



Civil Resolution Tribunal

Date Issued: March 12, 2021

File: SC-2020-003848

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *305466 B.C. Ltd. v. Samji*, 2021 BCCRT 278

BETWEEN:

305466 B.C. LTD.

APPLICANT

AND:

NURDIN AKBAR SAMJI and ZARAKHANU FAZAL LALJI-SAMJI

RESPONDENTS

AND:

305466 B.C. LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an unpaid invoice for restoration work and a counterclaim for a carpet cleaning invoice. The applicant and respondent by counterclaim is 305466 B.C. Ltd. (305466). The respondents are Nurdin Akbar Samji and Zarakhanu Fazal Lalji-Samji. Nurdin Samji is the sole applicant in the counterclaim.
2. 305466 says the Samjis or their insurer hired it to repair water damage at the Samjis' strata lot under a signed work authorization agreement. It claims \$2,000 for an unpaid invoice and contractual interest at a rate of 18% per annum. It also claims \$1,490.84 for reimbursement of legal fees.
3. The Samjis agree that there is a balance due. However, they say that 305466 was obligated to clean their bedroom carpets and failed to do so. They say that 305466 should reimburse them for \$804.31 for carpet cleaning. Nurdin Samji counterclaims for this amount. 305466 disagrees with the counterclaim and says it cleaned the carpets.
4. An employee or principal represents 305466. Nurdin Samji filed a Dispute Response but Zarakhanu Lalji-Samji did not. 305466's documents indicate Nurdin Samji was its main contact for Zarakhanu Lalji-Samji. Given these circumstances, I find that Zarakhanu Lalji-Samji is not in default, Nurdin Samji represents the Samjis, and they take the same position, regardless of whether Zarakhanu Lalji-Samji filed a Dispute Response.
5. For the reasons that follow, I find that 305466 has proven its claims for the unpaid invoice and contractual interest. I dismiss the counterclaim.

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. 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.

ISSUES

10. The issues in this dispute are as follows:
 - a. Did any party breach the terms of the work authorization agreement, and if so, what are the appropriate remedies?
 - b. Must 305466 reimburse Nurdin Samji for \$804.31?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, 305466 and Nurdin Samji must prove their respective claims and counterclaims on a balance of probabilities. I have reviewed all the parties'

evidence and submissions but only address them to the extent necessary to explain my decision.

12. I begin with the undisputed background facts. The Samjis are related to each other. Zarakhanu Lalji-Samji lives in a strata lot in a strata corporation (strata). Nurdin Samji may also live there as well, though I find nothing turns on this. In late March 2019 a pipe above their washer and dryer began leaking, causing damage. The strata's property manager hired a contractor, MNBS, to locate the leak and replace affected piping. The repairs are detailed in an April 18, 2019 invoice for \$804.31. The strata's property manager paid this invoice and in a June 21, 2019 letter, requested Zarakhanu Lalji-Samji to reimburse this amount. The submissions indicate Nurdin Samji reimbursed the strata.
13. Nurdin Samji says they paid this amount to clean the carpets that 305466 failed to clean. I disagree. MNBS' invoice shows it was for emergency pipe repairs. It does not mention carpet cleaning. The invoice's date and described work also show that MNBS finished its work before 305466 started repairs or cleaning. Nurdin Samji's allegation is therefore inconsistent with the chronology of events.
14. The leak caused water damage to other areas of the Samjis' strata lot. 305466 prepared an April 1, 2019 photo report of the initial damage. It says that Zarakhanu Lalji-Samji had insured the strata lot with an insurance company named CC. Zarakhanu Lalji-Samji filed a claim with CC and CC contracted with 305466 for further repairs and cleaning work on the strata lot.
15. 305466 and Zarakhanu Lalji-Samji subsequently entered into a work authorization contract dated November 22, 2019. By its terms, Zarakhanu Lalji-Samji authorized 305466 to proceed with repairs and cleaning to remedy the water leak damage. Zarakhanu Lalji-Samji agreed that they would pay for any repair costs not covered by CC. This included any applicable insurance deductible. Zarakhanu Lalji-Samji also agreed to pay contractual interest at a rate of 18% per annum on overdue invoice amounts. The Samjis do not dispute that this contract is binding.

