Civil Resolution Tribunal

Date Issued: September 9, 2022

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Civil Resolution Tribunal

Indexed as: *A1 Windows Mfg Ltd. v. Lyle*, 2022 BCCRT 1004

B E T W E E N :

A1 WINDOWS MFG LTD. and SARBIJIT KALER

APPLICANTS

A N D :

STACEY LYLE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about a partially unpaid invoice for residential windows. The applicant, A1 Windows Mfg Ltd. (A1), contracted with the respondent, Stacey Lyle, to supply and install 10 windows. The other applicant, Sarbijit Kaler, is a principal of A1. The applicants seek payment of $2,310 as the balance owing.

2. Mrs. Lyle disagrees. She says A1 did not complete the windows' installation, so she says she owes nothing further.

3. A1's employee represents the applicants. Mrs. Lyle is self-represented.

4. For the reasons that follow, I find A1 has proven its claims and make the orders set out below. I dismiss Mr. Kaler's claims.

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.

ISSUE

9. The issue in this dispute is whether the applicants are entitled to the claimed $2,310.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants A1 and Mr. Kaler must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and arguments that I find relevant to provide context for my decision.

11. I begin with the undisputed background. On July 13, 2021, Mrs. Lyle entered into a written contract with A1 for the supply and installation of 10 windows. The total price was $15,350, inclusive of tax. I accept the applicants' undisputed submission that the contract included a separate document titled "Project Terms and Conditions". Further, consistent with A1's submissions, the contract mainly outlined specifications for the windows and the price, rather than contract terms.

12. Section 1 of the terms document was titled "Scope of work". It said that A1 agreed to provide the labour and materials necessary to supply and install the 10 windows described in the other contract pages. Section 7, titled "Stop Order", said that if A1 found existing water or rot damage that required rehabilitation work beyond the scope of work in the signed contract, a change order would be required. Section 3 said that changes to the scope of work had to be documented by a written order signed by both parties.

13. Emails show Mr. Kaler was A1's principal. However, there is no indication that Mr. Kaler directly contracted with Mrs. Lyle and the applicants' submissions say Mrs. Lyle contracted with A1. Mr. Kaler's name does not appear in any contract documents. So, I dismiss Mr. Kaler's claims. My decision below addresses A1's claims.

14. A receipt shows that Mrs. Lyle paid a $8,810 deposit on July 20, 2021. A1 refunded $1,135 on July 23, 2021, as the deposit was meant to be $7,675. A1's installers arrived with the 10 windows at Mrs. Lyle's residence on September 9, 2021. The

same day, A1 emailed Mrs. Lyle that the installers removed the old windows and found the existing wood was rotten. A1 said it had to do a “stop work order”. I infer this meant a stop order under section 7 of the contract. With Mrs. Lyle’s permission, A1 temporarily placed the new windows in the openings. The emails show that the parties expected that Mrs. Lyle would have the wood rot repaired by a third party. After this, A1 would return to complete the installation. A1’s description of these facts, such as the existence of the wood rot, is not disputed. A1 noted that completing the installation on a new date “may come at an extra cost”.

15. On October 29, 2021, A1 returned to fix 2 windows to improve fit. It is undisputed that these repairs were completed. Around this time, Mrs. Lyle hired another contractor, Hany Builders Supplies (1971) Ltd. (Hany), to repair the wood rot and complete installation of the windows. A November 3, 2021 invoice shows that Mrs. Lyle paid Hany $2,310 for its work.

16. In an October 29, 2021 email, Mrs. Lyle suggested that A1 should decrease its price as A1 did not complete the installation. I note the parties’ July 13, 2021 contract lacked any breakdown that would specify how much of the price was for installing the windows. I find that A1 did not agree to Mrs. Lyle’s proposal to reduce the amount owing. In a November 18, 2021 email, A1’s representative said she still owed the balance under the July 13, 2021 contract. A1 noted that it was not charging for any additional work because the parties never signed a change order. Mrs. Lyle replied to A1 that day and said she should be entitled to a discount, but A1 did not agree to this.

17. Mrs. Lyle paid $5,000 to A1 on November 10 and $365 on November 18, 2021, leaving a balance owing of $2,310. She disagreed that A1 should be paid any further amounts.

Is A1 entitled to the claimed $2,310?

18. Mrs. Lyle submits that A1's invoice should be reduced by $2,310. She says this because Hany did the work of installing the windows, rather than A1, and she paid Hany $2,310 for the work. I note that Hany also repaired the wood rot for this price.

19. I find that, under section 3 of the parties' contract, the parties agreed that any changes to the scope of work had to be documented in a written order signed by both parties. Here, the parties did not sign such an order. So, I find that A1 was still contracted to install the windows after Mrs. Lyle fixed the wood rot. The emails support my conclusion. They show that the parties agreed to proceed in this manner.

20. I note that A1 was not obligated to fix the wood rot under section 7 of the contract. Mrs. Lyle did not allege this, in any event.

21. I find that Mrs. Lyle breached the contract by deviating from the parties' agreement by hiring Hany to complete the window installation. So, I disagree that she is entitled to any reduction or discount. Mrs. Lyle submits that Mr. Kaler was aware of her plan to have Hany complete the window installation. However, there is no evidence that either A1 or Mr. Kaler agreed to reduce A1's fees. Instead, the emails show that A1 was ready and willing to complete the window installation. It sent remainder emails in September and October 2021 to Mrs. Lyle to reschedule the work after the rot repairs were completed. I find that A1 was still entitled to full payment for supplying and installing the windows because Mrs. Lyle prevented it from completing the installation work.

22. I also find that this was not a windfall situation for A1 where it did no installation-type work at all. As noted above, A1 sent its workers on September 9, 2021 and put in the new windows to provide a temporary barrier against the elements. It also sent workers back on October 29, 2021, as noted earlier.

23. Given the above, I order Mrs. Lyle to pay A1 $2,310 as the balance owing under the July 13, 2021 contract.

24. As noted, A1 also claims for contractual interest. Section 4 of the terms sheet says that it was entitled to charge 26.82% yearly interest on overdue payments. A1 issued a final invoice on September 8, 2021, for the $2,310 balance owing, due on October 29, 2021. I find that this pre-judgment interest should apply from October 29, 2021, to the date of this decision. This equals $513.67.

25. 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. I find A1 is entitled to reimbursement of $125 in CRT fees. The parties did not claim for any specific dispute-related expenses. So, I order none.

ORDERS

26. Within 30 days of the date of this order, I order Mrs. Lyle to pay A1 a total of $2,948.67, broken down as follows:

    a. $2,310 in debt,

    b. $513.67 in contractual pre-judgment interest at 26.82% yearly, and

    c. $125 in CRT fees.

27. A1 is entitled to post-judgment interest, as applicable.

28. I dismiss Mr. Kaler's claims.

29. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member