Civil Resolution Tribunal

Date Issued: May 17, 2021

File: SC-2020-007727

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ahmed v. Citadel Gate Construction Limited*, 2021 BCCRT 529

B E T W E E N :

TALAN AHMED and AHMED FATAH

**APPLICANTS**

A N D :

CITADEL GATE CONSTRUCTION LIMITED

**RESPONDENT**

A N D :

TALAN AHMED and AHMED FATAH

**RESPONDENTS BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member: Leah Volkers

## INTRODUCTION

1. This dispute is about payment for construction services. The applicants and respondents by counterclaim, Talan Ahmed and Ahmed Fatah, are contractors. The applicants performed work on various constructions projects for the respondent, Citadel Gate Construction Limited, but say they have not been paid in full. The applicants claim $2,905 for unpaid labour and material costs.

2. The respondent says the applicants' work was incomplete, and the work previously completed for the respondent was substandard. The respondent counterclaims and says the applicants have been overpaid by $625 for the completed work. The respondent seeks a refund of its $625 overpayment. The respondent also says the applicants stole some of The respondent's tools and refused to return them.

3. The applicants are self-represented. The respondent is represented by its principal, Shaswar Mohammed.

## JURISDICTION AND PROCEDURE

4. 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.

5. 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested 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. The assessment of what is the

most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

6. 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.

7. 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.

8. The parties communicated both in English and another dialect, and the evidence before me contains documents in both languages, including a number of text messages. CRT rule 1.7(5) says evidence must be submitted in English or translated into English. Some of the submitted text messages were translated, and I have considered those translations. However, for the text messages where no translations were provided, I have given no weight to this non-English evidence.

9. In this dispute, there were numerous allegations against both the applicants and the respondent regarding threats, slander, libel, false and malicious claims, and lack of professional behaviour. The applicants did not claim any relief from these alleged complaints. However, the respondent, in its reply submissions on the counterclaim, asks that I stop the applicants from launching false and malicious claims against it. First, I find that this requested relief was not properly claimed in the respondent's counterclaim, and so is not properly before me. Second, I find that even if the requested relief was properly before me, ordering someone to do something, or to stop doing something, is known as "injunctive relief". Injunctive relief is outside the

CRT's small claims jurisdiction, except where section 118 of the CRTA permits it. I find there is no relevant CRTA provision here that would permit me to grant the injunctive relief. Finally, I also note that the respondent's reply claim appears to be for defamation, which is expressly outside the CRT's jurisdiction under section 119 of the CRTA. So, I make no findings about it.

### *Late Evidence*

10. The applicants provided late evidence in this dispute. The respondent did not object and had the opportunity to review the evidence prior to providing submissions. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to the parties in allowing this late evidence. I allow the late evidence as I find it relevant.

### *Additional Reply Submissions and Evidence*

11. In reply submissions, the applicants sought to submit a 19-page PDF document that contained both reply submissions and additional late evidence. The respondent has not had the opportunity to review the late evidence. The applicants advised CRT staff that they wanted to submit the PDF document because they were unable to include all their reply submissions due to the character limit. The applicants were advised by CRT staff that the PDF document, with the included late evidence, could not be accepted at that late stage. The applicants were provided with additional time to amend their final reply as needed, but chose not to do so.

12. I have considered whether the PDF document should be admitted, and the respondent provided with an opportunity to review and respond to the additional evidence and submissions. I note that on review, it appears that the additional evidence contained in the PDF document duplicates other documents already in evidence. So, I find there is no prejudice to the applicants in refusing to admit this late evidence, and admitting the evidence would add nothing. Here, I decline to admit the PDF document in this dispute, and so it is not necessary to provide the PDF document to the respondent.

13. With respect to the additional reply submissions contained in the PDF document, I note that under the CRT's rule 7.3, the character limit for a reply is 10,000 characters per claim. One purpose of rule 7.3 is to meet the CRT's mandate of speedy resolutions of disputes. On reading the parties' submissions, I find the applicants were reasonably able to reply to the respondent's response within the 10,000 characters allowed. In saying this, I put particular weight on the fact that the applicants were provided with the opportunity to amend their reply submissions after the PDF document was not accepted by CRT staff, but chose not to do so. I also note that the applicants, as respondents by counterclaim, were also able to provide separate response submissions for the counterclaim.

14. I am mindful of the need to balance the CRT's mandate described above with administrative fairness. Here, I find the applicants have had a fair opportunity to be heard. On balance, I find it is appropriate to hear this dispute without admitting the PDF document and without further submissions from either party.

## ISSUES

15. The issues in this dispute are:

    a. Whether the respondent must pay the applicants $2,905 for their labour and material costs, and

    b. Whether the applicants must refund the respondent for a $625 overpayment.

## EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, the applicants (whether by claim or counterclaim) bear the burden of proof on a balance of probabilities. I have read all the parties' submissions and evidence in support of their respective positions, but refer only to the evidence and argument that I find relevant to provide context for my decision.

### *Are the applicants entitled to $2,905 for their subcontractor work and material costs?*

17. It is undisputed that the applicants were contractors the respondent hired for various construction projects dating back to at least January 2019. It is undisputed the applicants' agreed rate was $25 per hour. It is undisputed the applicants' performed work for the respondent between March and May 2019 at a restaurant and a hotel, The applicants say they were not paid in full for their work. The respondent says the work was incomplete.

18. It is undisputed that the respondent paid the applicants $2,270 on April 27, 2019 and $2,000 on May 16, 2019 for some of their work. The applicants say that they decided to stop working with the respondent in late May 2019 because of their "bad experiences".

