



Civil Resolution Tribunal

Date Issued: September 22, 2022

File: SC-2022-002277

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *A&M Millwork Inc. v. Living Environment Design Inc.*,

2022 BCCRT 1045

B E T W E E N :

A&M MILLWORK INC.

APPLICANT

A N D :

LIVING ENVIRONMENT DESIGN INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about payment for cabinet renovation work. The respondent contractor, Living Environment Design Inc. (Living), hired the applicant contractor, A&M Millwork Inc. (A&M), to provide cabinet renovation work for a home owned by a non-party. A&M claims \$3,365.25 for its unpaid work.

2. Living denies the claim. Living says that A&M is not entitled to payment because it allegedly did not complete the project and A&M owed workers' compensation assessments.
3. Both parties are represented by employees or principals.

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). 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.
5. 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.
6. 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.
7. 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.

Unviewable evidence

8. A&M submitted a document that I was unable to view. A&M was given an opportunity to resubmit the document and it did so. Living was given an opportunity to respond to the resubmitted evidence, but did not do so. Since Living had an opportunity to respond, I find that it has not been prejudiced and I have considered A&M's resubmitted evidence in my decision.

ISSUES

9. The issues in this dispute are:
 - a. Does Living owe A&M \$3,365.25 in unpaid work?
 - b. Should Living's debt to A&M, if any, be reduced because A&M allegedly did not complete the project?
 - c. Is Living entitled to withhold payment of A&M 's invoice because A&M allegedly owes workers' compensation assessments.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant A&M must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. It is undisputed that Living hired A&M and another contractor, SMM, to provide home remodeling work on a non-party's home. SMM is not a party to this CRT dispute. Living sent multiple emails to SMM, which were copied to A&M, scheduling and coordinating the project. SMM sent Living an August 18, 2021 email, which was also copied to A&M, saying that the rates were \$55 per hour for labour and materials would be charged 20% over cost. Based on the emails exchanged between Living and SMM, I find that SMM had A&M's apparent authority to act as its agent and that the

rates quoted by SMM also applied to A&M's work. Living did not provide any submissions about the amount of the contract price, or how the contract price would be calculated. Based on the above, I find that A&M entered a contract with Living at the hourly rates quoted in SMM's August 18, 2021 email.

12. A&M says it finished its work in October 2021 and it sent Living an October 18, 2021 invoice for the claimed \$3,365.25. The invoice charged for 44 hours of cabinet installation work and 1 hour of light installation work, at the rate of \$55 per hour. The invoice also charged \$150 for garbage removal, \$450 for a cabinet valance and \$75 for supplies. It is undisputed that Living has not paid this invoice.

Project completion

13. Living says A&M is not entitled to payment because it allegedly did not finish the project. In contrast, A&M says that it completed the project, other than the installation of a drawer and touch latches that did not fit and the installation of screw covers that A&M could not find. Living says that A&M could have installed the drawers with modifications and it says that it provided A&M with the screw covers. Living says that the deficiencies could have been completed if A&M had not abruptly left the project.
14. However, I find that nothing turns on whether the project was completed, A&M left abruptly or A&M communicated clearly. I reach this conclusion because there is no evidence showing that A&M charged for work not performed or billed for materials not provided. As discussed above, I find that A&M charged Living on an hourly basis for labour and a cost plus basis for materials. Given this, I find that whether or not the project was not completed, or the manner in which A&M stopped working, does not change the amount of Living's debt for the work A&M had performed.
15. I have also considered whether Living could be entitled to a setoff from its debt owed to A&M if Living incurred additional expenses to complete A&M's promised work. Living has the burden of proving that its entitled to a setoff (*Lund v. Appleford*, 2017 BCPC 91). However, Living has not provided any submissions or evidence showing that it incurred any additional expenses resulting from A&M's alleged failure to

complete the project. So, I find that Living has not proved that it is entitled to a setoff from its debt to A&M.

16. Living does not dispute that A&M performed the invoiced work, nor the invoice's accuracy. So, I find that A&M performed \$3,365.25 of work, as invoiced. Further, as discussed above, whether A&M left abruptly or failed to communicate clearly as Living alleges does not change Living's responsibility to pay for the work A&M performed. So, I find that Living owes A&M \$3,365.25 for unpaid work. However, this is subject to the workers' compensation assessment issue discussed below.

Workers' compensation assessments

17. Living says that A&M is also not entitled to payment because A&M allegedly owes workers' compensation assessments to WorkSafeBC. Living received an October 8, 2021 letter from WorkSafeBC that says A&M owed an unspecified amount of workers' compensation assessments related to the project. The WorkSafeBC letter warned Living that it was liable for these unpaid assessments under the *Workers' Compensation Act* (WCA). Section 258 of the WCA says that both the contractor and the person for whom the work is undertaken are liable for the amount of a workers' compensation assessment in respect of the work. Since Living hired A&M, I find that Living was responsible A&M's unpaid workers' compensation assessments relating to this project under section 258 of the WCA.
18. Since A&M does not dispute that it owed workers' compensation assessments, I find that it did. Based on Living's liability for A&M's unpaid workers' compensation assessments in an unspecified amount, I find that Living reasonably withheld payment of A&M's invoice until this issue was resolved.
19. A&M says that these workers' compensation assessments were "cleared up" on January 6, 2022. However, since A&M only made this statement in its reply submission, Living did not have an opportunity to respond. Further, A&M did not provide supporting evidence showing that the workers' compensation issue had been resolved by January 6, 2022. Rather, A&M provided a July 3, 2022 WorkSafeBC

clearance letter saying that A&M's workers' compensation assessments had been paid up to April 1, 2022. In the absence of supporting evidence showing that the workers' compensation assessments had been paid by January 6, 2022 as A&M claims, I find that the A&M had paid its workers' compensation assessments relating to the project by the July 3, 2022 date on the provided clearance letter. So, I find that Living no longer had any liability for A&M's workers' compensation assessments after that date. Given this, I find that Living cannot continue to withhold payment of A&M's invoice based on A&M's past workers' compensation assessment delinquency.

20. For the above reasons, I find that Living must pay A&M \$3,365.25 in unpaid work.

CRT fees, expenses and interest

21. The *Court Order Interest Act* (COIA) applies to the CRT. A&M is entitled to pre-judgment interest for the unpaid work from July 3, 2022, the date of WorkSafeBC's clearance letter, to the date of this decision. This equals \$12.70.

22. 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 A&M is entitled to reimbursement of \$175 in CRT fees. Neither party requested reimbursement of dispute-related expenses, so none are ordered.

ORDERS

23. Within 30 days of the date of this order, I order Living to pay A&M a total of \$3,552.95, broken down as follows:

- a. \$3,365.25 in debt for unpaid work,
- b. \$12.70 in pre-judgment COIA interest, and
- c. \$175 in CRT fees.

24. A&M is entitled to post-judgment interest, as applicable.

25. 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.

Richard McAndrew, Tribunal Member