

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

HARBINDER SINGH SIDHU

CLAIMANT

AND:

FRANK SEVER, SR.

DEFENDANT

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE HYDE**

COPY

Counsel for the Claimant:

C. Drinovz

Counsel for the Defendant:

D. Plunkett

Place of Hearing:

Abbotsford, B.C.

Date of Judgment:

May 7, 2014

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[1] THE COURT: This is the matter of Harbinder Singh Sidhu v. Frank Sever, Sr. It is a claim and counterclaim involving an oral contract for finishing work by the claimant to the defendant's residence in Langley, B.C. The trial of this action was heard October 11th, 12th and 13th, three full days, and then submissions by counsel were made the afternoon of April 30th, 2014 and it was put over to today for decision.

[2] I have reviewed the 33 exhibits filed at trial by the parties. I have heard the claimant and his three witnesses, I have heard the defendant and his three witnesses give evidence. I have reviewed my notes taken during the three full days of trial and I have heard submissions on the facts and applicable law by counsel for the claimant and counsel for the defendant. I have reviewed my notes taken during the half-day of counsel's submissions. I have reviewed the case law provided by both counsel and reviewed the closing written arguments, and I do thank counsel for the written arguments; it was of great assistance.

[3] The Statement of Claim of Harbinder Singh Sidhu directed to Frank Sever claims a judgment for breach of contract in the amount of \$24,875, and in the alternative on a quantum meruit basis, pre-judgment interest in accordance with the *Court Order Interest Act* RSBC 1996, and costs, and such further and other relief as to this honourable court may seem just and meet. And as I say, the claim is for \$24,875.

[4] The reply of Frank Sever, Sr. is that the defendant will pay the amount that remains owing on the fixed price contract after the costs incurred to complete the

project and the costs incurred to repair the deficiencies in the claimant's work are deducted from the total owing. The work has not yet been completed and so this amount cannot be quantified.

[5] Now, just to be clear, the claim for \$24,875, \$12,000 has already been paid by way of payments by Mr. Sever to Mr. Sidhu, and we go from there then.

[6] The claimant seeks damages for breach of contract arising from finishing work he provided the defendant at the defendant's newly constructed residential home at 23026 73 Avenue, Langley, B.C. in late December 2011 and early 2012. In the alternative, the claimant seeks damages for those services provided to the defendant on the basis of contractual restitutionary quantum meruit.

[7] The defendant seeks to have the claim of the claimant dismissed, and this is the additional part, on the basis that the scope of the work agreed upon between the parties was included in the fixed price contract for the finishing work performed by the claimant at the defendant's residence at 23026 73 Avenue, Langley, B.C. In addition, the defendant says he did not agree to any price adjustments or extras to the agreement, either expressed or implied, and further the defendant says that the claimant did not fully and properly complete the project, including the correction of deficiencies in his work, and seeks a set-off from the fixed price agreement.

[8] The issues, primarily, are the price of the extra work, if any, by the claimant, provided to the defendant, and then if there are any deficiencies that the defendant can set off against the claimant's price.

[9] I am not going to review the evidence that the parties and their witnesses gave at trial. I will have the written submissions of counsel attached to my reasons for judgment as they are quite capably set out; the issues, the law and the facts as pertains to each of the parties. The submissions set out the relevant evidence of both parties to this action and that of their witnesses. Counsel's submissions also set out a summary of the applicable law on which their clients rely to support their legal positions.

[10] On the evidence as I find it, the parties negotiated several oral contracts before finally arriving at a specific price of \$19,715 for a specific scope of work. The defendant did not sign any of the oral contracts prepared by the claimant when they were reduced to writing by the claimant, including the final one agreed to, that being the fixed price of the \$19,715.

[11] Once the project began, the defendant requested extras beyond the scope of the final oral contract which the parties agreed to. The extras requested by the defendant were major in regard to changing of the coffered ceilings to a more complicated two-tier design which required a stronger ceiling support system. This system had to be prepared on the ground and then attached to the ceiling which involved much more extensive labour. Also, the master bedroom en suite ceiling was added to the master bedroom, den, nook and great room ceilings.

