Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bongers v. Wamco Developments Inc.*, 2022 BCCRT 1281

B E T W E E N :

WARREN BONGERS and KAYLA UNGARO

APPLICANTS

A N D :

WAMCO DEVELOPMENTS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. The applicants, Warren Bongers and Kayla Ungaro, hired the respondent, Wamco Developments Inc., to do renovation work in their home that included a new addition. The applicants say the respondent charged them for a new home warranty that was never purchased. They also say the respondent took moulding that the applicants paid for. Lastly, the applicants say the respondent incorrectly charged a 15%

management fee for appliances that the applicants purchased on their own. The applicants seek a $3,912.68 total refund.

2. The respondent says that it did not charge the applicants for a new home warranty but charged them a builder warranty fee that it charges for all renovations. The respondent further says that it returned the left-over moulding to the moulding supplier for a $148.74 refund which it acknowledges the applicants are entitled to. Lastly, the respondent says that it is entitled to a 15% management fee on all construction costs under the contract, including for appliances the applicants purchased on their own.

3. The applicants are self-represented. The respondent is represented by its owner, WM.

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.

Preliminary Issues

8. The parties' August 22, 2019 construction contract has a clause that says the parties agreed to submit disputes to arbitration. The CRT is not arbitration. However, none of the parties rely on this arbitration clause, and so I will not address it further. I find the CRT has jurisdiction over this dispute under its small claims jurisdiction over debt and damages.

9. Further, the applicants provided 4 documents that I was unable to view. At my request, CRT staff requested the applicants resubmit these documents, which they did. The respondent was given an opportunity to review and respond to the resubmitted evidence but did not provide a response. Given the above, I have considered the resubmitted evidence in my analysis below.

ISSUES

10. The issues in this dispute are:

    a. What amount does the respondent owe the applicants for the left-over moulding?

    b. Are the applicants entitled to a refund for the builder warranty fee?

    c. Are the applicants entitled to a $1,104.45 refund for the management fee charged for appliances?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

What amount does the respondent owe the applicants for the left-over moulding?

12. It is undisputed that the applicants paid for all moulding that was required for the project. The applicants say that after the moulding was installed, a large amount remained left over which the respondent returned and never reimbursed them for. The applicants claim $1,017.84 for the returned moulding.

13. The respondent undisputedly returned the left-over moulding to the moulding supplier on August 18, 2020. A receipt in evidence shows the respondent received a $148.74 refund for the moulding. The applicants say the $148.74 does not account for all of the moulding that was left over and the respondent must have used some of it on another job. I find this allegation speculative and unproven. There is no evidence before me, other than the refund receipt, about how much moulding was left over. So, I find the applicants have failed to prove that they are entitled to a refund greater than $148.74. I order the respondent to pay the applicants $148.74 for the returned moulding.

Are the applicants entitled to a refund for the builder warranty fee?

14. The applicants say that since the first day they discussed the project with the respondent, WM told them that a new home warranty would be provided in accordance with British Columbia's *Homeowner Protection Act* (HPA). The applicants say the respondent did not purchase a new home warranty for them but instead charged them for a builder warranty fee that they never agreed to.

15. The respondent says that since this was a renovation project, a new home warranty was not legally required. The respondent further says it provides clients with an "in-

house" home warranty program to manage deficiency claims for all renovation projects. It is undisputed that in its August 25, 2020 invoice, the respondent billed the applicants $4,851 for a builder warranty fee. The respondent says this fee is non-refundable and that it has gone back multiple times to fix deficiencies for the applicants.

16. The applicants refer to clause 8(d) of the parties' contract in support of their allegation that only a new home warranty was ever discussed. Clause 8(d) says that the work will be done in accordance with the quality and workmanship set out in the HPA and "in conjunction with National Home Warranty Coverage".

17. The evidence also includes 4 cost sheets which the respondent gave to the applicants during the project. In the January 31, March 6, and April 28, 2020 cost sheets, the respondent estimated $4,620 plus GST for a "home warranty". In the final August 25, 2020 cost sheet, the respondent changed the description for the $4,620 estimate to "builder warranty" instead of home warranty.

