



Civil Resolution Tribunal

Date Issued: April 16, 2021

File: SC-2020-008108

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mujezinovic v. Buildologist Construction Group Ltd.*, 2021 BCCRT 390

B E T W E E N :

ZIKRIJA MUJEZINOVIC

APPLICANT

A N D :

BUILDOLOGIST CONSTRUCTION GROUP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Zikrija Mujezinovic, says they did exterior wood finishing work at a new home construction site for the respondent, Buildologist Construction Group Ltd. The

applicant seeks an order that the respondent pay the applicant's "final invoice" of \$3,226.50.

2. The respondent says it does not owe the applicant anything because the applicant's work had deficiencies.
3. Both parties are self-represented.
4. For the reasons that follow, I dismiss the applicant's claims.

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. 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.
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 the parties have a contract?
 - b. If so, was the applicant's work deficient?

EVIDENCE AND ANALYSIS

10. In a civil dispute like this one, the applicant must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. In the Dispute Notice, the applicant says they did exterior wood finishing work at a residential address in West Vancouver. I infer from the evidence that the respondent was the general contractor at that site. The applicant says the respondent did not pay its last invoice for \$3,226.50. There is no copy of the invoice in evidence.

Did the parties have a contract?

12. The only written contract in evidence is a March 30, 2020 contract between the respondent and "Zico Construction LTD" (Zico). The applicant does not explain their relationship with Zico, but given that they signed the contract as an officer of Zico, I accept that the applicant is an officer of Zico.
13. The applicant says the respondent did not pay a "last draw", did not pay for extra work and did not pay for GST on the "third draw" of the contract. Based on these submissions and the evidence, I find the applicant's claim is based on the March 30, 2020 contract, which provided for payment by installments.

14. The common law concept of privity of contract says that as a general rule, a contract cannot give rights or impose obligations on a person who is not a party to the contract. Thus, only a party to a contract has standing (ability to demonstrate a legal right or interest) to enforce it. There are exceptions to this rule, but the applicant does not say any of the exceptions apply.
15. Based on privity of contract, I find that Zico is the only party that can bring a claim against the respondent under the March 30, 2020 contract. As the applicant has no right to do so, I dismiss the applicant's claim to the extent that it depends on the March 30, 2020 contract.
16. The applicant refers to "extra work" performed. In a June 29, 2020 email responding to the applicant, a representative of the respondent agreed to pay \$930 plus GST for some extra soffit, framing, fascia and backing work.
17. I have considered the possibility that the applicant engaged in this work outside the scope of the written contract, in their individual capacity. However, given the respondent previously contracted with Zico and knew the applicant as an officer of Zico, I find this unlikely. I find that a reasonable person in the respondent's position would have understood that it was contracting with Zico. The applicant does not argue or provide evidence that they agreed to perform this work individually rather than as a representative of Zico.
18. Regardless, the applicant does not explain how the \$930 plus GST related to the \$3,226.50 claimed in this dispute. The applicant said there was one final invoice for that amount, which further indicates that Zico performed all the work.
19. The applicant also did not submit any invoices into evidence, despite the fact that parties are told during the CRT process to submit all relevant evidence. I find the applicant has not provided sufficient evidence to support their claim, and so I dismiss it.

20. The parties submitted evidence about the alleged deficiencies and who was responsible for those deficiencies. Given that I find the applicant has not established entitlement to payment, it is not necessary to summarize that evidence.
21. Nothing in this decision prevents Zico from filing a dispute against the respondent, subject to any applicable limitation period.
22. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. The respondent was successful but did not pay fees or claim expenses. I dismiss the applicant's claim for reimbursement of CRT fees.

ORDER

23. I dismiss the applicant's claims and this dispute.

Micah Carmody, Tribunal Member