Date Issued: September 9, 2021

File: SC-2021-001024

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Litargne v. Changfoot (dba Urban Resolve Renovations)*, 2021 BCCRT 980

B E T W E E N :

VICTORIYA LITARGNE and ADRIEN LITARGNE

APPLICANTS

A N D :

KENT CHANGFOOT (Doing Business As URBAN RESOLVE RENOVATIONS)

RESPONDENT

A N D :

VICTORIYA LITARGNE and ADRIEN LITARGNE

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about a kitchen renovation contract.

2. The applicants (and respondents by counterclaim), Victoriya Litargne and Adrien Litargne, hired the respondent (and applicant by counterclaim), Kent Changfoot (Doing Business As Urban Resolve Renovations), to renovate their kitchen. The Litargnes signed Mr. Changfoot's Independent Contractor Agreement (contract) on November 23, 2020 and paid Mr. Changfoot a $3,000 deposit. Mr. Changfoot was scheduled to start work on January 4, 2021.

3. The Litargnes say that due to communication issues with Mr. Changfoot, they cancelled the contract on December 3, 2020 and requested their deposit be returned, but Mr. Changfoot has refused. The Litargnes claim a refund of their $3,000 deposit. The Litargnes also claim an additional $1,000 for the increased cost of hiring another company to complete the kitchen renovations.

4. Mr. Changfoot says that the contract's terms stated a $4,016 deposit was payable when the contract was signed. He says the Litargnes breached the contract by only paying $3,000. Mr. Changfoot says that because the Litargnes breached the contract, he does not have to refund the $3,000 deposit and is not responsible for any costs associated with hiring another company.

5. Mr. Changfoot counterclaims $4,867.60, which is made up of $1,016 for the alleged outstanding portion of the owed deposit, $401.60 in contractual interest on the unpaid deposit, and $3,450 in damages for the Litargnes' alleged breach of contract.

6. The parties are each self-represented.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.

9. 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.

10. 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.

11. I note that in Mr. Changfoot's submissions on his counterclaim for breach of contract damages, he alleges the Litargnes defamed him in a complaint they made to the Better Business Bureau. The 2 possible forms of defamation are libel (written) and slander (spoken). Section 119(a) of the CRTA specifically excludes claims for both libel and slander from the CRT's small claims jurisdiction. In any event, this allegation was not included in the Dispute Notice, so I find it is not properly before me. Therefore, I decline to consider Mr. Changfoot's allegation about defamation.

ISSUES

12. The issues in this dispute are:

    a. Are the Litargnes entitled to a refund of their $3,000 deposit?

b. Are the Litargnes entitled to $1,000 for the increased cost to complete the renovations?

c. Is Mr. Changfoot entitled to the alleged $1,016 outstanding balance of the agreed deposit, plus contractual interest?

d. Is Mr. Changfoot entitled to damages for loss of profit from the Litargnes' alleged breach of contract?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (which means "more likely than not"). Mr. Changfoot must prove his counterclaims to the same standard. I have read all the parties' evidence and submissions, but I refer only to what I find relevant and necessary to provide context for my decision.

14. The background facts are not in dispute. The Litargnes were involved in ongoing home renovations. The evidence shows they previously hired Mr. Changfoot to complete some renovations in about June 2020, with kitchen renovations to follow. In mid-November 2020, Mr. Changfoot provided the Litargnes with a $16,066 estimate for their planned kitchen renovations.

15. In a November 18, 2020 email, Mr. Changfoot told the Litargnes that if the estimate "looked good", he required a $6,426.58 deposit. Ms. Litargne responded in a November 22, 2020 email requesting reconsideration of the deposit amount. She stated that the deposit for the previous project was only 25%, not the requested 40%. In response, Mr. Changfoot stated that he would accept a 30% deposit ($4,819).

16. In a November 23, 2020 email, Ms. Litargne stated they were still concerned about the deposit amount, particularly given their other renovation expenses, the approaching holidays, and the project start date being still 6 weeks away. Ms. Litargne stated they were prepared to pay a 25% deposit, with $3,000 payable immediately and a further $1,016 payable between December 14 and 20, 2020.

17. Mr. Changfoot responded that he "will take the 25% for a deposit" given that is what they paid previously. He also sent the contract to the Litargnes to sign. The contract terms relevant to the deposit payment were set out under the heading "Compensation", as follows (reproduced as written):

> 7. A retainer of $4,016.00 (the "Retainer") is payable by the Client upon execution of this Agreement.
>
> 8. For the remaining amount, the Client will be invoiced as follows:
>
> - Deposit - A retainer of 25% of the total renovation cost ($16,066.00) in the amount of $4,016.00 will be due before the renovations begin and when contract agreement is signed by the client(s).
>
>   Payments will be due the day it is requested when each stage of renovation is completed and/or products order is required during the renovation. If payments are not received on the day due then the renovations will stop until payments is received. …

18. It is undisputed that the Litargnes returned the signed contract and paid Mr. Changfoot $3,000 on November 23, 2020, which Ms. Ltargne at the time referred to as the "first transfer".

