Civil Resolution Tribunal

Date Issued: July 4, 2024

Files: SC-2023-004237 and
SC-CC-2023-011627

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Black v. 1094204 B.C. Ltd.*, 2024 BCCRT 638

B E T W E E N :

BRIAN CHARLES BLACK

APPLICANT

A N D :

1094204 B.C. LTD.

RESPONDENT

A N D :

BRIAN CHARLES BLACK

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Megan Stewart

INTRODUCTION

1. The applicant in SC-2023-004237, Brian Charles Black, says the respondent, 1094204 B.C. Ltd. (109), failed to pay him in full for work he did on 109's development project. The work involved building outdoor stairs for four housing units, a retaining wall, and a planter box. The applicant claims $3,000 for the unpaid part of the alleged contract price. The applicant is self-represented. As he did not provide his title, I refer to Brian Charles Black as "the applicant" in this decision, recognizing he is the respondent in the counterclaim.

2. 109 says the applicant's work was incomplete, and it also alleges negligence. 109 says it had to hire different contractors to redo the applicant's work. In SC-CC-2023-011627, 109 claims $4,095 for the cost of hiring those contractors to redo the applicant's allegedly incomplete and deficient work. 109 is represented by an owner.

3. These two linked disputes involve the same parties and related issues, so I have issued a single decision for both of them.

JURISDICTION AND PROCEDURE

4. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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 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 an oral hearing is not necessary in the interests of justice.

6. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The CRT may also ask questions of the parties and witnesses, and inform itself in any other way it considers appropriate.

7. 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.

Preliminary issue

8. The applicant repeatedly said he contracted with "Golden Lite Development", though he provided no evidence in support of this claim. 109 denied this, and said it awarded the applicant the contract. Through CRT staff, I asked each of the parties to further explain their position. The applicant reiterated that he contracted with Golden Lite Development, but said because 109 was the registered property owner and the companies were "connected", he brought this claim against 109. 109 said the applicant was mistaken, and that "Golden Lite Ltd" was not involved in this matter, except that some "partners" in the project had a shareholder stake in "Golden Lite Ltd for licensing purposes only."

9. There is no written contract naming the parties. Since the applicant claims against 109 in this dispute, and 109 confirms the applicant's contract was with it, I find the contract was between the applicant and 109.

ISSUES

10. The issues in this dispute are:

    a. Is the applicant entitled to $3,000 for the unpaid part of the alleged contract price?

    b. Is 109 entitled to $4,095 for the cost of redoing the applicant's allegedly incomplete and deficient work?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities, meaning more likely than not. 109 must prove its counterclaim to the same standard. I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision. In coming to my decision, I have considered the submissions and evidence submitted by the parties collectively in both disputes.

The parties' contract

12. As noted above, the parties do not have a written contract. The applicant says the contract was to form stairs for four units, one retaining wall, and one planter box for $7,350, including tax. The applicant relies on an invoice he handwrote showing this amount, with payments totaling $4,200 and a balance of $3,150. The applicant does not explain why he only claims $3,000 as the unpaid amount, when the invoice shows a balance of $3,150.

13. 109 denies it agreed to pay the applicant $7,350. It relies on a text message exchange between the applicant and AD, the project manager, about the contract price. The text message shows AD agreed to pay $1,200 per unit (labour only) to form and install front and side stairs. 109's evidence shows it also agreed to have the applicant form a retaining wall and a planter box. 109 does not say how much it agreed to pay for the wall and planter box, and there is no text message evidence about pricing for that. The parties agree the applicant's work was to be done to architectural drawing specifications.

14. I find the text message exchange regarding $1,200 for each of the four units' stairs best reflects the parties' agreement for that work. Since there is no text message or other evidence showing what the parties agreed for the retaining wall and planter box, I accept the price for that was the $500 specified on the applicant's handwritten invoice. In total, I find the parties agreed to $5,565, including tax, for the stairs, retaining wall, and planter box, completed to architectural drawing specifications. It is

undisputed that 109 has already paid $4,200. So, I find the maximum outstanding amount the applicant could be entitled to is $1,365.

The applicant's claim

15. Generally, a contractor like the applicant is entitled to full payment if it substantially completed the work. The burden is on the applicant to prove the work was substantially complete. If a customer like 109 believes there are deficiencies in the contractor's work, the customer may bring a claim for damages. However, the customer must still pay for the work, subject to any deduction for deficiencies (see *Belfor (Canada) Inc. v. Drescher,* 2021 BCSC 2403, at paragraph 16).

