



# Civil Resolution Tribunal

Date Issued: April 21, 2021

File: SC-2020-005878

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Greater Vancouver Gutters Inc. v. Tiwana*, 2021 BCCRT 408

B E T W E E N :

GREATER VANCOUVER GUTTERS INC.

**APPLICANT**

A N D :

HARRY TIWANA and OAKVILLE HOMES LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about unpaid work for installing downpipes. The applicant, Greater Vancouver Gutters Inc. (GVG), says it installed downpipes for the respondents, Oakville Homes Ltd. (OHL) and Harry Tiwana. GVG says the respondents have failed to pay for work done. It seeks \$1,984.50 for 2 unpaid invoices, contractual interest,

\$450 in legal fees for filing a lien, and \$575 as compensation for time spent on this dispute.

2. Mr. Tiwana disagrees with GVG's claims. He acknowledges GVG completed the work and was not paid for it. He alleges that GVG unreasonably or unnecessarily filed the lien. He says he is willing to pay the invoice amounts in trust to a notary or lawyer in return for the removal of the lien. OHL did not file a response and is in default.
3. Stephen Elliott represents GVG as its employee or principal. Mr. Tiwana represents himself. I note that Mr. Tiwana's email address suggests he has some relationship with OHL, but Mr. Tiwana did not provide any submissions on OHL's behalf.
4. For the reasons that follow, I find that the respondents owe GVG \$1,984.50 for the unpaid invoices. I refused to resolve GVG's claim for legal fees because I find it is connected to filing a lien under the *Builders Lien Act* and is outside my jurisdiction. I dismiss GVG's remaining claims for contractual interest and time spent on the dispute.

## **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.

### ***The Claim for \$450 in Legal Fees***

9. As noted above, GVG claims \$450 in legal fees for filing a lien. GVG's lawyer provided a May 31, 2020 statement of account. From this, I find GVG instructed its lawyer to file a lien under the *Builders Lien Act* (BLA).
10. As set out in the BLA, I find that such liens are within the jurisdiction of the BC Supreme Court and outside the CRT's jurisdiction. I find this includes associated expenses including the lien's filing cost. The CRT has consistently reached the same conclusion in other decisions. See, for example, the non-binding decisions of *Rather Be Plumbing Ltd. v. Noquits Property Management Services Ltd.*, 2019 BCCRT 933 and *Hallmark Carpets (93) Ltd. v. Kenan Kilic (dba Keenan Associates Home Services)*, 2020 BCCRT 259. Given the above, I refuse to resolve GVG's claim for the expense of filing the lien under section 10 of the CRTA, for lack of jurisdiction.

### **ISSUE**

11. The issue in this dispute is to what extent, if any, the respondents owe GVG for work done.

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, GVG as the applicant must prove its claims on a balance of probabilities. I have reviewed the parties' submissions and evidence, but only comment on them as necessary to explain my decision. Mr. Tiwana chose to rely only on his submissions and did not submit any evidence.
13. A CRT Confirmation of Service form confirms the CRT served OHL under the CRT rules. OHL has failed to file a Dispute Response as required and I find it is in default. Liability is generally assumed in defaults, meaning GVG's position is assumed to be correct. I therefore find that OHL owes GVG money for work done based on the assumption of liability. However, I find that GVG's claims against OHL are only proven to the same extent as his claims are against Mr. Tiwana. This is because the evidence and submissions before me indicate that GVG's claims against OHL are essentially the same as those against Mr. Tiwana. I focus on the claims against Mr. Tiwana below.
14. According to an agreed statement of facts, Mr. Tiwana hired GVG to install downspouts at a new house under construction. I find that GVG, OHL and Mr. Tiwana used GVG's August 25, 2019 written estimate to form their contract. I note that GVG's estimate is addressed to "Paramax Homes" but given Mr. Tiwana's agreement he hired GVG, I place no significance on this. The estimate's stated worksite also matches Mr. Tiwana's address from his Dispute Response.
15. The estimate says GVG would supply and install the downpipes for \$1,984.50, inclusive of GST. I find GVG provided this quote as an estimate only and not a fixed price. However, nothing turns on this, as GVG's claim for work done is equal to the estimate price.
16. GVG subsequently began work and issued a March 19, 2020 interim invoice for \$1,575. GVG then finished its work on April 29, 2020. GVG issued a final invoice on the same date for \$409.50. GVG addressed its invoices to OHL, but as stated earlier,

Mr. Tiwana does not deny being liable for them. In total, these invoices equal both the claim and estimate amount.

