



Civil Resolution Tribunal

Date Issued: June 18, 2024

File: SC-2023-003381

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lucier (dba WC Concrete) v. Pro Villa Builders Ltd.*, 2024 BCCRT 560

B E T W E E N :

DAN JOSEPH LUCIER (Doing Business As WC CONCRETE)

APPLICANT

A N D :

PRO VILLA BUILDERS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about payment for concrete work. The respondent, Pro Villa Builders Ltd. (Pro Villa), hired the applicant, Dan Joseph Lucier (doing business as WC Concrete), to do concrete work.

2. Mr. Lucier says Pro Villa initially supplied poor quality concrete, requiring him and his workers to repair his original work. He says Pro Villa still owes him \$3,732.75 for this work.
3. Pro Villa says that Mr. Lucier's work was deficient. Pro Villa says had to spend \$6,750 to fix it, made up of \$4,500 for grinding, \$1,500 for metal braces and \$700 for an engineering review. Pro Villa did not file a counterclaim, so I infer it is asking me to deduct its claimed expenses against any amount owing to Mr. Lucier. It also claims \$3,000 in time spent on this dispute.
4. Mr. Lucier is self-represented. Pro Villa is represented by one of its owners, GS.

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.
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 court.
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. I note that Pro Villa said in its Dispute Response, and later to CRT staff, that it intended to seek legal advice and file a claim in the BC Provincial Court. However, it did not mention any claim in its submissions. So, I infer it chose not to file in BC Provincial Court. I have considered Pro Villa's submissions on that basis.
10. Under CRTA section 61, I may make any order or give any direction I think necessary in relation to a CRT proceeding, in accordance with the CRT's mandate. In the Dispute Notice, the respondent is named "Pro Villa Builders". However, the corporate search for Pro Villa shows that its correct name is "Pro Villa Builders Ltd.". As both parties operated acted on the basis that Pro Villa was named correctly, I have exercised my discretion under section 61 to direct the use of Pro Villa's name as shown in the corporate search in these proceedings. I have amended Pro Villa's name in the style of cause accordingly.

ISSUES

11. The issues in this dispute are:
 - a. Is Mr. Lucier entitled to \$3,732.75 from Pro Villa for unpaid work?
 - b. Is Pro Villa entitled to a deduction for costs to remedy the work?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Mr. Lucier must prove his 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 argument that I find relevant to provide context for my decision.

Is Mr. Lucier entitled to \$3,732.75 from Pro Villa for unpaid work?

13. Pro Villa hired Mr. Lucier to do initial concrete work, which involved overseeing the flow of concrete and ensuring it settled properly, as well as "finishing the top of the

wall”. Pro Villa says it paid Mr. Lucier for this work, and Mr. Lucier does not dispute this. I find Pro Villa does not owe anything for this initial work.

14. After Mr. Lucier did this initial work, the parties agree there were issues with the concrete, including large holes that required patching and an uneven top. The parties disagree on the cause. Pro Villa says it was Mr. Lucier’s poor skill. Mr. Lucier says it was poor quality concrete provided by Pro Villa.
15. Generally, when a customer says a contractor’s work is deficient, they must prove the work is deficient. I find that whether the defects were due to the concrete itself or Mr. Lucier’s settling is outside the knowledge and experience of an ordinary person, and therefore requires expert evidence to prove. Though Pro Villa says they had to get an engineering report, it did not provide a report. I therefore find that Pro Villa has not proven that Mr. Lucier’s original concrete work was deficient.
16. This does not end the matter. The parties agree Pro Villa hired Mr. Lucier to come back again to patch some of the holes. They disagree on what amount Pro Villa would pay him for this work. Mr. Lucier says he agreed to do the work at a “reduced rate” as a favour to Pro Villa. However, I find on the face of the invoice there is no reduced rate. Pro Villa says it agreed to \$300, plus the bags of concrete. It provided a text message outlining this arrangement, which I infer an employee sent to Mr. Lucier. However, Mr. Lucier’s response is cut off in the screenshot, other than the first line of “Our labour rate is \$85 per hour”. Neither party provided any contracts, emails or other messages.
17. For there to be an enforceable contract, there must be a “meeting of the minds” between the parties. In other words, there must be a shared understanding about the contract’s fundamental terms. This typically includes price, or at least how that price will be determined. I find Mr. Lucier has not proven that Pro Villa agreed to pay his full invoice for the repair work required. I also find Pro Villa has not proven that Mr. Lucier agreed to \$300. This means the parties did not have an enforceable contract.

18. I turn to the principle of *quantum meruit*. This allows me to decide an amount fairly owing based on the work that Mr. Lucier did. Mr. Lucier's invoice shows 3 employees spent 32 hours repairing the foundation. Pro Villa does not dispute Mr. Lucier's employees spent this time, and I find it would have been generally aware of the time contractors were on the job site. So, I find his employees spent 32 hours on repairs. Given his admission, I find Mr. Lucier agreed to do the work at a reduced rate, likely for business or goodwill reasons.
19. On a judgment basis, I find Mr. Lucier is entitled to 50% of this shop rate, and cost of the concrete and wall cement. I find he has not provided evidence to support the claim for generator rental or remedial management. So, Pro Villa owes Mr. Lucier \$1,648.50, which is \$1,360 for labour, \$210 for materials and \$78.50 in GST.
20. The *Court Order Interest Act* applies to the CRT. Mr. Lucier is entitled to pre-judgment interest on the \$1,648.50 from April 28, 2022, the date of the invoice, to the date of this decision. This equals \$132.65.

Is Pro Villa entitled to a deduction for costs to remedy the work?

21. As mentioned above, I find Pro Villa has not proven Mr. Lucier caused the defects. So, I find Pro Villa has not proven that Mr. Lucier is responsible for the cost of engineering, grinding or metal braces. Even if I had found Mr. Lucier responsible for the deficient work, Pro Villa has not provided any invoices or other evidence of these costs. So, I find Pro Villa is not entitled to a deduction.
22. 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 Mr. Lucier has been partially successful, and is entitled to reimbursement of \$87.50, which is half of the CRT fees he paid.

23. Mr. Lucier does not claim any dispute-related expenses. Pro Villa claims \$700 for the cost of the engineering report. However, as it did not provide an invoice, Pro Villa is not entitled to reimbursement.
24. Pro Villa also claims \$3,000 for dealing with this dispute, though provides no breakdown on when this was incurred. Under CRT rule 9.5(5), the CRT does not award reimbursement for time spent except in extraordinary circumstances. I find there are no extraordinary circumstances here, so I dismiss Pro Villa's claim for time spent.

ORDERS

25. Within 30 days of the date of this order, I order Pro Villa to pay Mr. Lucier a total of \$1,868.65, broken down as follows:
 - a. \$1,648.50 in debt,
 - b. \$132.65 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
26. Mr. Lucier is entitled to post-judgment interest, as applicable.
27. I dismiss the parties' remaining claims.
28. 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.

Amanda Binnie, Tribunal Member