



Civil Resolution Tribunal

Date Issued: February 16, 2021

File: SC-2020-005754

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goodland v. Johnston*, 2021 BCCRT 175

BETWEEN:

JEANIE GOODLAND

APPLICANT

AND:

SIOBHAN JOHNSTON also known as SIOBHAN RICH

RESPONDENT

AND:

JEANIE GOODLAND

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a partially completed bathroom renovation.
2. The applicant and respondent by counterclaim, Jeanie Goodland, agreed to renovate a bathroom for \$2,000 for the respondent and applicant by counterclaim, Siobhan Johnston, also known as Siobhan Rich.
3. Siobhan Johnston paid a \$1,000 deposit. Dissatisfied with Ms. Goodland's work after 2 days, Siobhan Johnston stopped the work and refused to pay the remaining \$1,000.
4. Ms. Goodland says she should have been allowed to complete the work, and claims \$1,000 for the balance of the contract.
5. Siobhan Johnston says the work was so poor and behind schedule that she had to hire a different contractor. In the counterclaim, Siobhan Johnston seeks \$1,245 for the cost of addressing the deficiencies. She also alleges that Ms. Goodland stole a bear banger and some tools, for which she seeks \$650.
6. Both parties are self-represented.

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). 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.
8. 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. In some respects, the parties in this dispute call into question each other's credibility. 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 *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

9. 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.
10. 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

11. The issues in this dispute are:
 - a. What were the contract's terms?
 - b. Did either party breach the contract?
 - c. What remedies, if any, are appropriate?
 - d. What amount, if any, is Siobhan Johnston entitled to for the allegedly stolen items?

EVIDENCE AND ANALYSIS

Background

12. As the applicant in this civil proceeding, Ms. Goodland must prove her claim on a balance of probabilities. Siobhan Johnston must prove her counterclaim to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
13. Both parties' submissions refer extensively to a person named SK who is not a party to this dispute, and whose relationship to the parties is not stated. I infer that SK is Ms. Goodland's business partner or employee because it is clear that SK helped Ms. Goodland do the renovation work.
14. In early July, Siobhan Johnston paid Ms. Goodland a \$1,000 deposit. Based on text messages in evidence I find Ms. Goodland and SK worked on Siobhan Johnston's bathroom on July 19 and 20, 2020.
15. On July 21, Ms. Goodland and SK had not arrived in the morning. Around 10:50 a.m., Siobhan Johnston unsuccessfully attempted to call SK, and then texted SK, saying that things were not working out, and she would leave SK's tools out "by the sheep shack." She also said she felt the \$1,000 deposit was fair for the work done and material provided.

What were the contract's terms?

16. In evidence is an unsigned, undated quote, which does not identify the contractor's name. Despite these shortcomings, the parties agree that the quote formed the basis of their bathroom renovation contract.
17. The quote says Ms. Goodland will:
 - Remove the old tub and surround.
 - Repair any damaged flooring under the tub.

- Install aquaboard around the tub, drywall if needed behind vanity, and mud, tape, and sand for paint ready.
- Build a custom vanity (wood provided by Siobhan Johnston) with a live edge slab countertop and live edge slab shelf beneath.
- Install and plumb new tub.
- Install new flooring.
- Remove toilet and install new wax ring.

18. The quote provided a labour cost of 3 days at \$500 per day, totaling \$900 for reasons that are not explained.

19. The material costs are itemized, the largest being \$400 for a tub and sink. The items add up to \$1,188 although the quote provides a total of \$1,058. The quote adds the labour and materials to arrive at \$1,958. Below that is written \$2,000. Below that is written the difference, \$42.00. These figures are not labelled. Despite these ambiguities, the parties agree that the quote was for \$2,000. The quote is silent about taxes, so I infer they are built into the price.

20. I find the parties intended the quote to capture most of the labour and material costs. However, I find the quote is best characterized as a budget or estimate. I find the work was not defined with enough detail to be considered a fixed-price contract: *Savings v. Mark Swallow Thompson Allard & Co.*, 1996 (CanLII) 1152 (BC SC).

Did either party breach the contract?

