



Civil Resolution Tribunal

Date Issued: January 27, 2023

File: SC-2022-004117

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Multiservices Vancouver Household Maintenance Ltd. v. Cascade Roofing & Exteriors Inc.*, 2023 BCCRT 72

B E T W E E N :

MULTISERVICES VANCOUVER HOUSEHOLD MAINTENANCE LTD.

APPLICANT

A N D :

CASCADE ROOFING & EXTERIORS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for construction cleaning services.
2. The applicant, Multiservices Vancouver Household Maintenance Ltd. (MVHM), and the respondent, Cascade Roofing & Exteriors Inc. (Cascade), both worked on the

same construction project in 2021, for a third-party general contractor, MC. MVHM says that Cascade damaged and stained some exterior pavers, and that MC instructed MVHM to clean the pavers and invoice Cascade for the work. MVHM says that Cascade has failed to pay its \$7,313.25 invoice. MVHM claims \$5,000, which is the small claims monetary limit for the Civil Resolution Tribunal (CRT), and it expressly abandons its claim to any amount over \$5,000. MC is not a party to this proceeding.

3. Cascade does not dispute that it agreed to pay MVHM for its cleaning services. However, Cascade says that MC reported deficiencies with MVHM's cleaning work and advised Cascade not to pay MVHM's invoice. Cascade says that MVHM refused to attend an on-site meeting with it and MC to review the alleged deficiencies, and so it was impossible to reach any agreement about what Cascade owed MVHM. I infer it is Cascade's position that this dispute should be dismissed.
4. MVHM is represented by a director, Ioana Alexandra Osan. Cascade is represented by its owner, Thomas Strahl.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.

ISSUES

9. The issues in this dispute are:
 - a. Did MVHM substantially complete the cleaning work, to the extent that it is entitled to payment of its invoice?
 - b. Was MVHM's work deficient, and if so, what are Cascade's damages, if any?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant MVHM must prove its claims 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 arguments that I find relevant to provide context for my decision. I note that MVHM did not provide any written reply submissions, despite having the opportunity to do so.
11. It is undisputed that MC approached MVHM in August 2021 about cleaning approximately 600 concrete pavers in a new building construction. The photographic evidence shows the pavers were dirty and stained with paint, rust, and other construction materials. MVHM sent MC an August 19, 2021 text quoting \$9,950 plus GST to clean the pavers. MVHM's text stated the quote included all required solvents

and removal of excess material between the pavers. It also stated that some stains would not come out completely, and MVHM anticipated “~ 80% removal”.

12. MVHM says that MC instructed it to invoice Cascade for 70% of the paver cleaning work because MC said Cascade was responsible for that proportion of the pavers’ stains. Cascade does not dispute this, and I find the evidence shows Cascade agreed to pay MVHM for 70% of its \$9,950 quote.
13. MVHM advised MC in a September 1, 2021 text that it completed the paver cleaning work. MVHM says it initially emailed its invoice to Cascade on September 7, 2021 but received no response, so it followed up and re-sent it on October 27, 2021. Cascade says it did not receive MVHM’s invoice before October 27, 2021, though I find nothing turns on whether it received the invoice earlier.
14. The evidence shows that MC emailed Cascade on November 2, 2021 to advise that MVHM did not complete the cleaning as promised, as most of the stains remained on the pavers. On November 4, 2021, Cascade emailed MVHM to arrange a site meeting with it and MC to review the alleged deficiencies with MVHM’s cleaning. MVHM responded that it was unwilling to attend a meeting with MC for reasons that are not relevant to this dispute. MVHM also advised Cascade that its guarantee is 48 hours and “at most a week”, from the time it completes a job. MVHM offered to instead provide Cascade with photos and videos showing it completed the work.
15. The parties’ email evidence shows they continued to communicate about MVHM’s outstanding invoice and that MVHM provided Cascade with its photos and videos on March 23, 2022. There is no evidence before me that Cascade responded. As the parties failed to reach any agreement, MVHM says it started this CRT dispute.
16. MVHM’s September 3, 2021 invoice to Cascade totals \$7,313.25, which is 70% of MVHM’s quote, including tax. It is undisputed that Cascade has not paid MVHM anything to date.
17. As a general principle, contractors like MVHM are entitled to payment upon substantial completion of a project. If a customer, like Cascade, believes there are

deficiencies with the contractor's work (which is relatively common in construction work), the customer may bring a claim for damages. However, the customer must still pay the contractor's invoice subject to any deduction for deficient work. See *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403.

18. Here, Cascade did not file a counterclaim. So, I infer it is Cascade's position that it is entitled to a set-off of the amount it owes MVHM for its work based on the law of deficiencies. As the party alleging deficiencies, Cascade bears the burden to prove them. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287, at paragraph 61.
19. The first question is whether MVHM substantially completed the contracted work. As noted, MVHM advised MC it had completed the work on September 1, 2021. I find Cascade does not seriously dispute that MVHM cleaned all the pavers it was contracted to clean. Rather, Cascade's position is that the quality of MVHM's work was substandard. So, I accept that MVHM substantially completed the contracted work. Therefore, I find it is entitled to payment of its \$7,313.25 invoice, subject to any deduction for deficiencies, addressed below.
20. Generally, expert evidence is required to prove whether a professional's work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry, which I find includes professional cleaning of various types of stains on concrete pavers. Exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.
21. Cascade says that it relied completely on MC's advice that MVHM's work was unsatisfactory. MC's November 2, 2021 email to Cascade stated that most of the stains still existed after the cleaning. MC's November 4, 2021 email to Cascade again stated that MVHM was supposed to remove everything off the pavers, but it had not done so. However, there is no evidence that MC provided Cascade with any supporting documentation about what stains it alleged MVHM had failed to remove.

22. Further, as noted above, MVHM's quote stated it anticipated being able to remove only about 80% of the paver stains. It is unclear whether that meant MVHM would be able to remove 80% of the stains completely and 20% would remain, or whether it meant that all stains would be visibly reduced by 80%. Either way, I find Cascade has provided no evidence that MVHM failed to achieve its stated target to remove about 80% of the paver stains. Significantly, Cascade did not provide a statement from MC.
23. Cascade argues that it had to rely on MC's evaluation of whether MVHM's cleaning work was satisfactory because MC would hold Cascade responsible if any further cleaning was required. However, Cascade provided no evidence that MC demanded that Cascade perform any additional cleaning after MVHM completed its work, or that Cascade incurred any expense to fix the alleged deficiencies with MVHM's work.
24. In the absence of any photographic or other supporting evidence showing what stains remained after MVHM's cleaning, I cannot determine whether MVHM's work was obviously substandard. Further, as Cascade has not submitted any expert evidence stating that MVHM's cleaning work fell below the expected industry standard, I find Cascade has not proven MVHM's work was deficient. For these reasons, I find Cascade is not entitled to any set-off against MVHM's invoice.
25. In summary, I find Cascade is responsible for MVHM's \$7,313.25 invoice, so I order Cascade to pay MVHM the claimed \$5,000.
26. MVHM expressly says it does not claim pre-judgment interest, and so I do not award any.
27. 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. As MVHM was successful, I order Cascade to reimburse it \$175 in CRT fees. Neither party claims dispute-related expenses.

ORDERS

28. Within 21 days of the date of this decision, I order Cascade to pay MVHM a total of \$5,175, broken down as follows:
- a. \$5,000 in debt, and
 - b. \$175 in CRT fees.
29. MVHM is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
30. 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.

Kristin Gardner, Tribunal Member