19. In a November 24, 2020 email, Mr. Changfoot confirmed that the full 25% had not yet been received, only a $3,000 portion. In a later email that day, Mr. Changfoot stated he would confirm when he had received the full 25% deposit and quoted clause 8 of the contract, as set out above. I find that in neither of these emails did Mr. Changfoot explicitly request the outstanding $1,016 portion of the deposit.

20. In a December 2, 2020 email, Mr. Changfoot told the Litargnes that $1,016 was still owing for the deposit. I find this was the first time Mr. Changfoot stated the full $4,016 deposit was owed when the contract was signed. Mr. Litargne responded that Mr. Changfoot should receive the balance of the deposit by December 5, 2020.

21. The parties' text messages in evidence show that Mr. Litargne also requested a phone call with Mr. Changfoot on December 3, but that Mr. Changfoot advised he was not available until the evening on December 5. I find that during their December 3 text message exchange, the parties both became somewhat confrontational, and their relationship broke down. Mr. Litargne ultimately requested a refund of their deposit, to which Mr. Changfoot responded: "Absolutely especially since you both did not honour the legal contract that you both agreed and signed" (reproduced as written).

22. Ms. Litargne sent Mr. Changfoot a December 4, 2020 email confirming they were cancelling the contract for their kitchen renovation. Ms. Litargne attached a copy of the signed contract with a notation that it was cancelled on December 3, 2020. She again requested that Mr. Changfoot reimburse the paid deposit.

23. It is undisputed that Mr. Changfoot has not refunded the Litargnes' $3,000 deposit.

Are the Litargnes entitled to a refund of their deposit?

24. The Litargnes argue that the contract did not say the deposit was non-refundable, and that the *Business Practices and Consumer Protection Act* (BPCPA) allowed them to cancel the contract and obtain a refund. As noted, Mr. Changfoot submits that the Litargnes breached the contract by failing to pay the full $4,016 deposit on November 23, 2020, and that their breach disentitled them to a refund.

25. I will first address Mr. Changfoot's allegation that the Litargnes breached the contract.

26. While clause 7 of the contract says the deposit is payable "upon execution" of the contract, clause 8 says the deposit is due "before the renovations begin and when contract agreement is signed by the client(s)". I find these 2 clauses, when read together, are ambiguous. It is somewhat unclear whether the contract required the deposit be paid in its entirety on the date the contract was signed, or whether it simply had to be paid before the renovations began.

27. When interpreting contractual terms, the surrounding circumstances in which the contract was reached can be considered to determine the meaning of the words in the contract and to deepen the understanding of the parties' mutual and objective intentions (see *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paragraph 57 and *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107 at paragraph 46).

28. Here, the Litargnes proposed a payment plan for the deposit, with $3,000 payable upon signing the agreement and the remaining $1,016 payable before the renovations were set to begin. I find Mr. Changfoot agreed to the proposal in his November 23, 2020 email when he stated he would take the 25% deposit. Mr. Changfoot did not tell the Litargnes that he was unwilling to accept the deposit in 2 payments, as proposed, or that he required the entire deposit be paid at once. Immediately following their exchange about the deposit, Mr. Changfoot provided the Litargnes with the contract.

29. Considering the parties' communications about the deposit immediately before Mr. Changfoot provided the contract, I find an objective reasonable bystander in the parties' circumstances would understand that the parties agreed and the contract provided that the deposit did not have to be paid in its entirety when the agreement was signed, so long as it was fully paid before the renovations were scheduled to begin on January 4, 2021. Therefore, I find the Litargnes did not breach the contract by failing to pay the full $4,016 deposit when they signed the contract.

30. In any event, the contract also provided that if payments were not received when due, Mr. Changfoot could stop work until paid. I find the evidence shows Mr. Changfoot did not treat the contract at an end due to the Litargnes' alleged breach of contract. Rather, I find that Mr. Changfoot stated he would not start working on the project until the Litargnes paid the deposit in full. So, I find the contract remained in effect until the Litargnes cancelled it on December 3, 2020.

31. This brings me to the BPCPA. Under section 17 of the BPCPA, a future performance contract is one where the supply of services or full payment is not made at the time the contract is made or partly executed.

