



Civil Resolution Tribunal

Date Issued: July 23, 2021

File: SC-2020-009656

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Citizen Design Collective Ltd. v. Wesley*, 2021 BCCRT 805

B E T W E E N :

CITIZEN DESIGN COLLECTIVE LTD.

APPLICANT

A N D :

JASON WESLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about partially unpaid invoices for house design services. The applicant, Citizen Design Collective Ltd. (Citizen), seeks payment of \$1,405.95 from the respondent, Jason Wesley, plus contractual interest at a monthly rate of 3.5%.

2. Mr. Wesley submits he should not pay because Citizen's work was allegedly deficient and its bill excessive. I discuss these allegations in detail below.
3. A principal or employee represents Citizen. Mr. Wesley represents himself.
4. For the reasons that follow, I find Citizen has proven most of its claims. I order Mr. Wesley to pay the amounts set out below.

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.

ISSUE

9. The issue in this dispute is whether Citizen's work was deficient and its charges excessive, and if not, what remedies are appropriate.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Citizen must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed background. The parties signed a March 25, 2019 written agreement. Citizen agreed to provide house design services. The agreement did not set out a fixed price or fixed fee for the work. Instead, the parties agreed Citizen would charge an hourly rate of \$85.
12. Citizen prepared house drawings which it completed at the end of April 2020. Citizen periodically billed Mr. Wesley for a total of 195.89 hours of work. Ultimately Mr. Wesley decided not to build the house for personal reasons.

Was Citizen's work deficient or its charges excessive, and if not, what is the appropriate remedy?

13. Citizen claims for 2 partially unpaid invoices. The first is dated January 31, 2020 and has a balance owing of \$1,251.75. The second is dated May 12, 2020 and has a balance owing of \$154.20. These 2 invoices total the claimed amount of \$1,405.95.
14. Mr. Wesley says he has "no issue" regarding the May 2020 invoice. I will therefore focus my discussion on the January 2020 invoice. In that invoice, Citizen charged for 39.16 hours of work at the agreed-upon hourly rate of \$85. The invoice shows Citizen met with Mr. Wesley and his contractor, changed the house layout, and created or changed drawings to submit them to obtain building permits. The parties agree that these tasks had the goal of producing drawings for a structural engineer.

15. As noted above, Mr. Wesley alleges that Citizen's work was deficient and its bill excessive. The burden of proof is on Mr. Wesley to prove these allegations: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.
16. Mr. Wesley says Citizen advised the work would take 10 to 12 hours, but he was ultimately billed for 39.16 hours. He says Citizen charged some of these hours for correcting drawing mistakes related to building codes. Citizen disagrees. It says it warned in advance that the work would take longer because the chosen structural engineer did not provide any drawing services. Citizen says it had to shoulder this work, increasing costs. Citizen also disagrees it made any errors.
17. Overall, I am not satisfied that Citizen breached the contract by charging for the additional hours. Citizen warned Mr. Wesley there would be "additional billable hours" in a January 17, 2020 email, if Mr. Wesley did not switch engineers. There is no evidence from the engineer to contradict Citizen's submission that it had to do extra work because the engineer did not provide drawing services.
18. Mr. Wesley points out that in the contract, Citizen estimated that the work would take 120 to 140 hours, and Citizen ultimately charged for 195.89 hours of work. However, I find nothing turns on this in this dispute, because the contract explicitly noted that certain items were excluded from the estimated hours. This included creating drawing packages for contractors and trades. I find the work in the disputed invoice fits this description and was excluded from the estimated hours. The parties did not provide evidence or submissions on whether Citizen overcharged for any other invoices.
19. I also find it unproven that Citizen charged for correcting mistakes. Mr. Wesley says Citizen charged for correcting errors from misapprehending building codes. Citizen disagrees and says it charged for replacing placeholder windows in the drawings. I find the evidence does not support Mr. Wesley's allegation or contradict Citizen. I therefore find that Citizen did not make the alleged errors.
20. Mr. Wesley also provided a March 2021 letter from TD, his home builder. TD says that in early February 2020, he received Citizen's drawings and forwarded them to

the engineer. He says the engineer advised they could not be used because they were watermarked as, “not to be used for building plan submission”. He also says there were other errors and the plans were not ready for the structural engineer’s approval until late April 2019. TD says this led to “costly delays”. However, neither TD nor Mr. Wesley elaborated on these costs or the impact of the delays. As noted earlier, Mr. Wesley did not build the house for his own personal reasons. So, I find it unlikely there was any additional cost or inconvenience created by any delay.

21. Given the above, I find Mr. Wesley owes \$1,405.95 under the January and May 2020 invoices. I order Mr. Wesley to pay this amount.
22. Citizen also claims contractual interest. Under the written agreement, Mr. Wesley agreed to pay late interest starting from 30 days after the date of each invoice. The agreement said the interest was calculated at a monthly rate of 3.5% but did not state an annual rate. 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. So, I find that Citizen is entitled to contractual interest of 5% per year on the invoice amounts, starting 30 days after the invoice dates of January 31 and May 12, 2020 invoices. This equals \$95.88.
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 Citizen is entitled to reimbursement of \$125 in CRT fees. The parties did not claim any dispute-related expense, so I order none.

ORDERS

24. Within 14 days of the date of this order, I order Mr. Wesley to pay Citizen a total of \$1,626.83, broken down as follows:
 - a. \$1,405.95 in debt,

- b. \$95.88 in contractual interest, and
- c. \$125 in CRT fees.

25. Citizen is entitled to post-judgment interest, as applicable.

26. I dismiss Citizen's remaining claims.

27. 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.

28. 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.

David Jiang, Tribunal Member