21. An owner has the right to end a contract where the contractor has breached the contract in such a substantial or fundamental way that it amounts to a “repudiation” or rejection of the contract. Siobhan Johnston says she ended the contract for 2 reasons – delay and poor quality work.

22. Siobhan Johnston says a speedy renovation was important as she shares the only bathroom in her home with 3 children. Ms. Goodland says Siobhan Johnston was

supposed to be house-sitting for a neighbour so Ms. Goodland and SK would have uninterrupted access to the bathroom. When that house-sitting fell through, Ms. Goodland says she and SK had to work around the family's bathroom use. I accept that this change in circumstances slowed Ms. Goodland's work.

23. The parties disagree about whether Ms. Goodland and SK could have completed the outstanding work on the third day. Given the quote had no specific language about when the renovation was to be complete, I find the quote's estimate of 3 days labour was a target rather than a binding commitment. This means it was implied that Ms. Goodland would complete the work in a reasonable time. I find Siobhan Johnston has not proved that Ms. Goodland could not finish the work within a reasonable time, such as an extra day, if given the opportunity. For that reason, and because there were unanticipated delays that were not Ms. Goodland's fault, I find any delay was not significant enough to justify ending the contract.
24. As for quality, work that is poor quality or defective does not generally entitle an owner to terminate a contract unless it is so poor that it amounts, in substance, to a repudiation of the contract: *Lind v. Storey*, 2021 BCPC 2.
25. I find many of the alleged deficiencies relate to incomplete rather than poor quality work. It is undisputed that Ms. Goodland removed the old bathtub, and delivered and partially plumbed the clawfoot tub. They installed aqua board and drywall. They partially installed new flooring but ran out of material. Overall, I find the deficiencies (described in detail below) were not so fundamental that they went to the root of the contract. Accordingly, I find Siobhan Johnston was not entitled to end the contract.
26. If an owner ends the contract in such circumstances, then the owner has repudiated the contract and the contractor will be generally be entitled to damages to put them in the position they would have been in had the contract been performed: *Jozsa v. Charlwood-Sebazco*, 2016 BCSC 78. I find Siobhan Johnston is entitled to the outstanding balance of \$1,000, less any allowable deductions for deficiencies, discussed below.

Deficiencies and Remedies

27. Where the contractor's work is deficient, the owner may counterclaim or seek to set off the cost of remedying the deficiencies against what is owed under the contract. However, the contractor has the right to remedy any defects in the work, and if deprived of that right, the owner's right of set off is curtailed: *Jozsa*.
28. Siobhan Johnston bears the burden of proving the deficiencies she alleges: *Lund v. Appleford Building*, 2017 BCPC 91.
29. Siobhan Johnston provided a written statement from Joey de la Salle, the contractor she hired to complete the bathroom renovation. Mr. de la Salle said Siobhan Johnston paid for supplies and paid him \$725 to finish the renovations, which he said is half of what he would have charged, but Siobhan Johnston partially paid with dog sitting services.
30. Mr. de la Salle's statement does not break down the labour charge by task or even provide the total hours required to complete the renovation. Given the lack of evidence overall, my determination of damages to remedy the deficiencies is an estimate, informed by Mr. de la Salle's evidence and the original quote.
31. I address the labour costs for the alleged deficiencies here, and the material costs separately below. I have considered where the evidence indicates Ms. Goodland likely would have been able to complete the work quickly and without additional costs.
 - a. *Counter and shelving* – Siobhan Johnston says SK destroyed the live edge slab she provided for the countertop with a large cut to fit a sink she did not want. She says she threw away the countertop and had Mr. de la Salle make a new one. This evidence is largely undisputed, so I find the counter and below-counter shelving were not completed as required by the contract. I allow \$80.
 - b. *Replumbing the leaking tub and toilet* – Siobhan Johnston says the tub and toilet leaked and required repair. Mr. de la Salle mentioned that he “redid” the