32. I find that Mr. Changfoot was a supplier and the Litargnes were consumers under the BPCPA, and that they were involved in a consumer transaction. Given that they entered into their contract about 6 weeks before Mr. Changfoot was set to start the renovation work and the Litargnes paid only a deposit, I agree with the Litargnes that they had a future performance contract.

33. Section 23(5) of the BPCPA says that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract, if the contract does not contain the information required under sections 19 and 23(2) of the BPCPA.

34. The Litargnes did not specify what information was missing, and Mr. Changfoot did not argue that the contract complied with the BPCPA.

35. From my review of the contract, I find the following BPCPA requirements are missing:

    a. Section 19(a): the supplier's name and, if different, the name under which the supplier carries on business. The contract does not refer to Mr. Changfoot's business, Urban Resolve Renovations, though the evidence shows he was doing business under that name while dealing with the Litargnes.

    b. Section 19(c): the supplier's telephone number. The contract does not include any reference to Mr. Changfoot's telephone number.

    c. Section 23(2)(b): the date on which the supply of services will be complete. The contract provides only the renovation start date, but it does not say how long the project is anticipated to take or when it will be completed.

36. In addition to the above, I find the requirements under BPCPA sections 19(m) and (n) are also missing from the parties' contract. Section 19(m) requires the contract to include notice of the consumer's cancellation rights, if any. Section 19(n) requires the

contract to include any other restrictions, limitations or other terms or conditions that may apply to the supply of services.

37. Clause 3 of the parties' contract states that the contract's term begins on the date the contract was made and remains in force until the services are complete, subject to earlier termination as provided in the contract. However, I find that there are no other contract terms setting out what would happen if one of the parties terminated the contract. Specifically, the contract did not state what would happen to the deposit if the Litargnes decided to cancel the contract, including whether it was considered non-refundable. If Mr. Changfoot intended to retain the deposit, even if he had not started the project before the contract was terminated, I find that term had to be included in the contract under BPCPA sections 19(m) and (n).

38. Given the parties' contract did not contain all the required information under BPCPA sections 19 and 23(2), I find the Litargnes were entitled to cancel their future performance contract.

39. I find that Ms. Litargne's December 4, 2020 email to Mr. Changfoot confirmed they were cancelling the contract, which was within one year of receiving a copy of the contract. Section 27 of the BPCPA provides that if a contract is cancelled under section 23, the supplier must refund the consumer all money received under the contract without deduction, within 15 days after the notice of cancellation has been given. Section 55 says the consumer may recover the refund from the supplier as a debt due.

40. For the above reasons, I find Mr. Changfoot must refund the Litargnes' $3,000 deposit.

Increased cost of renovations

41. The Litargnes say the renovation project involved installing cabinets, which were already ordered and could not be cancelled. They say it cost them an extra $1,000 to hire another company on short notice to complete the project on time to avoid other

penalties. However, the Litargnes provided no evidence about their cabinet order or their contract with another renovation company.

42. In any event, because the Litargnes were the party that cancelled the contract with Mr. Changfoot, I find there is no basis here to hold Mr. Changfoot responsible for their alleged increased costs. So, I dismiss the Litargnes' $1,000 claim for additional expenses.

Mr. Changfoot's counterclaims

43. As noted, I have found the parties' contract permitted the Litargnes to pay the deposit in 2 portions. I also found the Litargnes were permitted to cancel the contract and obtain a refund of their deposit under the BPCPA. So, I find Mr. Changfoot is not entitled to the $1,016 unpaid portion of the deposit, or interest on that amount.

44. Further, given I have found the Litargnes did not breach the contract as alleged, I find Mr. Changfoot is not entitled to compensatory damages for alleged lost profits. Therefore, I do not have address Mr. Changfoot's claim for lost profits in any detail. That said, I find Mr. Changfoot has provided insufficient evidence to prove he suffered any lost profits. I dismiss Mr. Changfoot's counterclaims.

INTEREST AND CRT FEES

45. The *Court Order Interest Act* applies to the CRT. The Litargnes are entitled to pre-judgement interest on the $3,000 from December 19, 2020, which is 15 days after the Litargnes cancelled the contract, to the date of this decision. This equals $9.77.

46. 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 find the Litargnes are entitled to reimbursement of $175 in CRT fees. As Mr. Changfoot was unsuccessful, I dismiss his claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

47. Within 21 days of the date of this decision, I order Mr. Changfoot to pay the Litargnes a total of $3,184.77, broken down as follows:

    a. $3,000 in debt,

    b. $9.77 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

48. The Litargnes are entitled to post-judgment interest, as applicable.

49. I dismiss Mr. Changfoot's counterclaims and the Litargnes' remaining claims.

50. 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.

51. 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.

Kristin Gardner, Tribunal Member