[12] In addition, the claimant had to install headers above door casings and clear coat window casings instead of staining them. The defendant, who was providing the materials for the claimant's finishing work, incurred additional invoices for extra

lumber. This would indicate that additional work that the claimant was expected to do over and above the scope indicated in the final oral agreement.

[13] I accept and prefer the evidence of the claimant and his witnesses over the evidence of the defendant and his witnesses with respect to the extra work done by the claimant beyond the scope of the oral contract between the parties. I have reviewed the case law provided by both counsel on this point and I find the claimant has met the test for contractual restitutionary quantum meruit.

[14] There was an existing oral contract between the parties outlining in the scope of the work to be done. The defendant required additional work to be done, over and above the scope of work in the oral contract. The parties did not specify or agree on the price to be paid by the defendant to the claimant for such work. The defendant accepted the extra work done and the claimant has sought payment for such work.

[15] The claimant has valued the work done by producing a spreadsheet, Exhibit 18, as to the hours worked by himself and his workers. These hours worked out and translated into a total invoice of \$36,875. The \$36,875 is \$17,160 more than the original contract price of \$19,715 with respect to the extras. There are charges for lunches of the claimant's workers, and many places the workers self-reported the hours they worked.

[16] The defendant was a "hands-on supervisor" of the work being done in his home. He was present almost daily and directly involved with the claimant and his

workers in their work. The defendant was well aware of the extra work being done to meet the changes and additions he required the claimant to do, and was well aware they were over and above the scope of the original contract.

[17] On the basis of contractual restitution of quantum meruit, I would award the claimant not the \$17,100 but \$10,000 for the extras done over and above the original orally agreed price of \$19,715. I cannot quantify the extra work done as amounting to either \$10,000 or \$17,100. The \$10,000, however, is one-third over and above the original contract price, and as I say, I do have some problems with lunches which I do not think would be envisioned by anyone, the fact that one of the workers was dismissed, why his wages should be included if he was not doing satisfactory work, and the fact that the workers self-reported.

[18] It is hard to believe that two parties who are involved in such a major, intricate endeavour, would proceed without a written contract as to the scope of the work and the price of it. If they could not agree to sign a written contract at the outset, and this falls primarily with Mr. Sever, I do not know how they expected to agree at the conclusion on the scope of the work and the price. The fact that there were major changes involving the scope of the work which affected price that were also not reduced to writing by the claimant, Mr. Sidhu, and signed off on by the defendant, Mr. Sever, would have avoided a lot of the difficulty, or at least caught it more towards the middle than the end.

[19] The parties come to court without any written contact as to scope and price and then they ask the court to make some sense of the situation and determine

what the parties intended as to the scope of the work and the price and extras, and it is extremely difficult to deal with.

[20] I also would allow the defendant to set off against the claimant's invoice deficiencies, the \$2422 completion of the baseboard, the \$2650 completion of the flooring and doors, and the \$450 with respect to the windows. I would disallow the defendant's claim for a thousand dollars for his personal removal and cleaning of the glue from the hardwood floors and the \$500 for the removal and clean-up of construction debris. I cannot really fit that into the contract.

[21] The end figures are \$19,715, the original contract, \$10,000 awarded the claimant for extra work outside of the oral contract, and that totals \$29,715, minus the \$5,022 set-off of deficiencies of the defendant, which leaves, and perhaps my figures could be checked, \$24,693, less the \$12,000 made in payments by the defendant to the claimant, for an outstanding amount owing of \$12,693, plus the relevant government taxes, and I guess that probably goes back to the total award of \$24,693. So that is the judgment to the claimant against the defendant.

[22] Each party will bear their own costs.

[23] That leaves a balance of \$12,693 owing by the defendant to the claimant, plus relevant government taxes on the amount charged, the \$24,693. I will let counsel figure that out.

[24] That can be paid forthwith or within the month, or two weeks?

[25] MR. PLUNKETT: Well, within the month, that would be great, that way I could assess our options.

[26] THE COURT: That will be paid within 30 days then of today's date.

(REASONS FOR JUDGMENT CONCLUDED)