Civil Resolution Tribunal

Date Issued: February 6, 2024

Files: SC-2023-002673
and SC-CC-2023-005950

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crane v. Art Monolith Construction Inc.*, 2024 BCCRT 115

B E T W E E N :

SHU-CHEN CRANE

APPLICANT

A N D :

ART MONOLITH CONSTRUCTION INC.

RESPONDENT

A N D :

SHU-CHEN CRANE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. These 2 disputes are about landscaping work. I find these 2 linked disputes are a claim and counterclaim. So, I have considered the evidence and submissions in both disputes and issued 1 decision.

2. In dispute number SC-2023-002673, Shu-Chen Crane claims Art Monolith Construction Inc. (Art) overcharged her for landscaping work that it did not complete. She further says that the work Art did do was substandard. Mrs. Crane claims $4,800 from Art for the cost of redoing and completing the contracted landscaping work. Mrs. Crane is self-represented.

3. Art denies that it overcharged Mrs. Crane and says its work was not substandard. Art says Mrs. Crane unilaterally terminated the parties' contract and it only invoiced Mrs. Crane $19,577.25 for the value of the work it completed. Art acknowledges Mrs. Crane has paid it $16,100. So, in dispute number SC-CC-2023-005950, Art claims the remaining balance of $3,477.25 from Mrs. Crane. Art is represented by its owner, Jacob Lin.

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). CRTA section 2 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.

5. CRTA section 39 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 and that an oral hearing is not necessary.

6. CRTA section 42 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.

7. Where permitted by CRTA section 118, in resolving disputes 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. First, in the Dispute Notices for both disputes, the parties named Art Monolith Construction Inc. as "Jacob Lin (Doing Business As Art Monolith Construction Inc.)". Neither party raised an issue about how Art was named in the Dispute Notices. However, the evidence shows that the parties' written contract is between Mrs. Crane and Art, an incorporated company, not Jacob Lin the individual.

9. Mrs. Crane's proof of service form shows that she sent the Dispute Notice for dispute SC-2023-002673 to Art's registered and records office, meaning that she served Art, the registered corporation, and not Jacob Lin personally. Based on the evidence and information before me, I find the parties proceeded on the basis that Art had been properly named in this dispute. So, I find it appropriate here to exercise my discretion under CRTA section 61 to amend the style of cause to correct Art's name from "Jacob Lin (Doing Business As Art Monolith Construction Inc)" to "Art Monolith Construction Inc." I note that if the parties had intended to name Jacob Lin as respondent and counterclaim applicant, I would have dismissed both disputes as the evidence does not show any contract between Mrs. Crane and Jacob Lin personally.

10. Next, both parties submitted some evidence that was not in English. Art submitted some translations, but Mrs. Crane did not. CRT rule 1.7(5) says all information and evidence must be in English or translated to English. So, in making my decision I have relied only on the evidence that is in English or has been translated to English.

ISSUES

11. The issues in this dispute are:

    a. Did either party breach the contract?

    b. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Mrs. Crane must prove her claims on a balance of probabilities (meaning more likely than not). Art must prove its counterclaim on the same standard. I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

Background

13. The evidence shows as follows. On October 14, 2022, Mrs. Crane signed a written agreement hiring Art to do landscaping work at her newly constructed home for $20,362 plus GST. According to the parties' contract, the work included levelling the ground, constructing 3 wooden balconies, preparing portions of the city sidewalk outside of Mrs. Crane's property for new concrete, among other things. Art started work on October 15. Then, in an October 18 document, the parties agreed to expand the scope of Art's work to include a ground floor terrace for $800 and wooden fences for $14,300. In a series of November 1 text messages, Mrs. Crane also agreed to pay Art an additional $900 to remove the front yard fence and $600 for labour costs of installing and modifying Mrs. Crane's fence. I find the October 14 signed contract, the October 18 signed document, and the parties November 1 text messages together set out the terms of the parties' agreement for the landscaping work totaling $38,810.10 (tax inclusive).

14. Art continued its landscaping work for Mrs. Crane until November 7 at which point Mrs. Crane asked Art to leave the jobsite. In a November 8 letter, Mrs. Crane

confirmed to Art that she was cancelling their agreement because of Art's alleged inferior work.

15. As of November 7, Art undisputedly had not completed all of the contracted landscaping work. On November 10, Art sent Mrs. Crane its $19,577.25 invoice for the work that it said it had completed. At this point, Mrs. Crane had already paid Art $16,100. So, Art asked her to pay the remaining $3,477.25. This is the amount Art seeks in its counterclaim.

16. On November 14, Mrs. Crane emailed Art, asking it to come back to complete various jobs that Art had invoiced her for. Art undisputedly did not respond to this email or return to the jobsite.

