



Civil Resolution Tribunal

Date Issued: February 14, 2024

File: SC-2023-001804

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Awana Group Development Ltd. v. Doan*, 2024 BCCRT 148

B E T W E E N :

AWANA GROUP DEVELOPMENT LTD.

APPLICANT

A N D :

THI PHUONG DOAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. Awana Group Development Ltd. (Awana) says it did framing work for Thi Phuong Doan¹ but has only been partially paid. Awana claims \$4,200 for its final invoice. Awana is represented by its manager.

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure

2. Thi Phuong Doan says that Awana's work had various deficiencies which allegedly cost it more to fix than Awana's final \$4,200 invoice. So, Thi Phuong Doan argues they owe Awana nothing. Thi Phuong Doan is represented by a family member who is not a lawyer.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. Where permitted by CRTA section 118, 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.

ISSUE

7. The issue in this dispute is whether Awana is entitled to the claimed \$4,200, or some other amount, for the unpaid framing work.

that the CRT respectfully addresses them throughout the process, including in published decisions. The respondent, Thi Phuong Doan, did not provide their pronouns or title. Because of this, I will use gender neutral pronouns to refer to Thi Phuong Doan throughout this decision, intending no disrespect.

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Awana must prove its claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
9. In late 2022, Thi Phuong Doan hired Awana to complete framing work for a new duplex building. It is undisputed that Thi Phuong Doan paid all of Awana's invoices except for the final \$4,200 invoice. None of Awana's invoices are in evidence.
10. Thi Phuong Doan says that it has refused to pay Awana's final invoice due to various deficiencies it found in Awana's framing work, discussed in detail below.

Is Awana entitled to the claimed \$4,200?

11. As mentioned above, Awana did not provide copies of its invoices as evidence in this dispute. Without its invoices, I cannot assess the specific work done, the time it took to complete that work and the rate charged. The invoices are clearly relevant to Awana's claimed amount and parties are told during the CRT process to submit all relevant evidence. Ordinarily, failure to provide the relevant invoices would be fatal to a claim. However, for the reasons that follow, I find it is not here.
12. As a general principle, contractors like Awana are entitled to payment upon substantial completion of a project. If a customer, like Thi Phuong Doan, believes there are deficiencies with the contractor's work (which is relatively common in construction work), the customer may bring a claim for damages. However, the customer must still pay the contractor's invoice subject to any deduction for deficiency work (see *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 16).
13. Here, Thi Phuong Doan did not file a counterclaim, so I infer it is their position that they are entitled to set off the amount they owe Awana for its work based on the law of deficiencies. As the party alleging deficiencies, Thi Phuong Doan bears the burden

to prove them (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61).

14. Thi Phuong Doan does not dispute that Awana completed the framing work. Rather, their position is that Awana's work was substandard. So, I find that Awana substantially completed the contracted work. Further, Thi Phuong Doan does not specifically dispute the amount charged by Awana in its final invoice, nor does it dispute that it paid Awana's previous invoices. Given that Awana's final invoice's amount is undisputed, I find it is entitled to the claimed \$4,200, subject to any deduction for proven deficiencies, addressed below.

Alleged deficiencies

15. Thi Phuong Doan alleges various deficiencies in Awana's framing work. In particular, they say Awana:
 - a. Failed to install a continuous poly barrier, causing the duplex to fail the air leak test,
 - b. Framed the garage door in the wrong location,
 - c. Installed a 3rd floor window on the west side instead of on the east side,
 - d. Decreased the balconies on the front and back by 2 feet, increasing the square footage for both bedrooms,
 - e. Framed a single balcony door instead of double doors, and
 - f. Damaged a truss in the garage during installation.
16. Awana says that the insulation trades are responsible for installing and sealing the poly-vapour barrier, not the framer. It further says that it framed the garage door based on the structural drawings that Thi Phuong Doan's builder, who is not a named party in this dispute, provided. Awana says that it had noted a discrepancy with the door between the structural drawings and the architectural drawings, and the builder told it to frame the door where it did, based on the structural drawings. For the 3rd

floor window, decreased balconies and the single balcony door, Awana says Thi Phuong Doan ordered the windows, doors and trusses and it framed these areas to accommodate what they had ordered and to fit the truss layout. Finally, Awana denies damaging the truss in the garage and says any alleged damage was likely caused by other trades after it finished its work.

17. Generally, expert evidence is required to prove whether a professional's work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry, which I find includes framing work. Exceptions to this general rule are when the work is obviously substandard, or the deficiencies relate to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).
18. Here, I am unable to find that Awana's work was obviously deficient based on the evidence before me. I find it is outside of ordinary knowledge whether a professional framer is required to install a continuous poly-vapour barrier. So, while I accept that Thi Phuong Doan had to pay another contractor \$6,195 to properly seal the duplex so that it was airtight, I find it unproven that Awana is responsible for this deficiency.
19. For the garage door location, Thi Phuong Doan provided an extract from what they say are the city approved plans for the garage which appear to show the garage door on a different side than where Awana framed it. However, as noted above, Awana says it raised a discrepancy between 2 sets of drawings with the builder and the builder specifically told it to frame the door where it did. Neither party provided a copy of the structural drawings Awana says it relied on, in addition to the builder's alleged advice, when framing the garage door. However, I find it unlikely that Awana would have framed the garage door in a completely different position without some sort of instruction to do so. In any event, Thi Phuong Doan has not provided evidence to show that they incurred any costs as a result of Awana framing the garage door where it did. So, I find Thi Phuong Doan has not proven they are entitled to any deduction for this issue.

20. Next, I turn to the alleged deficiencies with the 3rd floor window, smaller balconies, and the single balcony door. I find expert evidence is required to show that it was improper for Awana to rely on the truss layout when it framed these areas. As there is no expert evidence before me, I find these deficiencies unproven.
21. Lastly, Thi Phuong Doan provided a document sealed by an engineer showing the damage to a truss in what I infer is the garage. However, the document does not say who or what caused the damage. Thi Phuong Doan's evidence includes another document that appears to be an extract from an inspection report. This extract says that the trusses and wood framing in the attic were poorly installed and damaged. However, Thi Phuong Doan does not claim any deductions for deficiencies with the attic's trusses, only with the trusses in the garage. Without expert evidence, I am unable to find that any damage to the trusses in the garage was caused by Awana during installation as opposed to by another trade as Awana alleges. So, I find it unproven that Awana caused this deficiency.
22. In conclusion, I find Thi Phuong Doan is not entitled to set off any amounts against the \$4,200 they owe Awana for the framing work. I order Thi Phuong Doan to pay this amount.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Awana is entitled to pre-judgment interest on the \$4,200 from March 22, 2023, the date the Dispute Notice was issued, to the date of this decision. This equals \$183.45.
24. 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. Since Awana was successful, I find it is entitled to reimbursement of \$125 for its paid CRT fees. Thi Phuong Doan was unsuccessful, so I find they are not entitled to reimbursement of their paid CRT fees. Neither party claims any dispute-related expenses, so I award none.

ORDERS

25. Within 30 days of the date of this decision, I order Thi Phuong Doan to pay Awana a total of \$4,508.45, broken down as follows:
- a. \$4,200 in debt for the unpaid framing work,
 - b. \$183.45 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
26. Awana entitled to post-judgment interest, as applicable.
27. 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.

Nav Shukla, Tribunal Member