16. 305466 says that under the contract it worked on the strata lot and issued a June 27, 2019 invoice to the Samjis for the insurance deductible amount of \$2,000. This is inconsistent with the fact that the contract is dated November 22, 2019, about 5 months later. The parties did not address this discrepancy. I find the most likely explanation is that the contract is misdated and was signed at some point before 305466 issued the June 2019 invoice.
17. I also find the work authorization contract is binding on Zarakhanu Lalji-Samji but not Nurdin Samji. I reach this conclusion for several reasons. Nurdin Samji did not sign the agreement and is not named in the contract. Further, 305466 did not identify Nurdin Samji as an insurance policy holder. In its photo report of the initial damage, it simply says Nurdin Samji is a family member and contact. As I find the contract is not binding on Nurdin Samji, I find they are not liable for breach of that contract. I dismiss 305466's claims against Nurdin Samji for this reason.
18. The Samjis did not pay the invoice. In August and November 2019, 305466 emailed Nurdin Samji for an explanation. 305466's lawyers then sent a demand letter dated November 28, 2019 to the Samjis for the invoice amount plus interest. There is no indication that the Samjis replied to any of the emails or the demand letter.

Issue #1. Did any parties breach the terms of the work authorization agreement, and if so, what are the appropriate remedies?

19. I find that 305466 did the work it was contracted to do. The Samjis only dispute whether 305466 cleaned the carpets. On balance I find that they did. I reach this conclusion in part because there is no evidence that the Samjis complained about any work done until after 305466 filed its application for dispute resolution with the CRT. I find that if the carpets still required cleaning, the Samjis were in the best position to provide evidence of this and would have likely raised it as an issue before then.
20. Nurdin Samji says the Samjis paid \$804.31 to clean the carpets that 305466 failed to clean. I disagree. I have already found that Nurdin Samji paid the strata this amount

to reimburse MNBS' invoice. The invoice was for pipe repairs and not carpet cleaning. There is no evidence to show that 305466 left any carpets uncleaned.

21. Zarakhanu Lalji-Samji agreed to pay the June 2019 invoice under the work authorization agreement, plus contractual interest. I therefore find that Zarakhanu Lalji-Samji must pay \$2,000 for the outstanding invoice, plus contractual interest of 18% from the invoice date of June 27, 2019. The contractual interest equals \$615.45. I order Zarakhanu Lalji-Samji to pay these amounts.

Issue #2. Must 305466 reimburse Nurdin Samji for \$804.31 paid to the strata corporation's property manager?

22. I dismiss Nurdin Samji's counterclaim for reimbursement of \$804.31 paid to the strata. There is no evidence that any of this amount was applied towards remedying any deficiencies in work done by 305466. Further, in their Dispute Notice, Nurdin Samji wrote that the counterclaim was being made against "the insurance company". I have already found that CC is the strata lot's insurer and not 305466. Any claims the Samjis may have against CC are not properly before me, as CC is not a party.

CRT FEES AND EXPENSES

23. 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.
24. 305466 has succeeded on both its claim and the counterclaim. I find it is entitled to reimbursement of \$125 in CRT fees. I dismiss Nurdin Samji's claim for reimbursement of CRT fees.
25. 305466 also claims \$1,490.84 in legal fees as a dispute-related expense. CRT rule 9.5(3) says that except in extraordinary circumstances, the CRT will not order one party to pay another party's legal fees in a small claims dispute. CRT rule 9.5(4) says that to determine whether and to what degree legal fees should be reimbursed, the

CRT may consider 1) the complexity of the dispute, 2) the degree of involvement of the lawyer, 3) whether any party caused unnecessary delay or expense, and 4) any other factors the CRT considers appropriate.

26. I find this to be a relatively simple dispute about an unpaid debt. I find 305466's lawyer had a low degree of involvement that was mainly limited to debt collection services. There is no indication the Samjis caused unnecessary delay or expense. For those reasons, I do not find there to be anything extraordinary about this dispute and I decline to order reimbursement.
27. I would also decline to order reimbursement because I did not find the claimed legal fees to be proportional to the amounts involved in this dispute. I find ordering reimbursement would be counter to the CRT's mandate to provide dispute resolution services in a manner that is accessible, speedy, economical, informal, and flexible.

ORDERS

28. Within 14 days of the date of this order, I order Zarakhanu Fazal Lalji-Samji to pay 305466 a total of \$2,740.45 broken down as follows:
 - a. \$2,000 in debt,
 - b. \$615.45 in contractual interest, and
 - c. \$125 in CRT fees.
29. I dismiss 305466's remaining claims, including all its claims against Nurdin Samji.
30. I dismiss all of Nurdin Samji's counterclaims.
31. 305466 is entitled to post-judgment interest, as applicable.
32. 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.

33. 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.

David Jiang, Tribunal Member