Civil Resolution Tribunal

Date Issued: January 4, 2022

File: SC-2021-004241

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lakeview Geotech Ltd. v. Wilson*, 2022 BCCRT 3

B E T W E E N :

LAKEVIEW GEOTECH LTD.

APPLICANT

A N D :

TANJA WILSON and The Owners, Strata Plan K834

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about plumbing fees. The respondent, Tanja Wilson, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan K834 (strata). The applicant, Lakeview Geotech Ltd. (Lakeview) says Ms. Wilson hired it to change the water pipes in her strata lot as arranged by the strata, but has refused to pay the outstanding balance. Lakeview claims $885.54 for this unpaid balance.

2. The strata says 10 strata lot owners including Ms. Wilson agreed to have Lakeview change their water pipes, and to pay for that work themselves. The strata says Ms. Wilson and Lakeview agreed to the work in Ms. Wilson's strata lot, and Ms. Wilson was responsible for paying for it. The strata says it did not hire Lakeview for the specific work in Ms. Wilson's strata lot and it owes nothing.

3. Ms. Wilson says she did not contract with Lakeview, and that there was a verbal contract between the strata council president and Lakeview for the pipe replacement. However, Ms. Wilson also says she requested a "quote and/or contract" from Lakeview, and that she owed and paid Lakeview for the pipe replacement work it performed in her strata lot. Ms. Wilson says Lakeview did not provide all of the agreed services and measured her bathtub incorrectly, so she deducted the value of those errors from the amount she owed Lakeview. She says she owed a total of $188.51, which Lakeview declined to accept, so she owes nothing.

4. Lakeview is represented by an employee or principal in this dispute. The strata is represented by a strata council member. Ms. Wilson is self-represented.

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.

ISSUES

9. The issues in this dispute are:
    a. Did Lakeview contract with either or both respondents?
    b. Did Lakeview provide adequate plumbing services as agreed, and if so, do either or both respondents owe $885.54 or another amount?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Lakeview as the applicant must prove its claims on a balance of probabilities (meaning “more likely than not”). 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.

Did Lakeview contract with either or both respondents?

11. The strata sought to reduce a large insurance premium increase, caused in part by the problematic type of water pipes installed in the strata lots. The strata undisputedly obtained quotes for this pipe replacement work, including from RPR Heating & Air Conditioning, a division of Lakeview.

12. The strata says it called an "emergency meeting" of the ownership in December 2020, and that all 10 strata lot owners voted in favour of having Lakeview replace the pipes in each strata lot. Ms. Wilson submitted what appear to be point form minutes of that meeting, but they do not show any vote results, only that "We all agreed after getting 3 quotes the work will be done as soon as possible." The strata says each strata lot owner agreed to pay a $750 deposit up front and to cover additional costs themselves, since the requirements of each strata lot differed. The strata says it collected deposit cheques from each owner and turned them over to Lakeview, and the owners agreed they would get their own individual invoices from Lakeview for the total costs attributable to their units. No party raised the issue of whether the pipes were common property, and were therefore the strata's responsibility to repair.

13. Ms. Wilson does not directly dispute the strata's version of what happened at the emergency meeting, including that all the owners, including herself, voted to have Lakeview do pipe replacement work. I accept as true the strata's statements about that meeting noted above, because there is no evidence to the contrary. As noted, Ms. Wilson denies having a contract with Lakeview, and says she would have hired someone else for the pipe replacement work. However, she does not explain why she voted to have Lakeview do the work at her expense. She also does not explain why she paid Lakeview a $750 deposit up front and allowed it to do the work, instead of hiring a different company. The strata says that no work was done on the common property, it paid Lakeview nothing for the work in the strata lots, and all of the other strata lot owners paid Lakeview for the work in their strata lots. The other parties do not dispute these statements, so I accept them as true.

14. Ms. Wilson also says she asked Lakeview for a "quote and/or contract" and was provided with a $750 invoice for her deposit. The December 15, 2020 invoice in evidence was addressed to Ms. Wilson, not the strata, and was for services described as "Deposit Invoice", along with a description of proposed work in her strata lot. The work was described as a "whole house" pipe replacement, with a project price of approximately $1,500 to $2,000 per strata lot, which would be billed on a time and materials basis. The document said the project included necessary drywall removal,

and removing and replacing the pipes with appropriate materials. It also said that certain items, including "plumbing trim (fixtures)", were "not included".

