



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yuen v. Swan*, 2024 BCCRT 86

B E T W E E N :

CLAYTON YUEN

APPLICANT

A N D :

EDWARD SWAN

RESPONDENT

A N D :

CLAYTON YUEN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. These 2 linked small claims disputes are about payment for building a vacation home and a deck. The 2 disputes are a claim and a counterclaim involving the same parties, so I have issued a single decision for both disputes.
2. The respondent, Edward Swan, hired the applicant, Clayton Yuen, to form and frame his vacation home and build a deck off the home. Mr. Yuen says Mr. Swan paid for his work forming and framing the vacation home but has refused to pay for his work on the deck. He claims \$3,500.
3. Mr. Swan says that he already paid for Mr. Yuen's work framing his home and the deck should have been included with the home framing. Mr. Swan also says there were deficiencies in Mr. Yuen's work and counterclaims for \$5,000.
4. Both parties are self-represented.

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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Does Mr. Swan owe \$3,500 to Mr. Yuen for building the deck?
 - b. Is Mr. Swan entitled to \$5,000 in damages for allegedly deficient work?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Yuen must prove his claims on a balance of probabilities. Mr. Swan must prove his counterclaim to the same standard. 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.

Does Mr. Swan owe \$3,500 to Mr. Yuen for building the deck?

10. It is undisputed that Mr. Swan purchased a pre-fabricated home to build on his vacation property. Mr. Yuen sent Mr. Swan a written proposal dated August 9, 2021, to form and frame the vacation home. The proposal provides a scope of work for forming the home and lists \$65 as the hourly rate for Mr. Yuen and his team, with 2 workers working over three to four days. The proposal also provides a scope of work for framing the home at a total cost of \$44,500. The scope of work for framing the home includes the "install of all exterior decks". Despite the home forming being listed as a separate charge, the proposal's conclusion states that the total estimated cost for the project is \$44,500.
11. The parties never signed a formal contract. Mr. Swan's copy of the proposal has a handwritten notation stating that the \$65/hour rate would be reduced if he paid in cash. An email from Mr. Yuen to Mr. Swan dated September 24, 2022, suggests that

he agreed to reduce his hourly rate. However, neither party made any submissions on what Mr. Yuen's hourly rate was. There are no invoices in evidence which provide a breakdown of hours charged by Mr. Yuen and his team. Mr. Swan provided receipts signed by Mr. Yuen which show that he gave Mr. Swan four \$10,000 cash payments. The parties agree that Mr. Swan paid a total of \$44,000 in cash, even though there is no receipt for the remaining \$4,000.

12. I find that the parties finalized their agreement through a combination of written terms in the proposal and verbal agreements. There are no invoices showing hourly charges, Mr. Swan's cash payments are all in large dollar figures, and the total amount Mr. Yuen charged was exactly \$44,500, less a \$500 discount. So, I find that the parties agreed that Mr. Yuen would form and frame the vacation home for a flat fee of \$44,500.
13. On December 11, 2021, at Mr. Swan's request, Mr. Yuen provided a quote for \$5,000 to build a deck off of the main floor of the vacation home. It is undisputed that the parties later verbally agreed to \$3,500 as the price for Mr. Yuen to build the deck.
14. Mr. Swan admits that he agreed to pay \$3,500 for the deck, but says he later realized that the deck was part of the parties' agreement to frame the home. He points to the home's engineering plan which includes the deck and says Mr. Yuen's proposal included all exterior decks. Mr. Swan argues that the \$3,500 for the deck puts Mr. Yuen's charges over the \$44,500 fee for forming and framing the home.
15. Mr. Yuen says the deck was not included in the forming and framing agreement. He points out that the deck is labelled "NIC" on the home's engineering plan. He says that NIC means "not in contract" so the deck was not included in his original proposal or the parties' agreement. He says that the later contract to build the deck was separate, so Mr. Swan owes him \$3,500.
16. Mr. Swan admits that the engineering plan labels the deck as NIC, but says that it only means that the pre-fabricated home company would not supply building materials for the deck.

17. I find that the deck was not included in Mr. Yuen's original proposal or the parties' subsequent agreement to form and frame the home. The engineering plan for the home states that the deck is not in the contract and the pre-fabricated home company did not supply building materials for the deck. Mr. Swan requested a quote from Mr. Yuen for the deck which shows that both parties considered the deck to be outside the forming and framing agreement. I find that the parties agreed that Mr. Yuen would build the deck for \$3,500 and that this amount remains unpaid. This is subject to any set-off for deficiencies in the deck's installation, discussed below.

