



Civil Resolution Tribunal

Date Issued: May 24, 2024

Files: SC-2023-002712 and
SC-CC-2023-010509

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Richard Sanches (Doing Business As Attic Electric) v. Brown*, 2024 BCCRT
475

B E T W E E N :

RICHARD SANCHES (Doing Business As ATTIC ELECTRIC)

APPLICANT

A N D :

JOHN BROWN

RESPONDENT

A N D :

RICHARD SANCHES (Doing Business As ATTIC ELECTRIC)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This decision relates to 2 linked disputes that I find collectively consist of a claim and counterclaim. So, I have issued one decision for both disputes.
2. Richard Sanches (Doing Business as Attic Electric) says he completed electrical work for John Brown, but Mr. Brown has refused to pay the outstanding portion of his invoice. Mr. Sanches claims \$2,536 for the unpaid portion of his invoice.
3. Mr. Brown disputes Mr. Sanches' claims. He says he has already paid Mr. Sanches \$6,175 in cash for incomplete and deficient electrical work. Mr. Brown counterclaims \$2,650, the amount he says he had to pay another electrician to complete the electrical work, plus the electrical permit and lost food.
4. The parties are each 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.
7. Both parties in this dispute call into question the credibility of the other, and Mr. Sanches requested an oral hearing because credibility is at issue. However, the credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am

properly able to assess and weigh the documentary evidence and the parties' submissions. 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.

8. 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 court.
9. 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

10. The issues in this dispute are:
 - a. To what extent, if any, is Mr. Brown responsible to pay Mr. Sanches \$2,536 for his invoice?
 - b. To what extent, if any, is Mr. Sanches responsible to pay Mr. Brown \$2,650 in damages?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Mr. Sanches must prove his claims on a balance of probabilities (meaning more likely than not). Mr. Brown bears the same burden for his counterclaims. I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.

Mr. Sanches' claim

12. It is undisputed that Mr. Brown hired Mr. Sanches to complete electrical work. Mr. Brown initially agreed to a \$3,700 estimate for some electrical work, and later agreed to some extra work. None of this is disputed.
13. Mr. Sanches submitted a March 8, 2023 invoice totaling \$6,536.25. After accounting for a \$4,000 deposit, the outstanding balance totaled \$2,536.25. The parties dispute whether Mr. Brown has paid the invoice's balance.
14. Mr. Sanches says Mr. Brown paid him \$2,000 at the start of the job, and another \$2,000 before his last visit on December 14, 2022. Mr. Sanches says at that time, all the electrical work was tested and working, with the exception of some limited outstanding electrical work that could not be completed until the counters were installed.
15. For his part, Mr. Brown says he paid Mr. Sanches \$6,175 in cash for incomplete and deficient work. Mr. Brown did not explicitly address the initial \$2,000 deposit, but says he paid \$4,175 and says Mr. Sanches did not give him a receipt because he did not want to declare it to the "CRA". Mr. Brown says Mr. Sanches only made up an invoice after Mr. Brown accused him of cheating the CRA and "not claiming the tax".
16. Mr. Sanches disputes this and says he provided the invoice in March 2023 when Mr. Brown made it clear that he would not allow Mr. Sanches to complete the work nor pay the remainder of what he owed for the electrical work. Mr. Sanches says he does not invoice until the job is complete. He says that up until March 2023, he thought that he was waiting for countertops to be installed before completing the outstanding electrical work.
17. When parties choose to deal in cash, it is harder to prove what amounts, if any, have not been paid. The onus is generally on the payor (here, Mr. Brown) to prove what he paid once the debt is proven.