18. Further, in a September 28, 2020 email in response to the applicants' questions about the builder warranty and other things, WM said that since the applicants moved into the addition before scheduling a deficiency walk-through, this meant the respondent was not responsible for any deficiencies in the new addition. WM went on to say that any issues with the old house could be addressed at the applicants' expense.

19. On balance, based on the evidence before me, I find it more likely than not that the respondent did not discuss a builder warranty with the applicants prior to billing them for it on August 25, 2020. The evidence before me suggests that the only warranty the parties discussed was a new home warranty, which the respondent undisputedly did not purchase.

20. I find there is nothing in the parties' contract that entitled the respondent to charge the applicants the $4,851 builder warranty fee. There is also no evidence that the applicants ever agreed to pay for a warranty other than a new home warranty. So, I find the applicants are entitled to a refund for the builder warranty.

21. Though the respondent charged $4,851 for this warranty, the applicants undisputedly held back $3,185.61 from their final payment to the respondent. The applicants claim a refund for the $1,665.39 difference. So, I order the respondent to pay the applicants $1,665.39 for the improperly charged builder warranty fee.

Are the applicants entitled to a $1,104.45 refund for the management fee charged for appliances?

22. It is undisputed that under the parties' contract, the respondent's work included sourcing appliances for the applicants. The parties' contract required the applicants to pay a 15% management fee of the total "Contract Costs". The contract defined "Contract Costs" as "the actual cost of all labour, materials, permits, taxes, and all other proper charges" in connection with the contract.

23. The applicants say that the parties eventually agreed the applicants could source and buy the appliances themselves, which they did. So, they say the respondent is not entitled to a management fee on the appliances. It is undisputed that the parties had previously agreed to remove certain painting work from the respondent's scope in order to help reduce costs. The respondent says that the same arrangement could have been made for the appliances if the applicants had discussed it before the respondent obtained quotes. The respondent says there was no such arrangement for the appliances and the $1,104.45 management fee for appliances was properly charged.

24. Section 4 of the parties' contract deals with changes to the work. Under this section, the parties could agree to add or remove items from the respondent's work scope. If the parties agreed to make such changes, the Contract Costs would be adjusted accordingly. If the respondent did not consent to the changes, the respondent was required to give the applicants reasons for its refusal within 7 days of the applicants' request.

25. On April 30, 2020, the respondent emailed a $6,035.74 quote for appliances to the applicants. After some emails back and forth, on May 6, 2020, the applicants told the

respondent that they could themselves arrange the appliances and an installer. The respondent responded to the applicants' email the following day addressing other matters.

26. I find the applicants' May 6, 2020 email was their request to remove the appliance work from the respondent's work scope. The respondent undisputedly continued to do renovation work for the applicants after receiving this email. However, there is no evidence that the respondent did any further work to source appliances for the applicants after their May 6, 2020 request. Notably, the respondent does not argue, and the evidence does not show, that it told the applicants that it did not consent to removing the appliance work from the contract.

27. Based on the above, I find the respondent agreed to the applicants' request to remove the appliance related work from the respondent's work scope. So, I find the appliances were not a "Contract Cost". It follows that I find the respondent was not entitled to charge the applicants a management fee on the appliances and so the applicants are entitled to a $1,104.45 refund. I order the respondent to pay the applicants this amount.

CRT FEES, EXPENSES AND INTEREST

28. The *Court Order Interest Act* applies to the CRT. However, the applicants expressly waive any claim for pre-judgment interest, so I make no order for interest.

29. 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 the applicants are entitled to reimbursement of $175 in CRT fees. The parties do not claim any dispute-related expenses.

ORDERS

30. Within 21 days of the date of this decision, I order the respondent to pay the applicants a total of $3,093.58, broken down as follows:

    a. $2,918.58 in debt, and

    b. $175 for CRT fees.

31. The applicants are entitled to post-judgment interest, as applicable.

32. 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.

Nav Shukla, Tribunal Member