



Civil Resolution Tribunal

Date Issued: April 9, 2024

File: SC-2023-001899

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cox v. Grenier*, 2024 BCCRT 344

B E T W E E N :

GARETT COX

APPLICANT

A N D :

DUSTIN GRENIER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. Dustin Grenier hired Garrett Cox to design a residential duplex. Mr. Cox says he completed the design, but Mr. Grenier has not paid his final invoice. He claims \$3,080.
2. Mr. Grenier says that Mr. Cox made errors on the original design, and did not complete required revisions in a reasonable time. He denies owing Mr. Cox anything.

3. Both parties are self-represented.
4. For the following reasons, I allow Mr. Cox's claims.

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. 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, neither party requested an oral hearing, and I find that I am properly able to assess and weigh the documentary evidence and submissions before me. So, I heard this dispute through written submissions.
7. 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 court.
8. 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.
9. I was initially unable to open multiple items of Mr. Cox's evidence. At the CRT's request, Mr. Cox resubmitted these items. CRT staff then invited Mr. Grenier to comment on Mr. Cox's resubmitted evidence, but he did not do so. As I find the resubmitted evidence is relevant to the dispute and the respondent had an opportunity to comment on it, I have considered it in my decision below.

ISSUE

10. The issue in this dispute is whether Mr. Grenier must pay Mr. Cox \$3,080 for building design services.

BACKGROUND AND EVIDENCE

11. As the applicant in this civil proceeding, Mr. Cox must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. In February 2021, Mr. Grenier hired Mr. Cox to design a set of blueprints for a duplex. Mr. Cox provided a February 3, 2021 design proposal in evidence. The design proposal says that it was prepared by GC Design. There is no evidence that GC Design is an incorporated company, so I infer it is a sole proprietorship operated by Mr. Cox.
13. The design proposal is not signed by either party, but Mr. Cox says Mr. Grenier approved it. Mr. Grenier does not dispute this, so I find the design proposal is the parties' contract. It says that Mr. Grenier will pay Mr. Cox \$5,880, including GST, for architectural construction drawings.
14. Mr. Grenier undisputedly paid Mr. Cox a deposit of \$2,800 on March 2, 2021. In this dispute, Mr. Cox claims the balance of \$3,080.
15. Mr. Cox provided Mr. Grenier with an initial set of drawings on March 19, 2021. The parties agree that Mr. Cox completed several rounds of revisions between March and July 2021. The set of drawings that Mr. Cox sent to Mr. Grenier on July 8, 2021 undisputedly did not fit within the community's required setbacks. Mr. Cox acknowledged this error in a July 14, 2021 email. He said that he would look into the setback issue and fix the drawings, but that he would need some direction from Mr. Grenier's builder, UEH, about where to cut space from if needed.

16. Mr. Cox says that after this, he downsized the design to fit within most of the setbacks, but UEH instructed him not to worry about the rear setback because they were going to apply for a variance to the setback requirements in order to maximize the property usage. Mr. Cox refers to a September 17, 2021 email from UEH, on which he says Mr. Grenier was copied, confirming that they were going to move ahead with his design. This email is not in evidence, and because Mr. Cox raised this argument in his final reply submissions, Mr. Grenier did not have an opportunity to respond to it. However, I accept this description as I find it is consistent with Mr. Cox's submission that he originally sent his final design invoice to Mr. Grenier in October 2021, which is supported by an email in evidence.
17. Mr. Grenier undisputedly did not pay Mr. Cox's final invoice in October 2021. The parties agree that shortly after this, the project was put on hold and Mr. Grenier ultimately stopped working with UEH. On February 1, 2022, Mr. Cox emailed Mr. Grenier to ask for an update so that he could "close out" the project. Mr. Grenier responded that he was working with a new builder, and was in the process of trying to have a variance approved so that the drawings would not need to be changed.
18. There is no further communication between the parties in evidence until July 2022. However, Mr. Grenier says, and Mr. Cox does not dispute, that the parties exchanged emails on June 7, 2022, about shrinking the building's size so that it would fit within the required setbacks. I infer this was required because the variance was not approved.
19. On July 18, 2022, Mr. Grenier sent Mr. Cox a text message to ask how the plans were progressing. Mr. Cox responded that he was "a bit backlogged", but that he was hoping to get back to Mr. Grenier's project "in the next couple weeks."
20. The parties undisputedly did not have further communication until February 2, 2023, when Mr. Cox emailed completed drawings to Mr. Grenier. Mr. Cox then sent Mr. Grenier a final invoice on February 13, 2023. Mr. Grenier responded, saying that he had hired a new drafting company to complete a new set of drawings. The parties exchanged further emails, and Mr. Grenier ultimately refused to pay the invoice.

ANALYSIS

21. Mr. Grenier makes two main arguments about why he should not have to pay Mr. Cox's invoice. First, he says that Mr. Cox has not provided design drawings that fit within the required setbacks. Second, he says that Mr. Cox did not complete the drawings within a reasonable time period.

