Civil Resolution Tribunal

Date Issued: January 6, 2021

File: SC-2020-003012

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Onsite Engineering Ltd. v. St.Regis Management Inc.*, 2021 BCCRT 10

B E T W E E N :

ONSITE ENGINEERING LTD.

APPLICANT

A N D :

ST.REGIS MANAGEMENT INC. and GUY W MARIS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about payment for engineering services. The applicant, Onsite Engineering Ltd. (Onsite), says that it provided feasibility and design services to the respondents, St.Regis Management Inc. (St. Regis) and Guy W Maris, relating to construction of an access road on a property adjacent to Crown land. Onsite claims an outstanding balance of $3,413.10 for its invoice.

2. St. Regis says it hired Onsite to perform services as set out in a March 6, 2019 "Project Proposal and Cost Estimate" totaling $2,965 for the first 2 phases of the project. St. Regis says it already paid a $1,510 deposit, so the most owing to Onsite is $1,455. However, St. Regis also alleges that Onsite's services were of poor quality.

3. St. Regis also says Onsite improperly named Mr. Maris, who is St. Regis' director and officer, as a respondent. St. Regis seeks $2,455 in unspecified "administrative and legal costs" as a result of having to respond to this dispute.

4. Although Onsite served Mr. Maris with the Dispute Notice, Mr. Maris did not provide a Dispute Response and is in default, which I discuss further below.

5. Onsite and St. Regis are each represented by one of their respective employees.

JURISDICTION AND PROCEDURE

6. 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.

7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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 the interests of justice.

8. 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.

9. 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.

10. St. Regis filed a Dispute Response but did not file any evidence or make any submissions. CRT staff made several attempts to contact St. Regis to remind it of the relevant deadlines and a final warning was sent on December 7, 2020. On December 11, 2020, after the dispute had already been referred to a tribunal member for adjudication, St. Regis requested an indeterminate adjournment "due to Covid 19 restrictions and constraints imposed by Provincial Authorities on employees and agents of St Regis". I find that St. Regis had sufficient opportunity to provide evidence and submissions during the CRT decision process, and it did not explain how the pandemic prevented the business from filing its evidence and submissions online. I find St. Regis did not provide any reasonable basis to support a request for an adjournment, and it was out of time to make the request. Therefore, I have decided to issue a final decision in this dispute based on the information before me.

ISSUE

11. The issue in this dispute is whether the respondents must pay Onsite $3,413.10 for engineering services provided.

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicant Onsite must prove its claims on a balance of probabilities. I have reviewed all the evidence and arguments but only refer to them to the extent necessary to explain and give context to my decision.

13. The evidence shows that Mr. Maris' executive assistant, SS, first contacted Onsite on January 16, 2019 to request a quote for assistance with a proposed access road on

Mr. Maris' property. The project required a feasibility assessment and an application to access adjacent Crown land for the road due to steep areas of terrain on Mr. Maris' property.

14. Onsite provided SS with an initial "Project Proposal and Cost Estimate" on January 29, 2019, which was revised as Onsite obtained further information about the scope of the project. On March 6, 2019, Onsite sent Mr. Maris an amended "Project Proposal and Cost Estimate", totaling $3,220 for the first 2 phases of the project, including:

    a. Feasibility assessment: 9 hours at $85 per hour ($765),

    b. Initial site review: various hours and rates by professional ($1,402.50), and

    c. Interim reporting: various hours and rates by professional ($1,052.50).

15. The March 6, 2019 estimate stated that all costs would be billed hourly and Onsite would communicate regularly with the client about the budget status. In the payment section, it noted that any items expected to go over budget would be discussed with the client prior to completing them. It also stated that totals are estimates only and assumed field conditions or design parameters can lead to changes in the complexity or extent of the work which may have an impact on the estimated costs.

16. A March 6, 2019 email from Onsite to Mr. Maris stated that Onsite was "wrapping up" the feasibility assessment, having used approximately 6 of the estimated 9 hours, for a total of about $510. As of the March 6, 2019 estimate and email, Onsite had not yet attended Mr. Maris' property in person to assess the project's viability and scope, which I find the estimate contemplated could impact the "assumed field conditions or design parameters", as well as the estimated costs. It is undisputed that Mr. Maris paid a $1,510 deposit at some point after March 6, 2019.

17. On March 20, 2019, Onsite attended the property and reported its findings to Mr. Maris in a March 22, 2019 email. The email set out 2 potential routes Onsite identified for the access road through Crown land. It also noted Onsite located a potential route

from within Mr. Maris' property, which had not been previously anticipated. Onsite obtained Mr. Maris' confirmation (through SS) to go ahead with drafting a "rationale document" for the application to design the access road through Crown land. I find based on his response, that Mr. Maris understood the rationale document would likely require more work given the potential route identified within Mr. Maris' property.

18. The email evidence between Onsite and Mr. Maris shows that Onsite regularly updated Mr. Maris about its work and sought Mr. Maris' approval to proceed with next steps, but it is undisputed that Onsite did not provide Mr. Maris with an updated cost estimate after its March 20, 2019 site visit.

19. In a June 26, 2019 email from Onsite to Mr. Maris, Onsite advised that it had not properly accounted for the time to assess both a road within the property and the Crown land routes because it had initially assumed that a route within the property was not feasible. Onsite acknowledged that it had significantly underestimated the effort required, noting it had initially estimated 20 hours to produce the rationale document, but that one of its engineers, JT, ultimately spent 48 hours on it.

20. Onsite then sent Mr. Maris an updated Project Proposal and Cost Estimate dated June 26, 2019 and a contract to sign. The updated proposal increased the estimate for interim reporting in phase 2 from $1,052.50 to $2,850, for a total of $3,902.50 for the first 2 phases. Neither party filed a copy of the contract in evidence, and I infer that the parties never signed the contract.