15. On the available evidence, I find that the strata likely agreed to propose Lakeview's pipe replacement work to the owners, on the understanding that the owners who accepted it would each be responsible for paying for the work in their individual strata lots. I find the evidence does not show that the strata hired Lakeview directly to perform specific tasks in any particular strata lot, or agreed to pay Lakeview anything for such work.

16. I find the evidence does not show that Ms. Wilson objected to the December 15, 2020 "invoice", which I find was a type of work proposal or estimate. I find Ms. Wilson accepted the proposed Lakeview work on the terms written in that document, by paying and not requesting reimbursement of the $750 deposit, and by not raising any objections or concerns about the proposed work, payment terms, or anything else in that document. This is consistent with the undisputed evidence that Ms. Wilson allowed Lakeview to replace the pipes in her strata lot, and her admission that she was responsible for paying for that work. I also find that given the dates of other invoices in evidence, Ms. Wilson likely received the December 15, 2020 document and agreed with its terms before Lakeview performed the work in her strata lot. Based on this evidence, I find that Ms. Wilson and Lakeview agreed to a contract for replacing the pipes in her strata lot. I find that the December 15, 2020 proposal and deposit invoice describes the contract's terms.

17. So, on the evidence before me, I find that the strata was not responsible for any of Lakeview's work in Ms. Wilson's strata lot. Further, although Lakeview named the strata as a respondent, I find Lakeview does not directly allege that the strata was responsible for paying for the work in Ms. Wilson's strata lot, which it invoiced to Ms. Wilson. I dismiss Lakeview's claim against the strata.

Did Lakeview provide adequate plumbing services as agreed, and if so, does Ms. Wilson owe $885.54 or another amount?

18. Ms. Wilson admits, as she indicated in an April 19, 2021 letter to Lakeview, that she owed Lakeview the claimed $885.54 for the remaining balance of its work. However, she says Lakeview threw out her existing bathroom faucets and she had to pay $268.79 to replace them. Ms. Wilson also says that a Lakeview employee, R, provided her with incorrect bathtub measurements, and she purchased a new tub based on those measurements. She says the new tub was too narrow and, I infer, there was a gap between the existing flooring and the new tub. She says this caused her to pay $428.24 to replace the flooring near the bathtub. Ms. Wilson says these expenses total $697.03, which she deducted from the amount she owed Lakeview. She says she tried to pay the remaining $188.51 balance to Lakeview, but it did not accept the payment.

19. On the evidence before me, and before considering Ms. Wilson's claimed expenses, I find that she owed Lakeview the claimed $885.54 for its plumbing work. The expense deductions claimed by Ms. Wilson are each known in law as a "set-off". I find that because Ms. Wilson is alleging these set-offs, she bears the burden of proving them on a balance of probabilities. I find if she does not prove the set-offs, she will owe Lakeview $885.54.

20. First, the faucets. Lakeview says that other than one strata lot with different faucets, all of the existing bathroom faucets in the strata lots, like those removed from Ms. Wilson's bathroom, were of the same problematic type as the pipes being replaced, and were incompatible with the new pipes. Lakeview says that it recycled all of the old faucets, and that the owners were expected to pay for replacement faucets, which it installed. As noted, the December 15, 2020 invoice says "plumbing trim (fixtures)" were "not included". I find that plumbing fixtures likely includes faucets.

21. Ms. Wilson says she was not told that she would have to purchase new faucets, and suggests that Lakeview should have purchased them at no additional cost to her. However, she does not deny that her agreement with Lakeview was on a time and

materials basis, and that it did not say that any materials such as faucets were included in any pricing. A February 19, 20201 invoice shows that Lakeview charged Ms. Wilson for 13 hours of labour and several different types of material, including tub and shower trim. Ms. Wilson does not dispute any of those invoiced charges. I find it likely that if Ms. Wilson had not purchased faucets herself, under the agreement Lakeview could have obtained them and charged Ms. Wilson for them in the same manner that it charged her for all of the other materials. I find Lakeview did not agree to cover the cost of faucets for Ms. Wilson. In addition, Ms. Wilson did not provide any reliable evidence, such as receipts or payment statements, showing what she allegedly paid for new faucets. So, I find she has not met her burden of proving the value of her alleged set-off.

22. Ms. Wilson also says that Lakeview disposed of her old faucets despite her requests that they be kept for her, although I find there is no evidence showing that she asked Lakeview to keep them. Ms. Wilson also does not directly dispute Lakeview's submission that the old faucets were incompatible with the strata's new pipes. On balance, I find the parties did not agree that Lakeview would re-use Ms. Wilson's existing faucets, or that the new pipes would be compatible with those existing faucets. For all of the above reasons, I find Ms. Wilson is not entitled to a $268.79 set-off for the new faucets she purchased.