17. To complete its work, GVG made 3 trips to the property. The parties disagree on whether 2 of these trips were necessary and who is to blame for them. I find nothing turns on this issue because GVG did not charge extra for the 2 trips.
18. The respondents did not pay either the interim or final invoice. The invoices state that amounts owing under them had to be paid within 30 days, otherwise an “automatic builders’ lien” would be placed on the property. As noted in the lawyer’s statement of account, GVG instructed its lawyer to begin preparing the lien under the BLA on April 29, 2020. The lawyer filed the lien on May 2, 2020.
19. Mr. Tiwana submits the following. He says the parties agreed that GVG would only charge for the work once it was all completed. I infer Mr. Tiwana means they agreed verbally as no documents say this. Mr. Tiwana says GVG should not have issued the March 19, 2020 interim invoice or filed a lien for any amounts owing under it. He says he would have paid all amounts owing in a timely manner if GVG had instead billed a single invoice for all work done on April 29, 2020. He does not say that GVG’s work is deficient.
20. While I acknowledge Mr. Tiwana’s submission, I find it is essentially about whether GVG acted reasonably in filing the BLA lien and who should pay for the cost of filing it. These matters are beyond my jurisdiction. I do not find this affects the respondents’ obligation to pay for work done. Mr. Tiwana does not dispute that he owes the invoice amounts. He explicitly agrees that if the lien was removed, he would pay GVG the claim amount for work done.
21. Given the above, I find that Mr. Tiwana and OHL must pay GVG \$1,984.50 for work done.
22. GVG claims contractual interest at an unspecified rate. Although GVG’s invoices state that it would charge 2% monthly interest on overdue amounts, I do not find that the respondents agreed to this. The estimate is silent on contractual interest and there is

no other evidence that shows the respondents agreed to pay this rate of interest or any rate. I dismiss the claim for contractual interest.

23. As the parties did not agree on contractual interest, the *Court Order Interest Act* applies. GVG is entitled to pre-judgment interest on the \$1,945.50 debt, calculated from the dates of the 2 underlying invoices to the date of this decision. This equals \$17.30.
24. GVG also claims \$575 for time spent on this dispute. CRT rule 9.5(5) says that the CRT will only order compensation for time spent dealing with a dispute in extraordinary circumstances. I do not find there to be anything extraordinary in this dispute. It did not involve issues of unusual complexity or an unusually large amount of evidence. GVG's claim is also unsupported by any evidence or explanation for why the amount of \$575 is justified. For all these reasons, I dismiss this claim.
25. I find that OHL and Mr. Tiwana are jointly and severally liable to pay the amounts set out below. This means that GVG may recover the money owing from either OHL or Mr. Tiwana.
26. 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. GVG is the successful party, but CRT staff notes indicate GVG waived its claim for dispute-related fees and expenses. As such, I do not order any reimbursement for the parties.

## **ORDERS**

27. Within 14 days of the date of this order, I order OHL and Mr. Tiwana, jointly and severally, to pay GVG a total of \$2,001.80, broken down as follows:
  - a. \$1,984.50 in debt, and
  - b. \$17.30 in pre-judgment interest under the *Court Order Interest Act*.

28. GVG is entitled to post-judgment interest, as applicable.
29. I refuse to resolve GVG's claims for the expense of filing a lien under section 10 of the CRTA, for lack of jurisdiction.
30. I dismiss GVG's remaining claims.
31. 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. However, under section 56.1(2.1) of the CRTA, a party in default (here, OHL) has no right to make a notice of objection.
32. 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.

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David Jiang, Tribunal Member