18. Mr. Brown provided an October 27, 2022 bank withdrawal slip for \$5,000 in cash. Mr. Brown also provided a statement from CB, who I infer is related to Mr. Brown. In his statement, CB says he went to the condo to pick up funds and was present on two occasions. He says the first payment was \$2,000 and the second payment was \$4,175 on December 14, 2022. He says he brought the funds to the condo and Mr. Brown gave the funds to Mr. Sanches. He says Mr. Sanches counted the funds and then left. CB also says he went to the bank and withdrew \$5,000 cash on October 27, 2022.
19. Mr. Sanches says this is entirely false. He says Mr. Brown is not credible and says CB had nothing to do with the business side of this job. Mr. Sanches says Mr. Brown was the only one who gave him money, and as noted above, says it was an initial \$2,000 payment and a second \$2,000 payment on December 14, 2022. Mr. Sanches says he accepts payments by cash, cheque, or e-transfer, and Mr. Brown insisted on paying cash.
20. As noted above, the onus is on Mr. Brown to prove what he paid Mr. Sanches in cash. Here, I find Mr. Brown has not proved he paid Mr. Sanches as he alleges. First, neither CB nor Mr. Brown explained how CB was connected to the electrical work project, nor address Mr. Sanches' allegation that CB was Mr. Brown's partner. So, I find CB is likely not a neutral witness, and without further explanation from Mr. Brown about CB's involvement, I place no weight on CB's witness statement.
21. I also find the withdrawal slip does not show the \$5,000 withdrawal is linked to either CB or Mr. Brown in any event. The slip lists the member as "brent" and says \$5,000 in cash was given to the member. Mr. Brown did not explain who "brent" is. Further, Mr. Sanches provided text messages that show he only set out the \$6,175 electrical work costs, including the extra work, on December 13, 2022, well after the \$5,000 cash withdrawal on October 27, 2022. So, even if Mr. Brown did make the cash withdrawal, the evidence does not show that Mr. Brown knew the electrical work costs at that time. Given this, I find the October 27, 2022, cash withdrawal does not show

any of those funds were withdrawn for electrical work costs that Mr. Sanches did not provide until December 2022, nor that any of those funds were paid to Mr. Sanches.

22. Although Mr. Brown alleges Mr. Sanches did not want to provide a receipt, he did not say that he attempted to pay by any other means, such as e-transfer or cheque. He also did not explain whether he sought confirmation of the alleged \$4,175 cash payment in any other way, such as through text or email. So, I do not accept that Mr. Sanches refused to provide any receipt. In making this finding, I also place weight on the fact that there was still some work to be completed at the time of the alleged December 2022 payment.
23. Finally, Mr. Brown himself submitted undated text messages between the parties. Mr. Brown dated the messages April 13, 2023, which is after Mr. Sanches started this dispute, but before Mr. Brown filed his response. In the messages, Mr. Brown reiterated that the work was \$3,700 cash plus the electrical permit cost, and accused Mr. Sanches of “cheating the CRA and trying to get more cash for work you did not do”. In response, Mr. Sanches explained the cost of extra work Mr. Brown agreed to. The parties’ April 2023 text messages are inconsistent with Mr. Brown’s submissions that he had already paid Mr. Sanches \$6,175 by December 2022. I find it unlikely Mr. Brown would restate and rely on the original \$3,700 estimate amount several months after he allegedly paid Mr. Sanches \$6,175. The above text messages are more consistent with Mr. Sanches’ submissions that Mr. Brown paid him only \$4,000 in cash.
24. Given all the above, I prefer Mr. Sanches’ version of events, and I find it more likely than not that Mr. Brown has only paid Mr. Sanches \$4,000.
25. I turn then to Mr. Sanches’ \$2,536.25 outstanding invoice amount, which accounts for \$4,000 in payments. In general, a contractor like Mr. Sanches is entitled to be paid for their work once the work is substantially complete. Although Mr. Brown alleges that Mr. Sanches’ work was deficient, which I will address below, Mr. Brown does not dispute that much of the electrical work was completed. However, it is undisputed that there was some outstanding electrical work because Mr. Sanches was waiting

for countertops to be installed. Given this, I find Mr. Sanches has not proved he is entitled to payment of the outstanding invoice balance in full.

26. Mr. Sanches says all work was complete with the exception of undercabinet lighting, a garburator and dishwasher. LED tape in the cabinets was charged at \$450 on the invoice. Mr. Sanches did not detail the cost of the garburator or dishwasher, but I find it warrants a further minor reduction of the invoice amount. So, on a judgment basis, I find it is appropriate to reduce Mr. Sanches' invoice by \$500 to account for the incomplete work.
27. After accounting for the \$500 reduction, I find Mr. Sanches has proven he is entitled to payment of \$2,036.25 for the outstanding portion of his invoice, subject to any proven deficiencies.
28. I turn then to consider whether Mr. Brown has proven any alleged deficiencies.