17. The evidence shows Mrs. Crane hired B&S Landscaping Ltd. (B&S) after Art's departure. Mrs. Crane says she paid B&S $4,800 to re-do and complete Art's allegedly unfinished and deficient work.

Did either party breach the contract?

18. An owner may terminate a construction contract if the contractor commits a substantial breach of the contract, such that the breach amounts to repudiation of the contract by the contractor (see *Lind v. Storey*, 2021 BCPC 2 at paragraph 94). While there is an implied warranty in all contracts for work and labour that the work will be carried out in a good and professional manner, in general, merely poor or defective work will not be enough to entitle an owner to terminate a contract (see *Lind* at paragraphs 83 and 94).

19. Mrs. Crane alleges various deficiencies in Art's work. As the party alleging the deficiencies, Mrs. Crane has the burden of proving them (see *Lund v. Appleford Building Company Ltd. et al,* 2017 BCPC 91 at paragraph 124). Where a dispute's subject matter is technical or beyond common understanding, it is necessary to produce expert evidence to help the decision-maker determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131). Mrs. Crane did not provide any expert evidence here.

20. From the photographs and videos in evidence, I am unable to find any deficiencies in Art's work that would amount to a substantial breach of contract. So, I find Mrs. Crane has not shown that Art committed any substantial contractual breach. Rather, I find it was Mrs. Crane that repudiated the contract when she told Art to stop work and leave the jobsite on November 7. Repudiation is when a party indicates to another party that it no longer intends to be bound by their contract (see *Mantar Holdings Ltd. v. 0858370 B.C. Ltd.*, 2014 BCCA 361). Where a party repudiates a contract, the innocent party may accept the repudiation and bring the contract to an end. This means the parties are discharged from their future obligations. However, rights and obligations that have already matured are not extinguished, and the innocent party is entitled to seek damages from the repudiating party (see *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC)).

21. I find Art accepted Mrs. Crane's repudiation when it left the jobsite at her request on November 7. So, Art is entitled to seek damages for Mrs. Crane's repudiation. Here, Art claims the alleged value of the work it actually performed for Mrs. Crane. I find Art is entitled to be paid for the work it completed. My findings about how much Art is entitled to follow.

Invoiced work

22. Art billed Mrs. Crane for completing 9 tasks in its November 10 invoice. As noted, Mrs. Crane argues that Art did not fully complete all of these tasks, and much of the work Art did complete was deficient.

Ground leveling

23. Art charged Mrs. Crane $4,000 for ground leveling. Mrs. Crane does not dispute that she agreed to pay $4,000 for Art to complete this work. However, she argues that Art did not complete it properly. I find photographs and videos show various areas where the ground is clearly uneven and not properly levelled. The evidence shows B&S charged Mrs. Crane $800 to re-level the ground. Under the circumstances, I find Art is entitled to only $3,200 for leveling the ground.

Custom overlap wooden fence, flat wooden fence, and interval wooden fence

24. Art charged Mrs. Crane $2,500 for completing 5 overlapping fence panels at $500 a panel, 3 panels of a flat wooden fence for $1,200 (at $400 a panel), and $3,000 for constructing 10 panels of interval fencing at $300 a panel. Mrs. Crane does not dispute these rates and I find these are the rates the parties agreed to for each completed fence panel. However, I find photographs and videos in evidence show that while constructed, none of these panels were fully complete. Many of these panels appear to be wobbly and all appear to be missing bottom rails as well as concrete to ground the fence posts. Art says it did not use concrete to ground the posts because it was waiting for Mrs. Crane to confirm the final boundary for the fence. Mrs. Crane denies this and says that she had a survey done in June 2021 confirming her property's boundaries and says there were markers identifying the boundary which Art should have used to finalize the fence's location. Art did not provide any evidence to show that it was waiting for Mrs. Crane to confirm the final boundary. In any event, Art did not finish grounding the fence posts with concrete, so I find it is not entitled to charge for this work.

25. B&S's December 15, 2022 invoice says it charged Mrs. Crane $1,000 to finish the wobbling overlapping fence. It is unclear whether B&S's work was limited to completing the 5 panels that Art had partially constructed or for also adding missing panels. Under the circumstances, and on a judgment basis, I find it appropriate to reduce Art's $2,500 invoiced amount for the overlapping fence panels to $2,000.

26. For the flat wooden fence, given my finding that the 3 panels were only partially constructed, I find it appropriate to reduce Art's invoiced amount to $900 for these 3 fence panels. Finally, for the interval fence, in addition to saying it was incomplete, Mrs. Crane says that Art did not use enough nails for each slat. Mrs. Crane paid B&S $1,550 to re-do the 10 panels and stabilize the fence. I find it is outside ordinary knowledge whether Art used an inadequate number of nails, requiring the whole fence to be re-done. Without expert evidence, I find this deficiency unproven. However, given that the interval fence was clearly not fully constructed, on a judgment

basis, I find Art is entitled to only $2,500 for the work it did in constructing the interval fence.