21. On July 4, 2019, Onsite delivered its invoice to Mr. Maris, totaling $4,923.10. Onsite did not explain the reason for the difference between the amounts reflected in the June 26, 2019 estimate and its July 4, 2019 invoice. However, the invoice reflects that Onsite applied a reduction to the 48 hours it said JT had spent, charging 34.5 hours for his time. Mr. Maris responded to the invoice in a July 29, 2019 email in which he stated the invoice "appears to be outside of our agreement". The email evidence before me suggests that Mr. Maris stopped communicating with Onsite after July 29, 2019, despite several attempts by Onsite to follow up.

22. So, the question is whether Mr. Maris or St. Regis (or both) must pay Onsite's invoice, or some other amount, for the work Onsite performed.

23. As noted above, Mr. Maris did not file a Dispute Response. Based on the proof of notice form submitted by Onsite, I am satisfied Mr. Maris received the Dispute Notice but did not respond by the deadline set out in the CRT's rules. So, I find Mr. Maris is in default.

24. Liability is generally assumed against a party in default. Here, there is some question about who the contracting party is. St. Regis says it was the party that contracted with Onsite for its services, and it objects to Mr. Maris being named as a respondent. However, Mr. Maris is described as the owner of the subject property, he provided instructions to Onsite about the project, each of Onsite's Project Proposal and Cost Estimates named Mr. Maris as the client, and Onsite's invoice was issued to Mr. Maris. Therefore, I find it was reasonable for Onsite to conclude that it was also contracting with Mr. Maris in his personal capacity. Given that Mr. Maris has not participated in this dispute, I find Mr. Maris is liable for any amount owing to Onsite for its services.

25. However, given St. Regis says it was the contracting party with Onsite, and that Mr. Maris is St. Regis' principle, I find that St. Regis and Mr. Maris are jointly and severally liable for any amount owing to Onsite for its services. This means that Onsite may recover the monies owing to it from either Mr. Maris or St. Regis.

26. I turn now to how much Mr. Maris and St. Regis owe to Onsite.

27. I find that based on the terms of Onsite's March 6, 2019 Project Proposal and Cost Estimate, contrary to St. Regis' position, Onsite did not provide a firm price quotation. Rather, it was an estimate, and it explicitly noted that Onsite would charge by the hour. Therefore, I find Onsite was not limited to charge only what was reflected in the March 6 estimate, and it did not breach the contract simply by exceeding the estimated amount.

28. The estimate also stated that items expected to go over budget would be discussed with the client. I accept Onsite's argument that by advising Mr. Maris in its March 22, 2019 email about the potential route within the property, it was implied that the scope and complexity of the project increased. I find this put Mr. Maris on notice that the estimated costs would likely be impacted. By authorizing Onsite to continue working, I find Mr. Maris implicitly agreed to pay more than the estimated costs.

29. As noted above, St. Regis admits it agreed to pay Onsite's March 6, 2019 estimate of $3,220. Onsite's $4,923.10 invoice was more than 50% higher than its estimate. However, based on the evidence before me about Onsite's work, and noting that Onsite did not charge for the full number of hours spent, I find that Onsite's invoice was reasonable for the work it performed. Taking into account the $1,510 paid deposit, I find Mr. Maris and St. Regis must pay Onsite the claimed $3,413.10.

30. As noted above, St. Regis alleges that Onsite's work was of poor quality. I infer that its position is some deduction should be applied to what is owed due to deficient work. The burden of proving deficiencies is on the party alleging them (see *Lund v. Appleford Building Company Ltd. et al,* 2017 BCPC 91). St. Regis' Dispute Response lacked any detail about how Onsite's services were of "poor quality" and St. Regis provided no evidence or submissions in this dispute. Further, I find an assessment of the quality of a professional engineer's feasibility review and draft rationale document would require expert evidence because it is outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). In the absence of any evidence, including any expert evidence, I decline to make any findings that Onsite's work was deficient or that any deduction should be applied to the amount owing to Onsite.

INTEREST AND CRT FEES

31. While Onsite's invoice stated that interest is charged at 1.5% per month on amounts outstanding after 30 days, Onsite says there was no agreement on interest. A party may not unilaterally impose an interest rate on outstanding amounts by stating it on an invoice. I find there is no evidence before me that St. Regis or Mr. Maris agreed

to a 1.5% interest rate in advance. Therefore, I find the parties did not have an agreement on interest.

32. However, the *Court Order Interest Act* applies to the CRT where there is no agreement on interest. I find Onsite is entitled to pre-judgement interest on the $3,413.10 from August 3, 2019, 30 days after the invoice date, to the date of this decision. This equals $68.69.

33. 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 Onsite is entitled to reimbursement of $175 in CRT fees. Onsite did not claim any dispute-related expenses.

34. As noted above, St. Regis claimed $2,455 in unspecified "administrative and legal costs" for having to respond to this dispute. St. Regis provided no evidence in support of this claim. I note CRT rule 9.5(3) says that the CRT will not order a party to pay another party's legal fees in a small claims dispute, except in extraordinary circumstances, which I find do not exist here. In any event, given St. Regis was unsuccessful, I find it is not entitled to any reimbursement of claimed dispute-related expenses.

ORDERS

35. Within 14 days of the date of this order, I order Mr. Maris and St. Regis, jointly and severally, to pay Onsite a total of $3,656.79, broken down as follows:

    a. $3,413.10 in debt,

    b. $68.69 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

36. Onsite is entitled to post-judgment interest, as applicable.

37. 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.

38. 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.

39. Since Mr. Maris is in default, he has no right to make a notice of objection, as set out in section 56.1(2.1) of the CRTA.

Kristin Gardner, Tribunal Member