



# Civil Resolution Tribunal

Date Issued: May 28, 2021

File: SC-2020-006386

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coast Wide Flood & Fire Restorations Ltd. v. D.E.*, 2021 BCCRT 585

B E T W E E N :

COAST WIDE FLOOD & FIRE RESTORATIONS LTD.

**APPLICANT**

A N D :

D.E. and D.F.

**RESPONDENTS**

A N D :

COAST WIDE FLOOD & FIRE RESTORATIONS LTD.

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about home repairs. The applicant and respondent to the counterclaim, Coast Wide Flood & Fire Restorations Ltd. (Coast Wide), says the

respondent and counterclaim applicant, DE, and the respondent DF, hired it to perform repairs to DF's home. Both parties say that DE was acting as DF's power of attorney. Coast Wide says it performed \$8,813.26 in work but it was only paid \$6,000. Coast Wide claims \$2,813.26 in unpaid work.

2. DE says Coast Wide is not entitled to further payment because it did not complete the work and the work was allegedly substandard.
3. DE counterclaims against Coast Wide claiming that its repair delays prevented DF from selling their home and caused them to incur related expenses. DE claims \$4,981 in home expenses for an alleged 6 month delay. DF is not a counterclaim applicant. Coast Wide denies the counterclaim and says it performed all work properly. Coast Wide said the only delay was related to weather.
4. Coast Wide is represented by a vice-president of the company. DE is self-represented and he represents DF as their litigation guardian.

## **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. 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.

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.

### ***Late Evidence***

9. Coast Wide submitted late evidence, consisting of a real estate appraisal which I find relates to DE's counterclaim. I find that DE and DF were not prejudiced by the late evidence because they had an opportunity to respond. So, I have allowed Coast Wide's late evidence and I have considered that evidence in my decision.

### **ISSUES**

10. The issues in this dispute are:
  - a. Does DE or DF owe a debt for unpaid work? If so, how much?
  - b. Should DE's or DF's debt to Coast Wide, if any, be reduced because the work was defective or substandard work?
  - c. Does Coast Wide owe DE damages in negligence or breach of contract for allegedly failing to complete the repairs in a reasonable time? If so, how much?

### **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Coast Wide must prove its claims on a balance of probabilities. DE has the same burden on the counterclaim. I have read

all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

12. Coast Wide provided a July 26, 2019 quote of \$3,553.94 to replace contaminated insulation in DF's crawl space and install a breathable vapour barrier. On September 19, 2019, DE emailed Coast Wide and told them that the house is owned by DF and that he acts as their enduring power of attorney. DE requested additional services beyond Coast Wide's July 26, 2019 quote. Specifically, DE asked Coast Wide to: remove the plywood skirting, install a ground covering, repair damaged beams, repair PEX water lines, provide access for insulation replacement, replace skirting with a more suitable material, fix water drainage, and replace the veranda rail and deck planks. The email also said that replacing bathroom linoleum was optional.
13. On October 4, 2019, DE emailed Coast Wide saying it would also replace the broken drainpipe, install pretreated wood in the support beams, replace the skirting and deck and remove all debris. DE proposed a total price for all work, including taxes and disposal fees, of \$8,000.
14. Coast Wide emailed DE on October 7, 2019 saying that it agreed and that it would start working on October 15, 2019. By doing so, I find that Coast Wide accepted the terms of DE's October 4, 2019 email and this became a binding contract.
15. Coast Wide says the \$8,000 quote was only an estimate, but the final price would be determined by the actual labour and supply costs. In contrast, DE says that \$8,000 was a fixed price. I find that DE's October 4, 2019 email offered a fixed price of \$8,000 for all work and that Coast Wide accepted this offer on October 7, 2019. So, I find that parties agreed to a fixed \$8,000 contract price.
16. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on its behalf. So long as the agent discloses that they are acting as an agent for the principal, the agent will not generally be liable under a contract they make between the principal and third party. I find that the law of agency applies to this dispute and I find that DF was the

principal and DE acted on their behalf as their agent. So, I find that DE is not liable under the contract. Since Coast Wide's claim is based solely on the contract, I dismiss its claims against DE.

17. DE claims that the contract was with individuals KM and CC, and not Coast Wide. However, Coast Wide's July 26, 2019 invoice, which DE referred to, was written on its company letterhead. Further, KM's October 7, 2019 email to DE identified KM as a Coast Wide employee. I find that DE was aware KM and CC were acting as Coast Wide employees and that the contract was with Coast Wide, not with KM or CC as individuals. Further, even if DE was not initially aware that the contract was with Coast Wide, I find that he ratified this contract on DF's behalf when he did not later stop Coast Wide from performing the repairs.
18. On November 13, 2019, Coast Wide sent an invoice for \$8,813.26. The invoice said Coast Wide replaced the insulation, replaced the skirting, installed access points, reinstalled ducting and water lines, replaced bathroom baseboards and vinyl flooring and replaced the deck rails and planks. However, Coast Wide admits that some of the invoiced work was performed after the November 13, 2019 invoice. The invoice charged \$6,550 for labour, \$1,568.58 for materials, \$275 for disposal fees and \$429.68 tax. However, as stated above, the parties agreed to a fixed \$8,000 price and there is no evidence before showing that DE agreed to additional charges. So, I find Coast Wide cannot charge more than \$8,000.
19. It is undisputed that DE paid Coast Wide \$6,000 in January 2020. However, DE says the work was incomplete and he refused to pay more. I find that Coast Wide is only entitled to payment for work it performed.
20. It is undisputed that Coast Wide did not paint the skirt. Coast Wide said it could not be painted until the spring because the wood was wet. Since the skirt painting was included in the contract, and it is undisputed that Coast Wide did not do this, I find that Coast Wide cannot charge for this service. Coast Wide offered to deduct \$372.75 from its invoice for the non-performed painting. This included \$280 for labour and \$75 for paint. Since DE has not disputed Coast Wide's painting cost estimate, I accept