Wooden balconies

27. Next, Art invoiced Mrs. Crane $4,775 for completing 4 wooden balconies. Mrs. Crane does not dispute she agreed to pay this amount for the 4 balconies but argues that 1 of the balconies was unfinished. I find the evidence shows that 1 of these balconies was likely missing nails and had a small gap. I acknowledge that Art says that it had fixed the gap, but it provided no evidence of the completed balcony, whereas Mrs. Crane provided a video that she says is from November 8 which clearly shows a gap. So, on a judgment basis, I find Art is entitled to only $4,555 for the 3 completed balconies and 1 partially completed balcony.

Entrance template

28. Art charged Mrs. Crane $500 for completing an entrance template. Mrs. Crane does not dispute that she agreed to pay this amount for the template. However, she says that the template Art created was incomplete and poorly constructed with scrap wood, which led to it falling apart. Art disputes this and says that it completed the template properly, but Mrs. Crane's other contractors dismantled it while installing a staircase. I am satisfied from photographs in evidence that Art likely completed the template. I am unable to find any obvious deficiencies from these photographs. So, I find Art is entitled to the full $500 it charged for the entrance template.

Labour for replacing fence

29. Art invoiced Mrs. Crane $600 for labour to replace a fence. It is not entirely clear what this work consisted of. Art says that Mrs. Crane agreed to pay this amount in their November 1 text message exchange mentioned above. While I agree that Mrs. Crane agreed to pay $600 for labour costs to replace a fence, I find Art has not shown what this work included or that it completed this work. So, I find Art is not entitled to the $600 fence replacement labour costs.

Labour for removing the existing fence

30. Next, Art invoiced Mrs. Crane $270 for removing 3 pieces of original fencing, at $90 each. Mrs. Crane admits that Art removed these 3 pieces of fencing and I find she agreed in the November 1 text messages to pay Art $900 for removing all of the old existing fence. I find the $270 Art charged for removing the 3 pieces reasonable.

Removing and disposing of concrete from the city sidewalk

31. Lastly, Art charged Mrs. Crane $1,800 for removing and disposing of concrete from the city sidewalk in front of Mrs. Crane's property. I find Mrs. Crane agreed to pay Art $2,800 to prepare the sidewalk for new concrete. Art undisputedly only removed the concrete and did not complete the formwork or gravel compaction. Art says that it only charged Mrs. Crane for the portion of the work it completed. The evidence shows Mrs. Crane paid B&S $450 to complete the sidewalk work. Under the circumstances, I find nothing unreasonable about the $1,800 Art charged and I allow it.

Conclusion

32. In total, I find Art was entitled to charge Mrs. Crane $15,725 plus GST for the landscaping work it completed. This totals $16,511.25. As noted above, Mrs. Crane already paid Art $16,100. So, I order Mrs. Crane to pay Art the remaining $411.25. As I have made appropriate deductions to Art's invoiced amounts to account for the value of the work it actually completed, I find Mrs. Crane is not entitled to the $4,800 she claims for hiring B&S to complete Art's work. So, I dismiss Mrs. Crane's claims in dispute SC-2023-002673.

Interest, CRT fees, and dispute-related expenses

33. The *Court Order Interest Act* (COIA) applies to the CRT. Art is entitled to pre-judgment interest on the $411.25 from November 10, 2022, the date of its invoice, the date of this decision. This equals $22.50.

34. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. Since Mrs. Crane was unsuccessful, I dismiss her claim for CRT fees. I find Art was partly successful in its counterclaim. So, I award it $62.50 for half its paid CRT fees. Art also claims $4,000 for dispute-related expenses. The evidence shows Art paid $200 for translation fees on October 3, 2023 and $53 for translation fees on October 17, 2023. I find Art is entitled to $126.50 for half the translation fees. The evidence also includes a $1,000 payment receipt from YL who says they assisted Art with collecting and submitting evidence and arguments for these disputes. CRT rule 9.5(5) says that compensation for time spent on a dispute is not usually awarded except in extraordinary cases. I find no extraordinary circumstances exist here. So, I order no further reimbursement.

ORDERS

35. Within 30 days of the date of this decision, I order Mrs. Crane to pay Art a total of $622.75, broken down as follows:

    a. $411.25 in debt for the unpaid landscaping work,

    b. $22.50 in pre-judgment interest under the COIA, and

    c. $189 for $62.50 in CRT fees and $126.50 in dispute-related expenses.

36. Art is entitled to post-judgment interest, as applicable.

37. I dismiss Mrs. Crane's claims and Art's remaining counterclaims.

38. Under CRTA section 58.1, 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