



Civil Resolution Tribunal

Date Issued: July 27, 2022

File: SC-2021-008602

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *YZ Engineering Corp. v. Qin*, 2022 BCCRT 854

BETWEEN:

YZ ENGINEERING CORP.

APPLICANT

AND:

HONG QIN

RESPONDENT

AND:

YZ ENGINEERING CORP.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about structural engineering services.
2. The applicant and respondent by counterclaim, YZ Engineering Corp. (YZ), says it provided structural engineering design services to the respondent and applicant by counterclaim, Hong Qin, for a main building addition and an accessory building. YZ claims \$3,045 for its unpaid structural design services.
3. The respondent, Hong Qin, says she prefers to be addressed as Nina, and did not provide her preferred title. So, I will refer to Hong Qin as Nina in this decision. I intend no disrespect in doing so.
4. Nina says YZ's structural plans had errors and resulted in the addition's building permit being denied. She says structural plans are deficient, create safety hazards for her building project, and caused her financial losses. Finally, Nina says the amount claimed by YZ includes work that YZ has not yet completed as required by the parties' contract. Nina says YZ is claiming payment of an inflated invoice to avoid responsibility for fulfilling the contract and resolving her damages.
5. In her counterclaim, Nina asks for orders that YZ publicly apologize to her, admit its work error, and pay \$3,500 for her financial losses.
6. YZ is represented by a principal, JZ. Nina is 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.

ISSUES

11. The issues in this dispute are:
 - a. Is YZ entitled to payment of \$3,045 for its services?
 - b. Was YZ's work deficient, and if so, is Nina entitled to damages?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant YZ must prove its claims on a balance of probabilities (meaning more likely than not). Nina must prove her counterclaims on the same standard. I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
13. The parties agree Nina hired YZ to provide structural design services for a main building addition and an accessory building. The parties also agree that some work

was completed. However, the parties dispute the extent of work completed and whether any of the completed work was deficient.

14. An August 5, 2020 YZ estimate quoted \$2,300 for the addition, including structural analysis and design, two site visits, reports and schedules, and structural drafting. The design and report portions were quoted at 11 hours at \$175 per hour, and the drafting at 5 hours at \$75 per hour.
15. A second August 5, 2020 YZ estimate quoted \$1,700 for the accessory building, for the same services and hourly rates listed above, with the design and report portions quoted at 8 hours and the drafting estimated at 4 hours. Collectively, the estimates totaled \$4,000 for the addition and the accessory building.
16. The parties both submitted a September 22, 2020 contract. The version submitted by Nina is digitally signed by Nina. The parties' contract indicates that YZ would provide a structural engineering package for the addition and accessory building including structural analysis, design, reports and schedules, and three site visits for \$3,500. Confusingly, although the title of the document is "Contract", parts of the document also indicate it is an estimate. Nina also says she never agreed to the final amount. However, unlike the estimates discussed above that are broken down hourly, the contract lists \$3,500 for all the services combined as a structural engineering package. On balance, I find the parties' contract was defined enough to be a fixed price contract, rather than an estimate. As it is digitally signed by Nina, I find she agreed to pay YZ \$3,500 for the structural engineering package, as detailed above.
17. YZ says it provided onsite consulting and design services, the structural plans have been delivered to Nina, and Nina received the addition's building permit. YZ says Nina approved the original quote, but now wants to negotiate YZ's service fee. It is unclear whether YZ is referring to the August 2020 estimates which total \$4,000, or the September 22, 2020 contract which totals \$3,500, when referring to the original quote. However, given that I have found Nina agreed to the \$3,500 fixed price contract that was provided after the estimates, nothing turns on this. Further, YZ only

claims \$3,045, which is less than the amounts listed in either the estimates or the contract in any event.

18. Nina says YZ has not completed all the work agreed to. Nina she says she tried to communicate with YZ to request that YZ make changes to the addition's structural plan based on the architect's plan, and YZ said it would advise the construction crew to make the changes on site. Nina says YZ also has not provided on-site engineering advice and schedules. However, the evidence shows YZ completed structural plans and schedules for the addition and the accessory building and provided them to Nina. I find the parties' contract did not include on-site engineering advice beyond the 3 site visits included as part of the structural engineering package.
19. On balance, I find YZ provided the structural design services required by the parties' contract. I have already found Nina agreed to pay \$3,500 for YZ's services. However, YZ did not provide an invoice in evidence or explain why it is only seeking \$3,045 for its services, despite the \$3,500 agreed to in the contract. Despite this, Nina is responsible to pay for the services provided. So, I find Nina is responsible to pay YZ the claimed \$3,045 for its services, subject to the alleged deficiencies, discussed below.

Was YZ's work deficient?