Alleged Deficiencies

22. There is an implied term in contracts for professional services that the services will be performed to a reasonably competent standard. Generally, expert evidence is required to prove whether a professional's conduct fell below this standard, unless the conduct is obviously substandard or the alleged breach is about something non-technical.¹ The party alleging substandard work has the burden of proving it.²
23. Here, Mr. Cox agrees that his initial drawings did not fit within the setback requirements. Although the design proposal does not specifically state that the design will comply with local setback requirements, it says that the drawings will be "ready for building permit application", which I find includes complying with local regulations including setback requirements. As Mr. Cox's initial drawings undisputedly did not do so, I find expert evidence is not required to prove that they were deficient.
24. Mr. Cox says that his initial drawings did not fit within the setbacks because Mr. Grenier did not provide him with an adequate site plan until the drawings were complete. I find it unnecessary to address the parties' evidence and arguments about the site plans in detail, because I find that in any event, the parties agreed in June 2022 that Mr. Cox would revise the plans. In other words, although the initial drawings were deficient, Mr. Cox offered to fix the error, and Mr. Grenier agreed. So, I find Mr. Grenier cannot now rely on the initial deficiency to refuse payment of Mr. Grenier's invoice.

¹ *Schellenberg v. Wawanese Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.

² *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61.

25. As noted, Mr. Cox provided a final set of drawings to Mr. Grenier on February 2, 2023. Mr. Cox says these drawings comply with all required setbacks. Mr. Grenier has not provided evidence, expert or otherwise, to show that they do not. So, I find Mr. Grenier has not proven that Mr. Cox's final drawings were deficient.

Delay

26. I turn to the question of whether Mr. Cox provided the completed drawings within a reasonable time period.

27. The design proposal says that design time can vary depending on the home's size and complexity, and the number of requested changes. It says that revisions will take up to two weeks per revision to complete.

28. Mr. Cox undisputedly did not complete the revisions to shrink the plans to fit within the required setbacks within this two-week timeframe. However, I find that Mr. Grenier waived this provision's application. A waiver occurs where one party to a contract gives up, or foregoes reliance on, a contractual term. Waiver may be expressed formally or informally or may be inferred from conduct.³

29. I find Mr. Grenier waived the time provision for two reasons. First, Mr. Grenier undisputedly asked Mr. Cox to put the project on hold from the fall of 2021 until June 2022, while he changed builders and attempted to apply for a variance. Second, Mr. Grenier contacted Mr. Cox to check in about the revisions on July 18, 2022, which was undisputedly more than two weeks after the June 7, 2022 request for Mr. Cox to proceed with the revisions. So, I find that through his conduct, Mr. Grenier indicated that he was not relying on the contractual term about the timeframe for revisions.

30. Because of this waiver, I find the parties did not have an agreement about a specific deadline for the drawings. While Mr. Cox did tell Mr. Grenier in July 2022 that he was "hoping" to get back to the project in "the next couple weeks", I find this message does not constitute a commitment to have the drawings ready by a specific date.

³ *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, 1994 CanLII 100 (SCC), [1994] 2 S.C.R. 490.

There is no evidence before me that Mr. Grenier communicated to Mr. Cox that he required the drawings within a specific timeframe. Instead, Mr. Grenier chose to hire a new designer, without communicating this to Mr. Cox.

31. Mr. Cox acknowledged the delay when he sent the final plans to Mr. Grenier. However, he says that his timing was still reasonable, because Mr. Grenier was planning to start construction in the spring of 2023. While I find it was implied that Mr. Cox would provide the drawings within a reasonable time, given the project's overall length and the previous delays, I find Mr. Grenier has not proven that Mr. Cox breached this implied provision.
32. So, I find Mr. Cox fulfilled his contractual obligations by providing the drawings to Mr. Grenier, and Mr. Grenier must pay the \$3,080 invoice.
33. I note that Mr. Grenier argues that he should receive his \$2,800 deposit back, because Mr. Cox did not complete the work. Mr. Grenier did not file a counterclaim, so I infer he argues that this amount should be set off against anything he owes Mr. Cox. For the reasons above, I find that Mr. Cox did complete the contracted work. So, I decline to order any set off for Mr. Grenier's deposit.

CRT FEES, EXPENSES, AND INTEREST

34. The *Court Order Interest Act* applies to the CRT. Mr. Cox is entitled to pre-judgment interest on the \$3,080 from February 13, 2023, the invoice date, to the date of this decision. This equals \$172.56.
35. 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. I see no reason in this case not to follow that general rule. Mr. Cox was the successful party, so I find he is entitled to reimbursement of \$175 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

36. Within 21 days of this decision, I order Mr. Grenier to pay Mr. Cox a total of \$3,427.56, broken down as follows:
- a. \$3,080 in debt,
 - b. \$172.56 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
37. Mr. Cox is entitled to post-judgment interest, as applicable.
38. This is a validated decision and order. 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.

Alison Wake, Tribunal Member