16. Here, the applicant says he completed the contracted work. 109 says he did not.

17. I find the photos in evidence show a largely complete flight of stairs, a retaining wall, and a planter box. While 109 says the applicant did not complete the work to the architectural drawing specifications, I find this is an allegation that the work was deficient, not that it was incomplete.

18. 109 also says the applicant did not finish two concrete posts, one on either side of the stairs. The applicant says the posts were not part of the contracted work, and there is no documentary evidence that they were. So, I find the applicant was not required to complete the posts.

19. Finally, I note the contracted work was for stairs on four different housing units, plus the retaining wall and the planter box. 109 does not say the stairs on any of the other units were incomplete, so I find they likely were complete. That means at a minimum, around three-quarters of the contracted work was undisputedly complete.

20. Taking all this into account, I find the applicant has proven he substantially completed the contracted work, and is entitled to payment of the outstanding $1,365, subject to any deductions for proven deficiencies. I turn to this now.

109's counterclaim

21. As noted above, 109 says the applicant failed to form and install the stairs, retaining wall and planter box to the architectural drawing specifications. It also says the applicant's work lacked structural integrity, and failed to meet municipal standards. 109 says this demonstrates the applicant was negligent. So, 109 says it had to pay $945 to redo the applicant's form work, and $3,150 to re-pour the concrete for the stairs, retaining wall, and planter box.

22. In professional negligence claims, the party alleging negligence must generally prove a breach of the applicable standard of care with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). This is because the standards of a particular industry are often outside an ordinary person's knowledge and experience. The exceptions to this general rule are when the alleged breach relates to something non-technical or is so egregious that it is obviously below the standard of care (see *Schellenberg v. Wawanesa Mutual Insurance Company,* 2019 BCSC 196, at paragraph 112).

23. I find expert evidence is required to prove the applicant's work fell below the applicable standard for forming and installing concrete walls and stairs.

24. First, 109 did not provide the architectural drawings it relies on to say the applicant's work was deficient, and evidence the drawings met the required standard. Nor did 109 submit expert evidence describing how the applicant failed to meet the drawing specifications. So, I find 109's claim about negligence resulting from a failure to meet the drawing specifications unproven. Though 109 did not specifically argue breach of contract, in the absence of documentary evidence of the drawings, I also find it unproven the applicant breached the parties' contract by not meeting the drawing specifications.

25. Next, 109 provided photos showing a curved retaining wall and other concrete work for the planter box and stairs that was not perfectly straight, which it says was due to the applicant's poor framing support. I find that whether these curves were due to poor framing support, and fell below the applicable standard, must be proven with

independent expert evidence, as this is beyond the knowledge and expertise of an ordinary person. 109 did not provide any such evidence.

26. Finally, 109 says the applicant's work had to be redone by other contractors to meet the municipality's inspection standards. Again, it provided no evidence of this, including evidence of the municipal standards it says the work was required to meet.

27. The applicant admits some of the photos in evidence show flaws in the poured concrete. He says these "minor flaws" were likely due to the concrete being poured all at once, rather than in two-foot increments, as he says he suggested. But, in the Dispute Notice for SC-2023-004237 issued at the start of these proceedings, the applicant says 109 did not send him invoices from other contractors for repairs performed. I infer from this that when 109 approached the applicant about the flaws, the parties discussed the possibility of a reduction in the contract price for the cost of repairing the flaws, pending completion of that work. I find that even if the applicant was open to this possibility, that does not mean he admits responsibility for the flaws or that any of the flaws fell below industry standard. There are many reasons a person could be prepared to reduce the contract price in a situation like this, such as to preserve their reputation or as a gesture of goodwill. So, I find any evidence the applicant was open to the possibility of covering repair costs for "minor flaws" insufficient to prove his work fell below the applicable standard, as 109 alleges.

28. In light of all of the above, I find 109 has not proven the applicant was negligent. I dismiss its counterclaim.

INTEREST, CRT FEES AND EXPENSES

29. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the $1,365 damages award from April 18, 2023, the date the applicant submitted his application for dispute resolution and a date I find reasonable, to the date of this decision. This equals $82.51.

30. 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 the applicant was largely successful, I find he is entitled to reimbursement of $150 in CRT fees. The applicant did not claim dispute-related expenses. I dismiss 109's claim for CRT fees in SC-CC-2023-011627.

ORDER

31. Within 30 days of the date of this order, I order 109 to pay the applicant a total of $1,597.51, broken down as follows:

    a. $1,365 in damages, for the unpaid part of the contract price,

    b. $82.51 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $150 in CRT fees.

32. The applicant is entitled to post-judgment interest, as applicable.

33. I dismiss 109's counterclaim.

34. 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.

Megan Stewart, Tribunal Member