Civil Resolution Tribunal

Date Issued: October 27, 2021

File: SC-2021-001890

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Park View Homes Ltd. v. Kohler,* 2021 BCCRT 1138

B E T W E E N :

PARK VIEW HOMES LTD.

APPLICANT

A N D :

SIG A KOHLER

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The respondent, Sig A Kohler, hired the applicant, Park View Homes Ltd. (Park View), to replace his windows and door. Park View says it completed the required work and claims $3,622.50 for its invoice.

2. Mr. Kohler agrees that the fixed price was $3,450 plus taxes but says Park View failed to replace the wooden window frames that Mr. Kohler says was part of the agreement. Park View says it did not replace the wood window frames because it says that was not included in the parties' agreement.

3. Park View is represented by an employee or principal. Mr. Kohler 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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.

5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

8. The issues are whether Park View's fixed price contract included replacement of Mr. Kohler's wooden window frames and to what extent, if any, Park View is entitled to payment of its $3,622.50 invoice.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Park View has the burden of proving its claim, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.

10. The parties' submitted evidence and arguments are limited, and so the underlying facts are not entirely clear.

11. That said, the undisputed evidence is that Park View completed its work for Mr. Kohler on July 10, 2020. There is no formal written contract in evidence. However, Mr. Kohler submitted a copy of Park View's May 31, 2020 email that set out its quote to "replace windows". It set out the scope of work as "Re & Re" of 3 windows, 1 patio door slider, 1 sealed unit with grids, and "re-frame all the 4 openings". Bug screens were included. Park View quoted $3,450 plus taxes, which totals the claimed $3,622.50. I find that quote comprised the parties' contract, and there is no documentary evidence to the contrary.

12. Park View's August 15, 2020 invoice sets out its $3,450 fixed price, which as noted totals the claimed $3,622.50. The invoice described "Re & Re" of 3 windows, 1 patio door slider, 1 sealed unit with grids. It also included bug screens and "exterior window trip" and disposal of "old windows". Missing is the "re-frame all the 4 openings", which is the issue in this dispute. It is undisputed Park View did not re-frame the 4 openings.

13. Park View undisputedly attended Mr. Kohler's home to measure and determine the scope of work in order to prepare the quote. Park View says "at the time" it told Mr. Kohler he would have to hire a carpenter/framer to fix "your rotten walls". Park View

also says it gave this advice to Mr. Kohler at the time it gave their quote, and that Mr. Kohler did not want to spend more money and so he "confirmed us to change the windows only". I find this confirmed change unlikely, given the above quote clearly includes "re-frame all the 4 openings" for the same price as the final invoice. Notably, there is no documentation before me showing that Mr. Kohler agreed to pay the same $3,622.50 but exclude the frame replacement.

14. I find that the parol evidence rule applies here. This rule says that, where there is a written agreement, outside evidence cannot be admitted to vary, modify, add or contradict the written agreement's terms, unless the written agreement is unclear or ambiguous (see *Athwal v. Black Top Cabs Ltd*., 2012 BCCA 107 at paragraphs 42 to 44). I find no ambiguity here. As noted, I also find it unlikely Mr. Kohler would agree to pay the same price for significantly less work.

15. So, I find Park View breached the parties' contract by failing to re-frame all the 4 openings as set out in the quote for $3,622.50.

16. I turn then to whether Park View is entitled to any payment for its invoice, given that it did supply the contracted vinyl windows and a patio door and bug screens. Park View's invoice did not provide a price breakdown, but Park View's submitted evidence shows it paid a supplier $2,835 for the windows, patio door, and bug screens.

17. Park View also submits that it incurred expenses of $50 for dump fees and $100 for shop type materials like silicone and spray foam but submitted no supporting evidence. Park View says its quote left it with $500 to pay 4 workers at $20 per hour, and essentially argues this is reasonable for the job completed.

18. As noted, I find this was a fixed price job, and the frames' replacement was included. Whether that was ultimately a profit-making bargain for Park View is not the issue before me.

19. I return to what payment Park View should receive, if any. Mr. Kohler says he is now left with new windows hung in dry rotten frames and is faced with "further

costs" having an incomplete job. However, Mr. Kohler does not say the installed new windows, door, and bug screens cannot be salvaged and re-installed after he has the wooden frames replaced. I find it would be unfair to Park View to allow Mr. Kohler to keep the usable windows, door, and screens without paying for them.

20. In the absence of an agreement about how much the frames' replacement was specifically worth as part of the parties' contract, I find it appropriate here to apply the principle known as "*quantum meruit*", meaning "value for the work done".

21. So, I find the issue is what amount of the $3,622.50 reasonably covered the frames' replacement so that I can deduct that sum from the amount I award to Park View. Mr. Kohler does not say what it will cost him at this point to have the new windows removed, frames replaced, and windows reinstalled. There is also no evidence there are any issues with the patio door or bug screens.

22. I find it would not be appropriate to use the $2,835 Park View paid for the windows and door as a starting point for what Mr. Kohler owes. First, I find there would likely be some added and wasted cost for the windows' removal and re-installation at this point, but that the bulk of that expense would be for the frames' replacement. Second, as this was a fixed price contract, what Park View paid its supplier is some evidence but not determinative.

23. On a judgment basis, I find Mr. Kohler likely will have to spend $1,000 to have the windows removed, frames replaced, and windows re-installed. So, I find Mr. Kohler must pay Park View $2,622.50. I find this will likely put Mr. Kohler in the position that he would have been in had Park View replaced the frames as agreed under the parties' contract.

24. The *Court Order Interest Act* (COIA) applies to the CRT. I find Park View is entitled to pre-judgment interest under the COIA on the $2,622.50. Calculated from the August 15, 2020 invoice date to the date of this decision, this equals $14.16.

25. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related

expenses. Park View was partially successful and so I find it is entitled to reimbursement of half its paid CRT fees, which equals $87.50. No dispute-related expenses were claimed.

ORDERS

26. Within 21 days of this decision, I order Mr. Kohler to pay Park View a total of $2,724.16, broken down as follows:

    a. $2,622.50 in debt,

    b. $14.16 in pre-judgment interest under the COIA, and

    c. $87.50 in CRT fees.

27. Park View is entitled to post-judgment interest, as applicable.

28. 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.

29. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair