



Civil Resolution Tribunal

Date Issued: September 28, 2022

File: SC-2022-000355

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ponco Contracting Ltd. v. Westfall*, 2022 BCCRT 1067

BETWEEN:

PONCO CONTRACTING LTD.

APPLICANT

AND:

LEISL WESTFALL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about invoices for completed bathroom renovations and 3 custom closet doors. The applicant, Ponco Contracting Ltd. (Ponco), says the respondent, Leisl Westfall, refused to pay the invoices without justification. Ponco claims \$1,757.13 for the bathroom renovation invoice. It also seeks \$1,474.32 for the 3 doors but submits that it “will have to deliver the doors”. So, I find it seeks specific

performance of an agreement to provide the doors to Ms. Westfall in return for payment. Ponco's claims total \$3,231.45.

2. Ms. Westfall disagrees. She says Ponco unreasonably refused her request to issue a new invoice for the bathroom renovations. She says the current invoice does not accurately reflect the price of work actually done. Ms. Westfall further says she purchased the 3 custom doors based on Ponco's misrepresentations. However, she says she is willing to pay for the doors if Ponco can provide a receipt to show how much Ponco paid for the doors from its supplier.
3. Ponco's owner, Nathan Pontius, represents it. Ms. Westfall represents herself.
4. For the reasons that follow, I find Ponco has proven most of its claims. I make the orders set out below.

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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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. Of note, CRTA section 118(1)(c) says that the CRT has jurisdiction to resolve a claim for specific performance of an agreement relating to personal property or services.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did Ponco overcharge for the bathroom renovations?
 - b. Must Ms. Westfall pay for the custom doors?
 - c. What are the appropriate remedies, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ponco as the applicant must prove its 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 argument that I find relevant to provide context for my decision.

11. I will first discuss the parties' agreement for the bathroom renovations and then the closet doors.

Issue #1. Did Ponco overcharge for the bathroom renovations?

12. Ponco emailed Ms. Westfall a \$6,005 quote for kitchen and bathroom renovations on April 29, 2021. The quote outlined the work tasks and the price of each. The bathroom renovation tasks included supplying and replacing the toilet, vanity unit, sink in the vanity unit, and flooring.

13. Ms. Westfall decided to hire Ponco for the bathroom renovations only. She paid Ponco a \$1,952 deposit, as documented in the emails. Ponco completed the bathroom renovations. It issued a November 3, 2021 invoice for \$3,532.50 before tax.

14. The November 2021 invoice differed from the April 2021 quote in the following ways. It excluded the kitchen work and drywall repairs totaling \$2,630. It included a sole new entry of \$157.50 for additional work by a subcontracted plumber for installing new shutoff valves in the bathroom. These amounts equal the difference between the April 2021 quote and November 2021 invoice.

15. Ponco says the parties contracted for a fixed price for each of the listed tasks. Ms. Westfall disagrees. She provided a letter from a family member, RW, written and addressed to Ponco after the renovation work was done. As noted in the letter, RW owns the renovated property. I find the letter further outlines Ms. Westfall's arguments. It says that Ponco's price should be based on time and materials.

16. Overall, I find the quote's wording shows that the parties contracted for a fixed price for each task listed in the quote. The quote did not say it was an estimate or that the price was based on time plus materials. There is no mention of an hourly rate or any indication that the price was subject to change. Similarly, Ponco noted in a November 3, 2021 email that its supply-side prices had gone up, but despite this, Ponco would not charge more.

17. Ms. Westfall says the work done was either different from or outside the scope of the work the parties agreed to. In particular, Ms. Westfall says 1) Ponco installed a vanity and sink combination product instead of a separate vanity base and sink top, 2) Ponco used economical linoleum flooring instead of professional grade flooring, and 3) Ponco's subcontracted plumber had to visit a third time to fix Ponco's deficiencies. This is the additional \$157.50 charge Ponco added to the final November 3, 2021 invoice.
18. I will first consider whether the vanity unit and flooring work were within the scope of the April 2021 quote. In both the April 2021 quote and November 2021 invoice, Ponco 1) charged \$1,180 for supplying and installing a new vanity and new sink in the vanity, and 2) \$800 for installing "new sheet vinyl flooring", rather than linoleum flooring.
19. Overall, I find that Ms. Westfall agreed to the changes to the vanity unit work and flooring, and they were within the scope of the work originally contemplated in the contract. The evidence indicates that the parties agreed that they would pick the exact flooring, vanity unit, sink, or vanity and sink combination product at a later date. For example, the April 2021 quotes did not state the exact brands or specifications of items that would be used in the bathroom renovations. Similarly, the late September and early October 2021 emails show that Ms. Westfall advised Ponco what flooring, toilet, and vanity, sink, or vanity top and sink combination product she wanted to use.
20. At the time of these emails, no party suggested that the price would change based on the products she selected. Ms. Westfall only emailed about changing the price after Ponco sent its final bathroom renovation invoice on November 3, 2021. By then, the bathroom renovation work was done. There is no indication that Ponco used the wrong vanity combination product or flooring. Consistent with that, in RW's letter, RW said that Ponco overcharged for its work without alleging that Ponco installed the wrong products.
21. Further, I find it unproven that Ponco charged an unreasonable amount for the work. There is no evidence from a neutral party, such as a contractor providing an estimate, to show this. So, I find it unproven that Ms. Westfall sustained any loss.

22. This leaves the sole added entry in the November 2021 invoice for the subcontracted plumber's work of \$157.50. As it was a new entry, I find that Ms. Westfall will only be responsible for the extra work if Ponco proves that Ms. Westfall explicitly or implicitly authorized the work, and she was informed or necessarily aware that the extra work would increase the cost. See *Kei-Ron Holdings Ltd. v. Coquihalla Motor Inn Ltd.*, 1996 CanLII 3443 (BCSC) at paragraph 41. Here, there is no evidence that Ms. Westfall authorized the extra work or that she was aware this would increase the cost. So, I find it unproven that she should pay the \$157.50 charge for the extra plumbing work.
23. In summary, I find Ms. Westfall is liable for the November 3, 2021 invoice of \$3,532.50, less the extra work charge of \$157.50. Ponco charged for GST in its quote and invoice, so I find Ponco is entitled to \$3,375 plus GST of \$168.75, for a total of \$3,543.75. Ponco acknowledges it should apply Ms. Westfall's deposit of \$1,952 to the amount owing, so I order Ms. Westfall to pay the balance of \$1,591.75 in debt.

Issue #2. Must Ms. Westfall pay for the custom doors?

24. Ponco emailed Ms. Westfall a \$1,654.80 quote on April 29, 2021, for supplying and installing 3 closet doors from the hardware store. Ms. Westfall ultimately decided to order custom closet doors through Ponco. Ponco obtained the doors and issued a second invoice dated December 9, 2021, for the 3 doors. The total price was \$1,474.32, inclusive of taxes and delivery.
25. Ponco's undisputed submission is that it provided the price for the 3 custom doors in advance to Ms. Westfall, and she agreed to pay it, but now refuses payment and delivery. Ponco also says the doors are unreturnable. I find this is likely the case as they are custom made.
26. Ms. Westfall says she is willing to pay for the doors, but wants to know what Ponco paid for them. Ponco did not answer this. However, there is no indication that Ponco contracted to share this information with Ms. Westfall. I also find this was a fixed price agreement as nothing suggests otherwise, so I find nothing turns on the cost of the doors.

27. Ms. Westfall also submits that she should not pay for the doors because Ponco misled her. She alleges the following. Ponco represented that it could not find matching double sliding closet doors “off the shelf” at the hardware store. Ponco said it could have someone make them for a similar price. Ms. Westfall says that in truth, the doors she wanted were widely available at the time. Based on the representation, Ms. Westfall says she decided to purchase the 3 custom doors. Ms. Westfall submits that Ponco made its untrue representation to either enrich itself or the door maker.
28. I have considered the law of misrepresentation. A fraudulent misrepresentation occurs when the seller makes a false statement of fact that the seller knew was false or was reckless about whether it was true or false, and the misrepresentation induced the purchaser into buying the vehicle. A negligent misrepresentation occurs when the seller carelessly or negligently makes a representation that is untrue, inaccurate, or misleading, and the purchaser reasonably relied on the misrepresentation, which reliance resulted in damages.
29. Here, I find it unproven that Ponco negligently or fraudulently misrepresented the availability of the sliding closet doors at the hardware stores. There is no evidence about this issue. So, I find Ms. Westfall’s allegations about misrepresentation are unproven.
30. Given the above, I order Ms. Westfall to pay \$1,474.32 for the doors. In total, Ms. Ponco must pay \$3,066.07. I also order Ponco to deliver the 3 custom closet doors described in its December 9, 2021 invoice to Ms. Westfall. Ponco must deliver the doors at Ms. Westfall’s address used in this proceeding unless the parties agree otherwise in writing. Ponco submits it should also be awarded a delivery fee, but I decline to do so. This is because Ponco already included a delivery fee in the sum of \$1,474.32.
31. Ponco claims for contractual interest. The April 29, 2021 quotes state that overdue accounts are subject to late interest of 1% per month. I find that Ms. Westfall agreed to pay this as I find the quote outlined their contract. However, section 4 of the federal *Interest Act* says that where a contract does not state an annual interest rate, a

maximum of 5% yearly interest applies. Neither the contract nor other documents state the annual interest rate. So, I find I may only order 5% yearly interest. I calculate contractual interest on the debt award of \$3,066.07, calculated on the amounts and dates of the underlying November 3 and December 9, 2021 invoices, to the date of this decision. This equals \$130.90.

32. 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 order Ms. Westfall to reimburse Ponco \$175 in CRT fees. The parties did not claim for any specific dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Ms. Westfall to pay Ponco a total of \$3,371.97, broken down as follows:
- a. \$3,066.07 in debt,
 - b. \$130.90 in contractual interest at the yearly rate of 5%, and
 - c. \$175 in CRT fees.
34. Ponco is entitled to post-judgment interest, as applicable.
35. Within 30 days of the date of this order, I order Ponco to deliver the 3 custom closet doors described in its December 9, 2021 invoice to Ms. Westfall. Ponco must deliver the doors at Ms. Westfall's address used in this proceeding unless the parties agree otherwise in writing.

36. 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