that \$372.75 is a reasonable estimate of these costs and I find that this amount must be deducted from the \$8,000 contract price.

21. DE also says Coast Wide did not repair the floor flexing or replace the PEX plumbing pipes. As stated above, the contract included the replacement of the beams and the repair of the PEX piping.
22. Coast Wide says it did not replace the beams because they were not defective. Rather, Coast Wide says the floor flexing was caused by an unrelated problem outside of the scope of the contract. However, even if this work was not needed, I find that beam replacement was included in the contract and I find that Coast Wide is not entitled to payment for non-performed work. Since neither party provided an estimate of the beam replacement costs or the amount of labour or material costs involved, I deduct \$500 from Coast Wide's charges on a judgment basis.
23. Coast Wide says that it did not replace the PEX piping because it does not do plumbing work. However, since the PEX plumbing repair was included in the contract, and Coast Wide has not performed this, I find that Coast Wide is not entitled to payment for this work. Since neither party provided an estimate of the PEX piping plumbing costs, I again deduct \$500 for the non-performed plumbing work on a judgment basis.
24. Based on the above, I find the contract price was \$8,000 and DF is entitled to deductions of \$372.75 for non-performed painting, \$500 for non-performed beam repair and \$500 for non-performed plumbing work. This totals \$6,627.25. After the \$6,000 payment, this leaves an outstanding balance of \$627.25 owed for unpaid work, subject to any reductions for defective work discussed below.
25. The respondents say that Coast Wide improperly performed its work. The burden to prove breach of contract for defective or substandard work is on the party who alleges the breach: see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. In this case, the burden is on DF.

26. Where the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of professional competence (see *Bergen v. Guliker*, 2015 BCCA 283). In the circumstances here, I find that a contractor's competence is outside the scope of common understanding. So, I find expert evidence is necessary.
27. However, DF has not provided expert evidence showing that Coast Wide's work was defective or improperly performed. Although DE provided multiple photographs, I generally could not tell from the photographs whether the work was substandard.
28. I find that the respondents have failed to prove that Coast Wide's work was defective. So, I find that DF owes Coast Wide a debt of \$627.25 for its unpaid work.

### **Counterclaim**

29. DE counterclaims against Coast Wide for expenses caused by alleged work delays. I find that DE lacks standing to make this counterclaim because he has named himself, rather than DF, as the applicant in the claim and an agent generally cannot sue to enforce a contract which was made solely on the principal's behalf as they are not a party to that contract (*Rothwell Corp. v. Amstel Brewery Canada Ltd.*, 1991 CanLII 7296 (ON SC)).
30. For the above reasons, I dismiss this counterclaim and I find DF owes Coast Wide a debt of \$627.25 for unpaid work.

### **Interest**

31. Coast Wide requests contractual interest. Coast Wide's July 26, 2019 quote says interest is payable at 2% monthly, 30 days after invoice, but it did not state an annual rate. Since DE referred to this quote before entering the contract, I find that this interest was part of the contract. However, section 4 of the federal *Interest Act* says that when an interest rate is expressed as a rate for a period of less than a year, and the contract does not say the equivalent annual percentage rate, the maximum allowable interest is 5% per year. Therefore, I find that Coast Wide is entitled to

contractual interest on the \$627.25 owing calculated at 5% annually. The latest invoice in evidence is dated November 13, 2019. Under the terms of the contract payment was due within 30 days, and payments more than 30 days late were subject to contractual interest. Therefore, I find contractual interest started accruing on December 13, 2019 to the date of this decision, for a total of \$45.71.

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. Since Coast Wide was partially successful in its claim, I find that it is entitled reimbursement of one-half of its CRT fees, being \$62.50 \$125 in CRT fees. Coast Wide did not claim reimbursement of dispute-related expenses. Since DE was not successful in his counterclaim, I find that he is not entitled to reimbursement of his CRT counterclaim fees.

## **ORDERS**

33. Within 30 days of the date of this order, I order DF to pay Coast Wide a total of \$735.46, broken down as follows:
- a. \$627.25 in debt for unpaid work,
  - b. \$45.71 in pre-judgment contractual interest, and
  - c. \$62.50 in CRT fees.
34. Coast Wide is entitled to post-judgment interest from DF, as applicable.
35. Coast Wide's claims against DE are dismissed.
36. DE's counterclaim is dismissed.
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.

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Richard McAndrew, Tribunal Member