls on the east and north side of the property are misaligned, with significant bulging. The engineer says these defects are caused by poor workmanship, including out of line of formwork installation. GMS did not provide

any responsive expert evidence. Based on the engineer's undisputed expert report, I find that GMS breached the standard of care by failing to properly align the formwork.

21. However, to prove negligence, 094 must also prove that GMS' conduct caused 094 to sustain damage. For the reasons that follow, I find that 094 has not proved this.
22. There is no evidence before me that 094 has suffered any losses related to the quality of the walls that GMS framed. Although 094 has provided an estimate of \$5,000 to repair the walls, 094 has not provided any evidence showing that it is obligated to repair the walls or that it needs to compensate the owner of the property for damage to the walls. Further, 094 has not provided any evidence showing that the property owner deducted any amounts from 094's construction fees for any damage to the walls. In addition, the owner at the time of construction has already sold the property and there is no evidence before me showing that 094 has an obligation to the current owner to repair the walls.
23. 094 does say that it needed to hire workers to remove the forms left by GMS. However, 094 has not provided any evidence showing the expenses it incurred to remove the forms. 094 also says the poor quality of the walls has damaged its reputation. However, 094 has not provided any evidence in support of this alleged loss either.
24. For the above reasons, I find that there is no evidence that 094 has sustained any losses relating to the walls. As such, I dismiss 094's claim for negligence.

### ***Breach of Contract***

25. I find it unnecessary to determine whether GMS breached a contract to perform framing work for 094 because, as discussed above, I find that 094 has not proved that GMS has caused any losses to 094. In the absence of any losses from an alleged breach of contract, I dismiss this claim.
26. For the above reasons, I dismiss this dispute.

27. 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 not to follow that general rule. In this dispute, 094 requests reimbursement of its CRT fees and reimbursement of \$1,050 it says it paid for the engineer's consultation as a dispute-related expense. Since 094 was unsuccessful, I dismiss its claim for reimbursement of CRT fees and its request for reimbursement of the cost of the engineer's report.

## **ORDER**

28. I dismiss 094's claims and this dispute.

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Richard McAndrew, Tribunal Member