23. Turning to the floors, Ms. Wilson says that R, the Lakeview employee, wrote bathtub measurements for her on a piece of paper. An unsigned, handwritten note in evidence includes the words "60" x 32" Left Hand Tub". Ms. Wilson says that she used those measurements to purchase a new bathtub, which she had a different company install for her. Ms. Wilson says that the written measurements were between 1 and 1.5 inches too narrow, and there was a gap between the old flooring's edge and the new tub's edge. She says that because of this mistaken measurement, she had to have the floor near the bathtub re-done.

24. I find Ms. Wilson is alleging that Lakeview negligently provided her with incorrect bathtub measurements. To prove negligence, Ms. Wilson must prove that Lakeview

owed her a duty of care, failed to meet a reasonable standard of care, and that the failure caused her to sustain damage.

25. Ms. Wilson submitted no photos of her bathroom floor or the alleged gap to the new tub. She submitted no receipts, invoices, or other evidence showing the actual dimensions of the new tub she purchased. She does not say whether either tub's dimensions were, or should have been, measured at its top, bottom, or in another location Ms. Wilson provided no evidence showing what the correct bathtub area measurements were, and whether they differed from the new tub's actual dimensions. I find the evidence does not show that Ms. Wilson verified the tub measurements before purchasing or installing the new tub, either personally or through her tub installers. Ms. Wilson does not explain why she chose to install an allegedly different-size tub rather than exchanging it for one with different dimensions that would not leave a floor gap. She also does not explain why the new tub's edge was not placed on the same floor edge as the old tub.

26. As noted, Lakeview did not purchase or install Ms. Wilson's new tub, although it says it installed a tub of the same size in a different strata lot with no issues. On the evidence before me, I find that Lakeview did not have a duty of care to provide accurate tub measurements to Ms. Wilson. Even if there was such a duty of care, I find that Lakeview likely would have met the appropriate standard of care by providing dimensions that were accurate to within 1 or 1.5 inches, which I find was the case here. Further, I find there is no documentary evidence showing what flooring work was done, or what Ms. Wilson paid for it. So, I find Ms. Wilson has not proven that she sustained any damages or their value. I also find that any Lakeview measurement inaccuracies were not a significant cause of any alleged flooring expenses. I find the alleged flooring expenses, if any, likely resulted entirely from Ms. Wilson's failure to verify that her chosen new bathtub could be installed without leaving a flooring gap.

27. For the above reasons, I find Lakeview was not negligent, and Ms. Wilson is not entitled to a $428.24 set-off for flooring expenses. Given my findings that Ms. Wilson is not entitled to the alleged $697.03 in set-offs, I find she is responsible for paying

Lakeview the remaining unpaid balance for its plumbing work. I allow Lakeview's claim against Ms. Wilson for $885.54.

CRT FEES, EXPENSES, AND INTEREST

28. As noted, Ms. Wilson agreed to the terms of the December 15, 2020 invoice, which said that past due accounts were charged 2% per month. However, nothing in the invoice identified an annual rate of interest. Under section 4 of the federal *Interest Act*, whenever contractual interest is not expressed as an equivalent yearly rate or percentage, the interest rate is limited to a maximum of 5% per year. So, I find this 5% per year maximum rate applies to the $885.54 owing. I find that contractual interest on that amount is reasonably calculated from April 30, 2021, the payment deadline given in an April 27, 2021 Lakeview email, until the date of this decision. This equals $30.33.

29. Under section 49 of the CRTA, and the 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 Lakeview was unsuccessful against the strata, but the strata paid no CRT fees and no party claims dispute-related expenses, so the strata is not entitled to any reimbursements. I find Lakeview succeeded in its claims against Ms. Wilson, so it is entitled to reimbursement of the $125 it paid for CRT fees.

ORDERS

30. Within 30 days of the date of this decision, I order Ms. Wilson to pay Lakeview a total of $1,040.87, broken down as follows:
    a. $885.54 in debt for unpaid plumbing fees,
    b. $30.33 in contractual interest, and
    c. $125 in CRT fees.

31. Lakeview is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

32. I dismiss Lakeview's claims against the strata.

33. 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.

34. 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.

Chad McCarthy, Tribunal Member