



Civil Resolution Tribunal

Date Issued: July 30, 2021

File: SC-2021-001846

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *PB Construction Ltd. v. Ghazikhanian*, 2021 BCCRT 839

B E T W E E N :

PB CONSTRUCTION LTD.

APPLICANT

A N D :

NARBEH GHAZIKHANIAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about fence construction. The applicant, PB Construction Ltd. (PB), says the respondent, Narbeh Ghazikhanian, hired it to build a fence for his home. PB says it performed the work and claims \$2,931.05 for unpaid work.

2. Mr. Ghazikhanian says PB used poor quality materials and performed deficient work.
3. PB is represented by an employee. Mr. Ghazikhanian is self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.

ISSUE

8. The issues in this dispute are:
 - a. Does Mr. Ghazikhanian owe PB \$2,931.05 for unpaid fence construction work?
 - b. Is Mr. Ghazikhanian entitled to a set-off from the amount owed to PB because its work was defective?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, PB as the applicant 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. Mr. Ghazikhanian did not provide any submissions or evidence, though he had the opportunity to do so.
10. On October 15, 2020, PB sent Mr. Ghazikhanian a text message offering to build a fence for \$23 per foot, plus GST. Mr. Ghazikhanian sent a reply text the same day accepting this offer and telling PB to proceed. I find that the parties entered a contract based on these terms.
11. PB says it built the fence and submitted in evidence supporting photographs. Since Mr. Ghazikhanian does not dispute this, and based on the photographs, I am satisfied that PB completed the fence work.
12. PB sent Mr. Ghazikhanian an October 25, 2020 invoice for \$6,931.05. I find that, at the agreed rate of \$23 per foot, PB's invoice charged for 287 feet of fencing, plus GST. Since Mr. Ghazikhanian does not dispute the amount of PB's invoice, I accept it as accurate. PB says that \$2,931.05 is unpaid, which Mr. Ghazikhanian does not dispute. Based on this, I find that Mr. Ghazikhanian owes the claimed \$2,931.05 under the contract, subject to Mr. Ghazikhanian proving that PB's work was defective as discussed below.

13. As noted above, Mr. Ghazikhanian says that PB's work was deficient and it used poor quality materials. Mr. Ghazikhanian may be entitled to a setoff from the invoice if it can prove that PB's work was defective. Mr. Ghazikhanian has the burden of proving the defects (see: *Lund v. Appleford*, 2017 BCPC 91).
14. Although Mr. Ghazikhanian says that PB used poor quality materials and performed poor quality work, Mr. Ghazikhanian did not explain the specific deficiencies alleged. Further, Mr. Ghazikhanian did not provide any evidence supporting his allegations that the work was defective. I find that Mr. Ghazikhanian failed to prove that the fence was constructed improperly. So, I find that Mr. Ghazikhanian is not entitled to a setoff and it owes PB \$2,931.05 under the contract.

INTEREST, CRT FEES AND DISPUTE-RELATED EXPENSES

15. The *Court Order Interest Act* (COIA) applies to the CRT. PB is entitled to pre-judgment interest on the \$2,931.05 from October 25, 2020, the date of the invoice, to the date of this decision. This equals \$10.05.
16. 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 PB was successful, I find that it is entitled to reimbursement of \$125 in CRT fees. PB did not request reimbursement of dispute-related expenses.

ORDERS

17. Within 30 days of the date of this order, I order Mr. Ghazikhanian to pay PB a total of \$3,066.10, broken down as follows:
 - a. \$2,931.05 in debt for unpaid work,
 - b. \$10.05 in pre-judgment COIA interest, and
 - c. \$125 in CRT fees.

18. PB is entitled to post-judgment interest as applicable.
19. 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.
20. 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.

Richard McAndrew, Tribunal Member