Mr. Brown's counterclaim

29. As noted, Mr. Brown alleges Mr. Sanches' work was deficient. He counterclaims \$2,650 in damages for the alleged costs incurred to have another electrician complete the electrical work, plus another electrical permit and lost food.
30. Mr. Brown says Mr. Sanches damaged the electrical panel when installing a new wire. Mr. Brown says he noticed the power going off at different times, and the fridge was not working, and he lost all his food. Mr. Brown says he also heard a loud noise and says there was fire flashing from the panel. Mr. Brown also says Mr. Sanches burned a new cabinet.
31. For his part, Mr. Sanches denies his work was deficient, and provided an electrical permit issued in September 2022 that shows the "rough wire" was approved in October 2022.
32. When a customer alleges that a contractor's work was below the required standard, they must prove the deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. Generally, an allegation that a professional's work was below a

reasonably competent standard requires expert evidence to prove. This is because the standard expected of professionals in a particular industry is generally outside the common knowledge of ordinary people. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard. See *Schellenberg v. Wawanese Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.

33. Mr. Brown provided photographs showing what he says are deficiencies with Mr. Sanches' work. However, I find the photographs do not show any obvious or non-technical deficiencies, such as burn marks or otherwise. I find whether Mr. Sanches' electrical work was substandard is outside common knowledge and therefore requires expert evidence.
34. Mr. Brown says two electricians, SL and A, were shocked by Mr. Sanches' work, and A said the wiring was not done right. However, Mr. Brown did not provide any expert reports, statements, or other evidence from SL or A. There is no expert evidence in this dispute that proves Mr. Sanches' electrical work was substandard.
35. Further, even if Mr. Sanches' work was deficient, which I find unproven, I find Mr. Brown has not proved the alleged costs to repair the alleged deficiencies, including the alleged resulting damage. Although Mr. Brown says he hired a new electrician to repair Mr. Sanches' deficient work, Mr. Brown did not provide evidence that shows he incurred any costs to do so, such as an invoice from another electrician. Mr. Brown also did not provide evidence of the food costs he allegedly incurred, or the alleged second electrical permit.
36. Finally, it is undisputed that Mr. Sanches was not permitted to return to address any alleged deficiencies. Deficiencies are common in construction work of all kinds. When there are deficiencies or work is incomplete, contractors are generally entitled to a reasonable opportunity to address any outstanding issues. If the owner does not give the contractor that opportunity, they are generally not entitled to claim damages for having the work fixed or completed by another contractor. See *Lind v. Storey*, 2021 BCPC 2, at paragraph 91.

37. Mr. Brown says he did not allow Mr. Sanches back to address the deficiencies and outstanding electrical work because Mr. Sanches made “life-threatening mistakes and even the inspector missed them”. I do not accept this. Mr. Brown provided little detail of the alleged deficiencies. As noted above, the electrical permit shows the “rough wire” was approved in October 2022, and there is no expert evidence to contradict this. I find Mr. Brown has not reasonably explained why he did not allow Mr. Sanches any opportunity to address any alleged deficiencies. So, I find he is not entitled to claim damages for having any of the electrical work fixed or completed by another contractor.
38. Given all the above, I find Mr. Brown has not proven that Mr. Sanches’ work was deficient or that he is entitled to any compensation for the alleged deficiencies.
39. In summary, I find Mr. Sanches is entitled to payment of \$2,036.25 for his unpaid invoice, and I dismiss Mr. Brown’s counterclaim.

Interest, CRT fees and expenses

40. The *Court Order Interest Act* applies to the CRT. Mr. Sanches is entitled to pre-judgment interest on the \$2,036.25 award from April 7, 2023, 30 days after the invoice date to the date of this decision. This equals \$113.98.
41. 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 Mr. Sanches was successful in his claims, I find he is entitled to reimbursement of \$125 in CRT fees. As Mr. Brown was unsuccessful in his counterclaim, I dismiss his claim for reimbursement of CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

42. Within 30 days of the date of this order, I order Mr. Brown to pay Mr. Sanches a total of \$2,275.23, broken down as follows:

- a. \$2,036.25 in debt,
- b. \$113.98 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

43. Mr. Sanches is entitled to post-judgment interest, as applicable.

44. I dismiss Mr. Brown's counterclaim.

45. This is a validated decision and order. 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.

Leah Volkens, Tribunal Member