19. On May 27, 2020, the applicants sent the respondent a text message requesting $2,905 for the remainder of their work, broken down as follows:

    a. A previous unpaid balance of $1,000,

    b. $1,750 for 70 hours of work at $25 per hour, and

    c. $155 in materials.

20. The respondent says that it requested a detailed account of the applicants' claimed work hours and an invoice, but none was provided. I do not accept this submission, in part. The applicants provided the respondent with the invoice by email on May 28, 2019. The applicants also provided an accounting of "52.5 hours New West and 18 hours in Richmond" at the respondent's request, but did not provide a more detailed explanation as requested.

21. The respondent also says the applicants breached the parties' agreement and only worked at the hotel on May 19 and 20, 2019, instead of working until May 23, 2019, as agreed. The respondent says the applicants failed to complete the work and exposed it to "serious hefty fines if project did not meet deadline" (reproduced as

written). However, the respondent did not provide any evidence that it was fined for the hotel project or was unable to complete the work with different contractors. So, I find the applicants' alleged failure to continue work after May 20, 2019 is not at issue in this dispute. The issue here is to what extent the applicants are entitled to payment for the work they say they have already completed for the respondent.

22. As noted above, the burden of proof rests with the applicants. Here, I find the applicants have not met their burden of proving they are entitled to the full $2,905 claimed.

23. In the text messages in evidence, the respondent does not dispute owing $1,000 for a previous unpaid balance or request that the applicants provide any further details on this unpaid balance. Rather, the respondent only asks for a breakdown of the additional 70 hours claimed in the invoice. In its submissions, the respondent acknowledges that it only paid the applicants $2,000 of the $3,004 claimed by the applicants on May 11, 2019. The respondent has not provided any evidence that this amount is specifically in dispute, other than its claim that the applicants work was deficient and incomplete, which I will address below. So, I find the applicants are entitled to payment of $1,000 for the previous unpaid balance.

24. The applicants claim for an additional 70 hours of work between the two of them. The applicants say they each worked for 9 hours on May 19 at the hotel. The respondent says that the applicants worked at the hotel on May 19 and 20. The invoice shows the hotel work on May 20 and 21. Despite this discrepancy, I find it is undisputed that the applicants worked at least one day. I find they are entitled to payment for 18 hours of work at the hotel at $25 per hour, as claimed, for a total of $450.

25. The applicants say they worked 52.5 hours in New West. As noted above, I infer this was for the restaurant work. The invoice claims $1,455 for this work, which is equivalent to 58.2 hours at $25 per hour, not 52.5 hours. The invoice indicates this work was performed between May 5 and May 19, 2021. However, the applicants have not provided a further breakdown of the hours worked each day or any explanation how they arrived at this amount. So, I find the applicants have not met their burden

of proving they worked 52.5 hours at the restaurant, as claimed. However, I find it is undisputed that the applicants performed some restaurant work. While I am not able to determine the precise amount of hours worked, I find it more likely than not that the applicants worked at least 20 hours at the restaurant. So, on a judgment basis, I find the applicants are entitled to payment for 20 hours of work at the applicants' $25 hourly rate, for a total of $500.

26. The applicants claim $155 for materials. However, they did not provide any details of the materials purchased or any receipts for the materials. There is no materials charge listed on the invoice. So, I find the applicants have not proven this $155 claim. In total, I award the applicants $1,950.

### *Is the respondent entitled to a $695 refund from the applicants for overpayment?*

27. In its counterclaim, the respondent says it paid the applicants $1,500 for cabinetry work at another project in January 2019. The respondent says that the applicants only completed 25 percent of the work. The respondent says that it has therefore overpaid the applicants "at least $625". The respondent also says the applicants only completed some of the brick work at the restaurant in March 2019 and failed to complete their cabinetry work. However, the respondent did not claim a refund for any overpayment for the March 2019 restaurant work.

28. As noted above, the respondent bears the burden of proving its claim. Here I find that the respondent has not met its burden. The respondent has not provided any evidence that the applicants' January 2019 work was incomplete. I also find it unlikely that the respondent would have hired the applicants to complete further work at other projects in March 2019 if they had not completed their work in January 2019. So, I find the respondent has not proven this claim.

29. The respondent also claims that the applicants' work was deficient. However, the respondent did not provide any evidence to support this claim, and I find it has not proven that any of the work completed by the applicants was deficient.

30. Finally, in its submissions, the respondent also says the applicants stole the respondent's tools. The respondent says the applicants said they would hold the tools until the respondent paid them. However, the respondent did not include this claim in its counterclaim, and it did not claim any amount for the stolen tools or provide any evidence as to what tools were stolen. So, I make no findings about the allegedly stolen tools.

### *Interest and CRT Fees*

31. The *Court Order Interest Act* applies to the CRT. The applicants entitled to pre-judgment interest on $1,950 from June 27, 2019, 30 days from the date of the invoice to the date of this decision, which I find is reasonable I the circumstances. This equals $46.24.

32. 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 the applicants are entitled to reimbursement of $125 in CRT fees. The applicants did not claim dispute-related expenses and so I award none.

33. As the respondent was unsuccessful in its counterclaim, I dismiss its claim for CRT fees.

## ORDERS

34. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of $2,121.24, broken down as follows:

    a. $1,950 in debt,

    b. $ 46.24 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

35. I dismiss the respondent's counterclaim.

36. The applicants are entitled to post-judgment interest, as applicable.

37. 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.

38. 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.

Leah Volkers, Tribunal Member