Is Mr. Swan entitled to \$5,000 in damages for allegedly deficient work?

18. Mr. Swan alleges that Mr. Yuen's work on the vacation home was deficient. In his Dispute Notice, Mr. Swan has identified ten separate areas where he says Mr. Yuen's work required remediation. These deficiencies relate both to the home framing and the deck. Mr. Swan also claims expenses for transport and lodging Mr. Yuen and his team at the building site.

19. Mr. Swan provided a report by an engineer dated June 15, 2022, with a list of deficiencies. Mr. Swan says he fixed these issues himself. The engineer's site review dated August 23, 2022, notes that the home's framing is installed according to structural drawings, no further structural reviews are needed, and that the installation of the exterior of the home can proceed.

20. It is undisputed that the parties met on September 22, 2022. Mr. Yuen says that the parties agreed that he would reduce his final invoice by \$500 to settle all issues related to the home. Mr. Swan says he paid the invoice and the parties agreed to a \$500 holdback. In his submissions, Mr. Swan says he realized at the time that \$500 would only cover a small part of the cost of fixing the deficiencies.

21. Creating a settlement agreement is no different than creating any other contract. There must be an offer and acceptance of that offer. In the context of a settlement agreement, there also must be evidence that the parties agreed, without qualification, to the essential terms of a settlement. The settlement agreement is then binding on

the parties. It is unnecessary for a settlement agreement to be a formal written or signed contract (see *Salminen v. Garvie*, 2011 BCSC 339, at paragraphs 24 to 27).

22. I find that the parties agreed to settle all issues related to the home's forming and framing. Mr. Swan had the engineer's report and was aware of the deficiencies which needed to be fixed. He was also aware of how much he had paid to transport and lodge Mr. Yuen and his team. Though Mr. Swan refers to the \$500 discount as a holdback, the remedial work was already completed on September 22, 2022, and it was open to Mr. Swan to claim the full cost of remediation. Instead, Mr. Swan paid Mr. Yuen's final invoice and admits that he paid because he wished to be done with the relationship. I find that the parties settled all outstanding issues related to the home's forming and framing. So, I dismiss Mr. Swan's claims for damages related to the home's forming and framing.
23. I turn to the alleged deficiencies in Mr. Yuen's work on the deck. Mr. Swan says the deck was built incorrectly because the joist straps were not "buried" in the superstructure. He says that he removed the plywood himself to fix this and discovered that the plywood had not been glued down. He says gluing plywood is standard practice. Mr. Swan says these issues caused the plywood to buckle and delaminate.
24. Mr. Yuen admits that using glue would have been better building practice, however he says the deck was ready to finish in February 2022. He says the plywood is buckling because Mr. Swan did not apply a finish to the deck and it was exposed to the elements from February to September 2022. Mr. Yuen says that the engineer's report dated June 15, 2022, found no issues with the deck's construction and only says that the engineer will provide reinforcing details for the deck's edge. Mr. Yuen says he never received any email from the engineer or Mr. Swan about further steps to take on the deck.
25. Expert evidence is generally required when an issue is outside the knowledge of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283). I find that the construction of a deck is highly specialized and the cause of the plywood buckling and

delaminating must be proven with expert evidence. On the evidence before me, I am unable to determine the cause of the plywood buckling and delaminating. So, I find that Mr. Swan has not met his burden of showing that Mr. Yuen's work on the deck was deficient. I dismiss Mr. Swan's claim for damages related to the deck.

INTEREST, FEES, AND EXPENSES

26. The *Court Order Interest Act* applies to the CRT. Mr. Yuen is entitled to pre-judgment interest on the \$3,500 from September 24, 2022, the date Mr. Yuen formally demanded payment for the deck, to the date of this decision. This equals \$195.17.
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. I see no reason in this case not to follow that general rule. I find that Mr. Yuen is entitled to reimbursement of \$175 in CRT fees. Mr. Swan was not successful, so I do not order any reimbursement of his CRT fees.
28. Mr. Yuen asks for an order that Mr. Swan pay him \$12.27 for the cost of sending his demand letter by registered mail. I find that this expense was not necessary. Mr. Swan responded to Mr. Yuen's demand letter when sent by email. So, I do not order any reimbursement of Mr. Yuen's registered mail expense. Mr. Swan did not claim any dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order Mr. Swan to pay Mr. Yuen a total of \$3,870.17, broken down as follows:
 - a. \$3,500 as debt,
 - b. \$195.17 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.

30. Mr. Yuen is entitled to post-judgment interest, as applicable.

31. 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.

Peter Mennie, Tribunal Member