Civil Resolution Tribunal

Date Issued: August 14, 2023

File: SC-2022-007062

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lillooet Contracting Ltd. v. Tripp*, 2023 BCCRT 681

B E T W E E N :

LILLOOET CONTRACTING LTD.

APPLICANT

A N D :

PATRICIA TRIPP

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about liability for an unpaid May 2022 invoice. The applicant, Lillooet Contracting Ltd., says the respondent, Patricia Tripp, did not pay for repairs related to acrylonitrile butadiene styrene (ABS) drainage pipes. It seeks an order for payment of $685.53 plus contractual interest at the monthly rate of 2%.

2. The respondent denies liability. They say the applicant's invoice is for fixing deficiencies from previous work done in January and February 2022. They say that the applicant was obligated to carry out such work for free.

3. Douglas Grossler is the applicant's owner and representative in this dispute. The respondent is self-represented.

4. For the reasons that follow, I find the applicant has proven its claim.

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.

9. The respondent expressed concern about 2 photos of her house not loading correctly. I had no difficulty viewing any of the evidence in this in this dispute. In any event, for reasons discussed below, my decision does not turn on photos of the house.

ISSUES

10. The issues in this dispute are as follows:

    a. Was the applicant's work from January and February 2022 deficient?

    b. Must the respondent pay the May 2022 invoice?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, 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.

12. Mr. Grossler provided an April 28, 2023 statement about the history of this dispute. He says the following. On January 19, 2022, the applicant's employee attended the respondent's property. There were multiple water leaks in the home. It is undisputed that this was caused by water freezing in the interior pipes and later thawing after a period of vacancy. A January 21, 2022 invoice shows that the applicant repaired the leaking pipes and a water meter. It is undisputed that the respondent paid this invoice.

13. The respondent says they hired the applicant to also complete flood restoration and "all leaks" in the house. I find this was likely the case, with some exceptions noted below. This is because Mr. Grossler says in his statement that the applicant also pressure tested water lines to check for additional leaks, snaked the kitchen drain as it was plugged, removed damaged materials and installed customer-supplied flooring, and installed heat trace on the pipes to prevent future freezing. So, I find the work included identifying and fixing other leaks at the property.

14. I note that the January 2022 invoice does not show all the above-described work. However, the parties' submissions indicate that it happened, and the applicant issued another invoice in February 2022 that is not before me, presumably for this work.

15. Mr. Grossler's undisputed account is that between February 9 and 12, 2022, the respondent detected water on the new flooring by the toilet. The applicant returned and fixed an improper seal at no cost. Mr. Grossler says the applicant did so because he was unsure if the applicant's work was responsible.

16. Mr. Grossler also say that on April 29, 2022, the respondent called the applicant and said there was water on the bathroom floor. The applicant's plumber attended and found the cause was a tub drain leak and a section of drainage in the wall from the bathroom sink. The applicant fixed the issue and on May 9, 2022 invoiced the respondent for the claimed $685.53. I find Mr. Grossler's account supported by the invoice and nothing else contradicts it.

Issue #1. Was the applicant's work from January and February 2022 deficient?

17. There is no indication that the parties agreed in advance on the April and May 2022 work would be done at no charge or at an extra charge. In particular, there is no indication the applicant said it would necessarily do this work for free.

18. Where there is no meeting of the minds, a party may still be entitled to payment on a *quantum meruit* basis, which means a reasonable payment for work done. See *Johnson v. North Shore Yacht Works Corp*, 2014 BCSC 2057 at paragraph 100.

19. Based on the circumstances, I find that from an objective perspective, the parties likely agreed that the applicant would do the work at no charge if it was due to a deficiency in its work. Notably, the applicant had done so before. I also find that, if the latest leak was unrelated to deficient work, the respondent agreed to pay a reasonable amount for the work, or that the applicant is entitled to such payment on a *quantum meruit* basis.

20. I next consider whether the applicant's work was deficient. The applicant says that the April 2022 leak was due to drainage and wastewater issues, and therefore unrelated to the waterlines feeding the property. It says this was a new issue and not a deficiency.

21. The respondent disagrees and says April and May 2022 work should have been included in the initial January and February 2022 repairs, or should have been done for free as deficiency repairs.

22. I find that, as the respondent claims that the applicant's earlier work is deficient, the respondent has the burden to prove this is the case. See *Balfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 16, and *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287. In general, expert evidence is required to prove a professional's work was deficient or that it fell below a reasonably competent standard. However, expert evidence may not be necessary when the work is obviously substandard, or the deficiency relates to something non-technical. See *Absolute Industries* and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196.

23. This dispute is about plumbing, so I find the deficiency relates to technical matters. As noted above, the applicant says the freezing that affected the water lines would not affect the drainage pipes. I find that to be a matter that is not within ordinary experience.

24. I also do not find it obvious that the work is substandard because, on the evidence before me, there is no indication that the applicant should have investigated the drainage earlier. The respondent first noticed drainage pipe issues in late April 2022, more than 3 months after they first reported plumbing issues in January 2022. The applicant's undisputed submission is that it tested throughout the property for leaks in January or February 2022 and did not identify the drainage issue. I do not find it obvious that the applicant carried out its tests incorrectly or in a substandard manner.

25. Further, given the passage of time, I do not find it clear that the drainage issues existed at the time the respondent hired the applicant in January 2022. As noted

above, professionals are expected to do work at a reasonably competent standard. There is no indication the applicant provided a guarantee or otherwise insured against all leaks anywhere in the house at any time, regardless of the cause.

26. For all those reasons, I find the respondent requires expert evidence to show the applicant's work was deficient. The respondent did not provide such evidence in this dispute. So, I find it unproven that the applicant's work was deficient.

Issue #2. Must the respondent pay for the May 2022 invoice?

27. I have found it unproven that the applicant's previous work was deficient. Likewise, there is no indication that the April and May 2022 work was deficient. It is undisputed that the applicant remains unpaid for the work. So, I order the respondent to pay the applicant $685.53 for work done.

28. As noted, the applicant also claims for contractual interest at the monthly rate of 2%. This rate appears at the bottom of the May 2022 invoice. However, there is no indication that the respondent agreed to pay the late interest. An applicant cannot unilaterally impose contractual interest by printing it on the invoice. See *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775. So, I dismiss the claim for contractual late interest.

29. In the absence of an agreement about interest, the *Court Order Interest Act* applies to the CRT. I find the applicant is entitled to such pre-judgment interest on the debt of $685.53 from May 9, 2022, the invoice date to the date of this decision. This equals $25.73.

30. 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 applicant is entitled to reimbursement of $125 in CRT fees. The parties did not claim any specific dispute-related expenses.

ORDERS

31. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $836.26, broken down as follows:

    a. $685.53 in debt,

    b. $25.73 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

32. The applicant is entitled to post-judgment interest, as applicable.

33. I dismiss the applicant's claim for contractual interest.

34. 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