



Civil Resolution Tribunal

Date Issued: July 20, 2021

File: SC-2021-002257

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Colter Developments JV Ltd. v. MacKay*, 2021 BCCRT 791

BETWEEN:

COLTER DEVELOPMENTS JV LTD.

APPLICANT

AND:

SHEILA MACKAY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This is a dispute about construction upgrades. The applicant, Colter Developments JV Ltd. (Colter), contracted with a strata corporation (the strata) to rebuild the entire strata, including the strata lot owned by the respondent, Sheila MacKay. Colter says Ms. MacKay requested strata lot upgrades that were not covered by the strata's contract. Colter says Ms. MacKay agreed to the quoted amount for the upgrades,

including a 15% surcharge for overhead and profit, but she now refuses to pay. Colter claims \$4,712 for its 15% surcharge for overhead and profit.

2. Ms. MacKay says she did not agree to the 15% surcharge for overhead and profit. She says Colter is not permitted to unilaterally charge additional fees under Colter's contract with the strata, which she says represented her as one of the owners. The strata is not a party to this dispute.
3. Colter is represented by an employee, TL. Ms. MacKay is self-represented.

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. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Whether Colter's contract with the strata applies to Ms. MacKay's requested strata lot upgrades?
 - b. Whether Ms. MacKay must pay Colter \$4,712 for its overhead and profit?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Colter must prove its claims on a balance of probabilities. 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.
10. It is undisputed that Colter had a fixed price contract with the strata (strata contract). Colter says Ms. MacKay's requested upgrades were not covered by the strata contract, which was limited to a rebuild of all the strata lots and common area to the drawings and specifications in the contract documents. Colter says it provided a separate quote to Ms. MacKay for her requested upgrades, which included a 15% charge for overhead and profit. Colter acknowledges that Ms. MacKay did not sign the quote, but says she made payments on the quote, so Colter continued the work.
11. Ms. MacKay does not dispute that Colter supplied and completed the upgrades listed in the quote. She says the only issue is whether Colter was entitled to charge 15% for overhead and profit on her materials upgrades, which she says she did not agree to.
12. As noted above, Ms. MacKay relies on the strata contract to argue that Colter is required to obtain her consent in order to charge a 15% surcharge. The strata contract

in evidence shows two parties to the contract, Colter and the strata. Also in evidence is a June 30, 2020 email from SW, the contract administrator for the strata, to Ms. MacKay and Colter employees. In the email, SW states that the change requested in Ms. MacKay's unit was "outside the reconstruction contract between the strata and Colter...The fixed price contract between Colter Developments and [the strata] has nothing to do with upgrades/extras that you requested Colter have completed within your unit". SW said they could not comment on the agreement Ms. MacKay made with Colter about those changes. Ms. MacKay did not address this email in her submissions. Here, I find I do not need to consider the strata contract because Ms. Mackay is not a party to it.

13. I now turn to consider whether Ms. MacKay must pay Colter its 15% surcharge for overhead and profit.

Must Ms. MacKay pay Colter \$4,712 for overhead and profit on the upgrades to her strata lot?

14. Ms. MacKay does not dispute that she requested the upgrades. It is also undisputed that apart from the 15% surcharge for overhead and profit, Ms. MacKay has paid for the upgrades. As noted above, Ms. MacKay only disputes Colter's right to charge 15% for overhead and profit, which she says she did not agree to.
15. Colter says when it began work, it advised all strata lot owners that any changes to their suites would carry at 15% surcharge. Colter also says the 15% surcharge is clearly listed on Ms. MacKay's quote. While originally dated February 7, 2019, both parties submitted the revised April 19, 2019 quote in evidence. I find the 15% surcharge for overhead and profit is clearly listed on the quote. While the quote is not signed by Ms. MacKay, her failure to sign the quote does not necessarily mean she did not agree to its terms. So, the question then is whether Ms. MacKay agreed to the quote as presented.
16. Colter acknowledges that Ms. MacKay did not sign the quote, despite their requests. However, Colter says that Ms. MacKay made payments as required by the quote,

and the work under the quote proceeded on that basis. Ms. MacKay does not dispute this. Despite Ms. MacKay's claim that she did not agree to the quote, I find her actions indicate otherwise. Parties can form a contract through their correspondence and their conduct if they show that they agreed to the contract's terms. (See *Crosse Estate (Re)*, 2012 BCSC 26, at paragraph 30). Ms. MacKay does not dispute receiving the quote or suggest that Colter failed to provide the upgrades listed in the quote. Other than the 15% surcharge, she paid for all the upgrades listed in the quote. I find this evidence shows that Ms. MacKay agreed to the quote as presented, including the 15% surcharge for overhead and profit. Apart from Ms. MacKay's submissions, there is no evidence that she raised any concerns with the 15% surcharge at any time prior to the upgrades being completed. In saying this, I place particular weight on an email exchange between Ms. MacKay and a Colter employee in mid-May 2020 where Ms. MacKay confirmed the amount owing under the quote was accurate.

17. Colter says that it incurred costs generating the quote and completing Ms. MacKay's upgrades, including paying staff to compile the quote and instructing tradespeople and staff to incorporate the upgrades into Ms. MacKay's strata lot. Colter says it needs to cover its costs and generate a profit to stay in business. I accept Colter's submissions and I find it would be unreasonable to expect Colter to complete Ms. MacKay's upgrades with no profit margin. So, I find the 15% surcharge for overhead and profit is reasonable.
18. Considering all the evidence, I find that on balance, Colter has proven Ms. MacKay agreed to the 15% surcharge for overhead and profit. So, I find Ms. MacKay must pay Colter \$4,712 for its overhead and profit.
19. The *Court Order Interest Act* applies to the CRT. Colter is entitled to pre-judgment interest on \$4,712 from May 16, 2020, the date Ms. MacKay confirmed the amount owing was accurate, to the date of this decision. This equals \$33.85.
20. 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 Colter is entitled to reimbursement of \$175 in CRT fees. Colter did not claim any dispute-related expenses and so I award none.

ORDERS

21. Within 30 days of the date of this order, I order Ms. MacKay to pay Colter a total of \$4,920.85, broken down as follows:
 - a. \$4,712 in debt,
 - b. \$33.85 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
22. Colter is entitled to post-judgment interest, as applicable.
23. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

24. 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