



# Civil Resolution Tribunal

Date Issued: April 20, 2021

File: SC-2020-008198

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ERC Roof Management Ltd. v The Owners, Strata Plan LMS 2460*,  
2021 BCCRT 405

B E T W E E N :

ERC ROOF MANAGEMENT LTD.

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 2460

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. This small claims dispute is over payment for roofing consultant services.
2. The applicant, ERC Roof Management Ltd. (ERC), performed roofing consultant services for the respondent strata corporation, The Owners, Strata Plan LMS 2460

(strata). The strata undisputedly paid for 90% of the invoiced work. ERC says the strata still owes it the remaining invoice balance of \$6,905.33. However, ERC limits its claim to the Civil Resolution Tribunal's (CRT) \$5,000 monetary limit in small claims.

3. The strata agrees \$6,905.33 is remaining unpaid on the invoices. However, it says ERC is not entitled to further payment because the work under their contract is allegedly incomplete. In particular, the strata says ERC did not complete a required final inspection and left it with a mess of debris and painting issues. ERC says it was not responsible for the alleged cleanup or the roof painting.
4. ERC is represented by its principal. The strata is represented by a council member.
5. For the reasons that follow, I find ERC is entitled to the claimed \$5,000.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. 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 that 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.

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:
  - a. Did ERC complete the consulting contract as agreed?
  - b. To what extent, if any, must the strata pay ERC the remaining invoice balance?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant ERC must prove its claims on a balance of probabilities. I have read the parties' submissions, but only comment on the argument and evidence that I find relevant to provide context for my decision.
12. The following facts are undisputed. In early 2018, the strata hired ERC as a roofing consultant to oversee the remediation of the strata building's metal roof. ERC handled the bidding process and identified GRC Columbia Roofing Inc. (GRC). The strata hired GRC as the roofing contractor in the fall 2018. The parties agree ERC's role was to monitor GRC's progress from start to finish, oversee quality assurance, conduct formal inspections, and issue a final report. In exchange, the strata agreed to pay ERC 10% of GRC's total contract price.
13. ERC submitted field inspection reports that show ERC conducted regular inspections of GRC's progress, which it reported back to the strata. In the reports, ERC identified GRC's progress, deficiencies as they arose, what was required to correct them, and

their subsequent corrections. The reports included photographs with descriptions of the inspected work and its completion, including cleanup. ERC's final report is dated November 4, 2019, and says ERC inspected all previously incomplete areas of specified work and the job was complete.

14. ERC wrote the strata on November 5, 2019 to ask for payment. The strata did not pay and asked ERC to have GRC return to perform further cleanup. In November and December 2019, the parties discussed by email that GRC's crew was attending the site to clean up some remaining items. In December 2019, ERC promised it would do a "final site visit" to inspect the cleanup. However, the strata says ERC did not then return to inspect the cleanup. ERC does not say whether it returned or not. It just says GRC performed the cleanup and it did not receive any further "notification of any outstanding items, cleanup or otherwise". I find ERC likely did not return to do a final site inspection as promised or it would have said so.
15. The parties agree the strata withheld 10% of the invoiced amount, or \$6,905.33. The strata says it is entitled to retain this payment because ERC did not perform the final inspection regarding cleanup. It says GRC also left an "unsightly mess on the roof" with "paint slopped all over" and "unfinished edges". The strata says it will have to pay someone to apply a topcoat of paint over the roof. Further, the strata says it hired "a firm" to clean out some downspouts that were plugged with debris from the project. More on this below.
16. I reviewed the submitted photographs of the completed job. For all the areas of work, the photographs show what looks like bright red paint edges along the light grey roof. The roof looks unfinished and I agree it would require a topcoat of paint for a consistent colour. However, as I explain next, I find the topcoat was not ERC's responsibility.
17. ERC submitted a January 29, 2020 letter from the roof system manufacturer (Sika), that explains the red paint visible in the photographs is "epoxy primer". Sika states the red epoxy primer was meant to be left exposed to allow an inspection. Sika says the inspected waterproof membrane work was completed to Sika's specifications and

exceeded the minimum quality standard required by their warranty. As these inspection results are uncontradicted, I accept them.

18. Sika wrote that the next project phase will require the strata to add a topcoat of paint over the waterproof membrane and metal roof. I find the parties did not contract for this next phase.
19. In particular, the underlying GRC contract states, “liquid applied roof membrane to all gutters, valleys, and projections” and “removal of TPO” for \$278,227.00. It does not mention painting or finishing work in the contract price. I find painting the metal roof was not part of GRC’s contract. Because of this, I find the painting also fell outside of ERC’s consulting contract. I find the strata was not entitled to hold back ERC’s payment for work that fell outside the contract’s scope.
20. As for the cleanup, the strata provided no invoice or other evidence showing it incurred any cleanup cost or that it hired a firm to clean the downspouts. Instead, the strata submitted some undated photographs that show some minimal debris. I find ERC should have attended the site to ensure GRC completed the final cleanup. It was also what ERC promised to do. However, to the extent further cleaning was required, I find it is reasonably covered by ERC’s reducing its claim by \$1,905.33 in order to fall within the CRT’s \$5,000 monetary limit.
21. I accept based on Sika’s uncontested inspection letter that GRC’s roofing work was completed as required. As this was the work the strata hired ERC to oversee, I am satisfied ERC substantially completed the contract. I find ERC is entitled to the claimed \$5,000.
22. The *Court Order Interest Act* applies to the CRT. ERC is entitled to pre-judgment interest on the \$5,000 debt from the January 1, 2020 invoice due date to the date of this decision. This equals \$66.74.
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. I find ERC is entitled to reimbursement of \$175 in CRT fees.

24. ERC also claims \$630 in legal fees as dispute-related expenses. CRT rule 9.5(3) says the CRT will not require a party to reimburse another party's legal expenses in a small claims dispute except in extraordinary circumstances. When determining whether extraordinary circumstances exist in a particular dispute, CRT rule 9.5(4) says the CRT may consider the complexity of the dispute, the legal representative's degree of involvement, whether a party's conduct has caused unnecessary delay or expense, and any other factors it considers appropriate.
25. ERC was not represented by a lawyer in the CRT process. This is a relatively straightforward contractual dispute and I find the strata did not cause unreasonable delay or expense. I find no extraordinary circumstances here. I dismiss ERC's claim for legal fees.

## **ORDERS**

26. Within 30 days of the date of this order, I order the strata to pay ERC a total of \$5,241.74, broken down as follows:
  - a. \$5,000 in debt for consulting services,
  - b. \$66.74 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
27. ERC is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
28. I dismiss ERC's claim for reimbursement of legal fees.
29. 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.

30. 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.

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Trisha Apland, Tribunal Member