20. Nina claims YZ's structural plans are deficient.
21. When a customer alleges that a contractor's work was below a reasonably competent standard, the customer must prove the deficiencies: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. Generally, expert evidence is required to prove a professional's or trade's work was below a reasonable standard: *Bergen v. Guliker*, 2015 BCCA 283. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.
22. Nina submitted a March 30, 2022 report from Edward Kyle, a civil and structural engineer at Hoel Engineering Ltd. (Hoel). Edward Kyle said they conducted a design

review of YZ's structural plans for the addition and accessory building, and compared them to drawings that Hoel produces on similar projects. Edward Kyle gave the following opinion:

- a. YZ's structural plans showed a number of inconsistencies that would increase the probability of errors during construction.
- b. There are a few instances where the load path is not consistent, which is a serious issue that should be addressed before construction occurs.
- c. Due to the inconsistencies, confidence within the overall design is weakened. Edward Kyle recommended that a qualified professional engineer in British Columbia complete an in-depth review of YZ's structural plans.

23. YZ says it respects Edward Kyle's report, but also says every engineer has its own expertise and perspective. YZ says the report is based on part 9 of the Canadian Wood Design Manual. YZ says part 4 is more accurate, and the design can follow either part 4 or part 9 of the manual. The manual itself is not in evidence. YZ also says and some the alleged issues identified in the report are not required design elements. JZ, YZ's representative in this dispute, is also a structural engineer. However, despite this I place little weight on YZ's own submissions on the report because as a party to the dispute JZ, and its representative YZ, are not neutral. YZ's submissions on the report are also unsupported by independent rebuttal expert evidence. Further, YZ did not meaningfully address the alleged deficiencies identified in the report, including the opinion that the inconsistent load path is a serious issue, or that a further in-depth review is required.

24. I accept Edward Kyle's expert report and I place significant weight on their opinion. I find it shows that there are deficiencies with YZ's structural plans that must be addressed before Nina can proceed with construction of the addition and accessory building. As noted, Edward Kyle recommended addressing the load path issues before construction occurs, and recommended an in-depth review of the structural plans.

25. Nina also says YZ's structural plans do not match the architect's plans, and says this will lead to safety issues on-site. However, she provided no documentary evidence in support of this assertion, so I place no weight on it.
26. Finally, Nina says YZ's work also contained errors that resulted in the accessory building's building permit being denied, including mislabeling one room as a bedroom. YZ acknowledges that the architectural design did not meet municipal bylaws and the accessory building's building permit was denied. YZ says the architectural drafter caused the error and it was unrelated to YZ's structural design. YZ says Nina received the building permit for the accessory building. Although undisputed, there is no documentary evidence that indicates why the addition's building permit was denied, or on what basis. Edward Kyle's report does not address this issue. Based on the evidence, I find Nina has not met her burden of proving the addition's building permit was denied as a result of YZ's alleged error.
27. Overall, and placing significant weight on the expert evidence before me, I find it likely that YZ's structural plans were deficient. Nina claims \$3,500 in financial losses. This amount matches the amount she agreed to pay in the parties' fixed price contract. So, I infer Nina claims her financial losses are the costs to obtain the deficient structural plans. Given the expert evidence, I find that Nina cannot rely on or use the structural plans in their current form for construction. Therefore, I find Nina is not responsible to pay YZ \$3,045 for deficient structural plans that she cannot use. I accept that Nina will likely have to hire a new engineer. However, I am not awarding the full \$3,500 Nina claims for financial losses because there is no indication she has paid anything, or that she will have to pay more for a new engineer.
28. As noted, Nina also requested orders that YZ apologize and admit its errors. First, I see no purpose in ordering YZ to apologize because an ordered or forced apology is not productive or helpful. Second, the decision itself addressed Nina's request that YZ admit its errors. So, I also find it unnecessary to make any order to that effect.

Summary

29. I find YZ is entitled to \$3,045 for the structural design services provided. However, I also find that Nina is entitled to a reduction of \$3,045 because the structural plans are deficient. I find these amounts cancel each other out, so neither party is entitled to any payment.

CRT fees and expenses

30. 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. Both parties were successful in their respective claims. YZ paid \$175 in CRT fees, and Nina paid \$125. In the circumstances, I find it reasonable that each party pay its own CRT fees. So, I decline to order any reimbursement.

31. Nina also claims reimbursement of \$780 for Edward Kyle's expert report as a dispute-related expense. However, she did not provide an invoice or any other documentary evidence to support this alleged expense, so I decline to order any reimbursement. YZ did not claim any dispute-related expenses, so I award none.

ORDER

32. I allow YZ's claim and Nina's counterclaim in part. The result is that I find nothing is owed, and so I make no order for payment between the parties.

Leah Volkens, Tribunal Member