IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cold Front Industries Ltd. v. Faucet Plumbing & Heating Ltd.,* 2025 BCSC 478

Date: 20250318
Docket: S98631
Registry: Nanaimo

Between:

Cold Front Industries Ltd.

Plaintiff

And

Faucet Plumbing & Heating Ltd.

Defendant

Before: The Honourable Justice Thompson

Reasons for Judgment

Counsel for the Plaintiff:	K. Hornquist
Counsel for the Defendant:	J. Freedman
Place and Date of Hearing:	Nanaimo, B.C. March 12, 2025
Place and Date of Judgment:	Nanaimo, B.C. March 18, 2025

[1] This is a summary trial of claims and counterclaims between contractors on a construction project in Nanaimo. The parties agree that the issues are suitable for determination on summary trial. I agree.

[2] WestUrban Developments Ltd. was the general contractor on a three-building construction project comprising 210 residential units on Junction Avenue (the "Junction Project"). On 21 March 2022, WestUrban entered into an agreement with the defendant by which the defendant became the mechanical contractor for the Junction Project.

[3] The plaintiff submitted a bid to the defendant for installation services in connection with ductless heat pumps on the Junction Project ($287,550 plus GST) and a project on Brechin Road (the "Brechin Project") ($117,450 plus GST). This bid was accepted on 6 October 2022. The contract work to be performed on each of these two jobs was the same:

> Supply/install of linesets, pressure tests and evacuate each unit, final connections to indoor and outdoor units, start up and commissioning reports. Electrical to supply 4 wire. Plumbing to supply condensate drains and mounting of units.

The "letter of award" from the defendant to the plaintiff also says: "When invoicing for this project please ensure all invoices are received by [the 23rd day of the month]."

[4] A contract was formed. Neither party suggests otherwise. But, its written terms are skimpy and consist entirely of what is quoted above.

[5] The notice of civil claim advances a claim for amounts the plaintiff alleges are due under the contract, and amounts due for extras, plus interest. The defendant's response to civil claim alleges that the plaintiff's work was deficient, and that the plaintiff further breached the contract by abandoning the Junction Project and the Brechin Project. The defendant claims a set-off for the costs incurred to correct the alleged deficiencies. The defendant concurrently filed a counterclaim for these same remediation costs, plus damages arising out of the abandonment of the projects.

[6] On this summary trial, the plaintiff claims $57,613.50, plus court order interest. The defendant acknowledges a part of the sum claimed, $38,186, but seeks to set-off $30,831.15 to reduce the net amount payable to $7,354.85. (The plaintiff did no work on the Brechin Project, and its claims and the set-off the defendant seeks relate entirely to the Junction Project.)

[7] The plaintiff began work on the Junction Project in November 2022. It sent six interim invoices to the defendant between December 2022 and July 2023, each of which was paid. At the centre of this dispute is the invoice rendered by the plaintiff on 23 August 2023. On 20 September 2023, the defendant sent the plaintiff an email that explained its position that insufficient work had been completed by the plaintiff to justify this invoice – it had been flagged by a quantum surveyor working for the general contractor. The plaintiff responded the next day advising that it "will no longer be providing work for Faucet Plumbing and Heating due to breach of contract." The plaintiff's complaint was slow payment of its invoices, and a failure to follow through with an earlier promise to pay the 23 August 2023 bill.

[8] The defendant responded by finding other contractors to finish the work that the plaintiff had contracted to perform. The total price for the work the plaintiff contracted to do on the Junction Project was $301,927.50 (including GST). When the smoke cleared, the defendant paid about $20,000 less than the contract price to get the contract work done. In these circumstances, the defendant has sensibly abandoned any claim for damages arising out of what it says was the plaintiff's breach of contract.

[9] The issues on this summary trial are the extent to which the plaintiff has proved entitlement to the progress draw represented by the 23 August 2023 invoice, and the extent to which the defendant has proved its claimed setoffs for remediating deficiencies. I conclude that there is no satisfactory proof of the plaintiff's claim beyond the $38,186 fairly conceded on this application, and I find that there is no satisfactory proof of the defendant's claim for setoffs.

[10] The written contract between the parties, such as it is, does not refer to progress draws. However, the sentence that calls on the plaintiff to ensure that its invoices are delivered by the 23rd day of the month, in the context of a contract which quite obviously was going to take many months to complete, is an indication of the jointly held expectation that the plaintiff would receive part payment of the contract price during the currency of the contract. Any doubt that the parties were operating on this basis is removed by their conduct from the time the plaintiff began work. Six interim invoices were sent – representing approximately $158,000 of the plaintiff's entitlement – and six were paid.

[11] I find that the parties' agreement was that the plaintiff was entitled to invoice monthly for whatever portion of the contract work it had accomplished since the last invoice. The absence of any explicit contractual guideposts to trigger entitlements to progress draws presents difficulties. In the result, the plaintiff finds itself in a challenging position: while it must prove its case only on a balance of probabilities, this must be accomplished with clear, convincing, and cogent evidence: *F.H. v. McDougall*, 2008 SCC 53 at paras. 45-46. I bear in mind, however, that the quality of the evidence required to meet the standard "will depend upon the nature of the claim and of the evidence capable of being adduced": *Nelson (City) v. Mowatt*, 2017 SCC 8 at para. 40.

[12] There is no evidence from the quantum surveyor referred to in the 20 September 2023 email to the plaintiff, and the "invoice tracker" relied on by the defendant does not persuade me that the plaintiff was billing ahead of the work accomplished. However, the plaintiff has the onus of proving completion of work in a portion justifying its invoice. The plaintiff evidently did not keep records that would allow it to prove its progress with any precision. This is not a criticism of the plaintiff's method of carrying on business. It may be that it is more economically efficient to have loose contractual arrangements and make rough-and-ready assessments of progress than to incur the costs associated with assembling meticulous documentation for each project it takes on. The downside of this more casual approach is difficulties of proof if a dispute arises.

[13] The plaintiff suggests two methods for making a rough assessment of the value of the work it accomplished under the contract – almost as if this were a claim in *quantum meruit*. Neither method results in clear, convincing, and cogent evidence that matches the total invoiced through August 2023 to the portion of the contract work accomplished by the plaintiff. I find that it might match, but it might be less; it might even be more progress than invoiced. If a quantum surveyor questions progress in a case like this, the reality is that it will be difficult for a contractor to prove progress without proper records. And, I find that the plaintiff has not carried its burden in this case.

[14] On the other side, there are substantial shortcomings in the defendant's set-off claim for alleged deficiencies. The affiants who criticize the plaintiff's work do not outline their credentials, and their evidence about deficiencies must be treated as bare allegations. There is no expert opinion evidence about the standard of work required or whether the plaintiff's work fell short of the standard. I was invited to look at some photographs and conclude that they show manifestly substandard work. I agree with the plaintiff that authorities such as *Zettl v. Roger Garside Construction Ltd.*, 2016 BCSC 2307, and *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403, make it clear that the body of evidence in this case falls far short of proof of the alleged deficiency claim.

[15] Accordingly, the plaintiff is entitled to judgment for $38,186 plus court order interest; the counterclaim is dismissed. The amount due to the plaintiff shall be paid to the plaintiff's solicitors in trust from the funds held in trust by the defendant's solicitors.

[16] My preliminary view is that neither party has achieved substantial success, and that each party should bear its own costs of the claim and counterclaim. If either party seeks a different result, costs may be spoken to.

"Thompson J."