- leaking toilet and tub plumbing. Based on that and the photos, I find the tub and toilet plumbing were deficient. I allow \$100.
- c. *Replacing drywall behind the sink, toilet and tub* – Based on the photographs and Mr. de la Salle’s evidence, I find SK damaged a number of walls that had to be replaced. I allow \$80.
 - d. *Mudding and sanding drywall* – I find some of this work had to be redone after the drywall was redone. I allow \$20.
 - e. *Plumbing the sink* – It is undisputed that this was not completed because the sink had not yet been installed, in part because the counter and shelving had to be remade. I allow \$40.
 - f. *Flooring* – It is undisputed that the floor was unfinished as SK ran out of material and had to purchase more. From the photos, I cannot tell how much flooring was completed and how much more was required. I allow \$80.
 - g. *Trim, baseboards and caulking* – Based on the quote, I find Ms. Goodland did not agree to complete trim, baseboards and caulking, so I allow nothing.
 - h. *Clean-up* – Siobhan Johnston submitted photos showing garbage bags, a bathtub and scrap wood in her yard. Siobhan Johnston did not dispute Ms. Goodman’s assertion that Siobhan Johnston asked to keep the old tub as a water trough for her animals. I find Ms. Goodland would have cleaned up with little expense so I allow nothing for clean-up.
32. Turning to material costs, Siobhan Johnston claims \$534 but provides no receipts. I find she likely spent something on flooring, plumbing, mudding and sanding supplies. On a judgment basis, I allow \$200.
33. Siobhan Johnston does not dispute Ms. Goodland’s assertion that Siobhan Johnston’s family mill supplied the live edge slabs free of charge. As well, Siobhan Johnston provides no other accounting of the value, so I decline to order anything for the replacement slab.

34. Siobhan Johnston claims \$100 for the sink Ms. Goodland provided as a package with the tub for \$400. On the evidence, I find Siobhan Johnston chose a different sink and still has the original sink, so this is not a deficiency.
35. The total allowable deductions is \$600. I find therefore that Siobhan Johnston must pay Ms. Goodland \$400 (\$1,000 less \$600).

Missing tools and equipment

36. Ms. Goodland admits she accidentally kept the bear banger Siobhan Johnston lent her to go fishing on a break. Siobhan Johnston says the replacement cost is \$70 with 2 cartridges. Ms. Goodland says the bear banger is \$30 and denies having received any “extra” cartridges. Siobhan Johnston says the bear banger is useless without cartridges, which I accept. I therefore find Siobhan Johnston likely lent the bear banger with at least one cartridge, and I find \$50 is the appropriate replacement cost.
37. Siobhan Johnston says she is also missing a Milwaukee “sawzall” and blade, 2 batteries and a charger. The parties disagree over how and why the tools were misplaced, but I find nothing turns on this. Ms. Goodland does not deny that she and SK ended up with the tools and does not deny that she is responsible to return or replace them.
38. In an emailed statement, Siobhan Johnston’s friend DJ said in July 2020 they lent Siobhan Johnston the tools, as described above. They said Siobhan Johnston replaced the missing tools on September 21, 2020. Siobhan Johnston provided a September 21, 2020 receipt for a Milwaukee saw, 2 batteries and a charger for \$566.01.
39. It is undisputed that Siobhan Johnston did not let Ms. Goodland know the tools were missing until Siobhan Johnston provided a Dispute Response on September 17, 2020. I acknowledge Siobhan Johnston’s submission that she felt obligated to replace the borrowed Milwaukee tools. However, I find she deprived Ms. Goodland of the opportunity to return the tools. I see no reason Ms. Goodland should be required to pay for new tools, given the tools were used and would have depreciated in value.

On a judgment basis, I find the used tools are worth \$350 and I order Ms. Goodland to pay Siobhan Johnston that amount. Together with the amount for the bear banger and cartridge, Ms. Goodland must pay Siobhan Johnston \$400.

Summary

40. The net result of the claim (Siobhan Johnston owes \$400) and the counterclaim (Ms. Goodland owes \$400) is that neither party owes the other anything.

41. 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. The parties had mixed success in their respective claims, so I decline to order reimbursement of CRT fees and expenses.

ORDER

42. Ms. Goodland's claim and Siobhan Johnston's counterclaim were each partially successful. As the claims fully offset each other, I make no order for payment between the parties.

Micah Carmody, Tribunal Member