

Citation: *Buurman v. Ovation World Inc.*, 2018 YKSM 2

Date: 20180524
Docket: 17-S0045
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Schneider

MICHAEL BUURMAN

Plaintiff

v.

OVATION WORLD INC./OVATION MONDE INC.,
o/a ATA POP HOMES

Defendant

Appearances:
Michael Buurman
Paul Girard

Appearing on own his behalf
Appearing on behalf of the Defendant

REASONS FOR JUDGMENT

[1] The Plaintiff, Michael Buurman, sues the Defendant(s) for \$25,000 (actual loss claimed to be \$28,529.62) for failing to provide services in accordance with a Contract for the Manufacture and Sales of Goods (“the contract”) wherein the Defendant was to build an energy efficient residential duplex for the Plaintiff on property owned by the Plaintiff.

[2] At the outset, it was agreed that as between the various named Defendants the proper singular Defendant was the corporate entity, Ovation World Inc. (“Ovation”). And while Mr. Buurman entered into the contract with Mr. Girard and all negotiations were

with Mr. Girard, these were with Mr. Girard in his capacity as a principal of Ovation, rather than personally.

[3] Prior to the signing of the contract to build, Mr. Buurman had retained Ovation to do demolition and other work related to the ultimate contract as well as various improvements and repairs to Mr. Buurman's residence, which was on the same property as the building site of the new construction. These collateral projects, to some extent, modified expected building time lines.

[4] While there has been a considerable volume and complexity of material filed and side issues raised, a distillation of the material reveals a matter which is relatively straight forward.

[5] The contract was signed on May 13, 2015. The build was complete on November 15, 2015. An Occupation Permit was obtained and Mr. Buurman's first tenant moved into the new duplex on January 1, 2016. Mr. Girard was paid in full as of December 11, 2015 although a "hold back" of \$1,000.00 was made by Mr. Buurman even though the contract did not provide for such. From the signing of the contract to the ultimate completion of the project, the written contract was modified and time lines adjusted through oral agreements as between Mr. Buurman and Mr. Girard (always on behalf of Ovation). Much documentation was provided in this regard but at the end of the day, I am of the view that the essence of the contract is sufficiently clear such that sorting through the intricacies of any changes is ultimately not helpful in deciding the issues to be decided. As well, Mr. Girard indicated, and his evidence was not contradicted, that he included several 'upgrades' to the written contract for which he did not seek Mr.

Buurman's agreement in that they were obvious improvements. It was not disputed that an Occupancy Permit is, at face value, an indication that all work has been completed in accordance with the plans filed and the permits obtained.

[6] Mr. Buurman received at least one government grant in the amount of \$10,000.00 based upon the documented energy efficient nature of the duplex build.

[7] Very shortly after the first tenant moved into the duplex, a shower drain froze. Mr. Girard was called by Mr. Buurman in order to have the matter fixed. Mr. Girard attended and provided an immediate fix and recommended a short-term fix that would resolve the problem until the spring. It is from this point in time that the relationship between the parties began to deteriorate precipitously. The short term fix proposed by Mr. Girard was not acceptable to Mr. Buurman who had apparently done his own research and determined that this solution was contra-indicated. Instead, Mr. Buurman thawed the frozen pipe on an as-needed basis with water. It should be noted that Mr. Buurman is not a builder and has no experience in the industry. From this point, Mr. Buurman commenced an onslaught of accusations directed at Mr. Girard alleging deficiencies and failures of every sort. It is not helpful to catalogue those or sort through them.

[8] Mr. Girard explained discrepancies between the contract and the work done as either variations ultimately included in the blueprints submitted to the City and approved with Mr. Buurman's knowledge, modifications made on consent, or 'upgrades' included by Mr. Girard on his own initiative. Mr. Girard is clearly a very experienced builder and his evidence was not contradicted in any substantial way. He provided testimonials from other satisfied customers.

[9] This unfortunate situation continued to spiral downwards as Mr. Buurman began to threaten and bully Mr. Girard with publicly disparaging broadcasts about his incompetency and challenging Mr. Girard's credentials. Mr. Girard indicated that Mr. Buurman would drive by his house, leave phone messages, and send demanding emails. Mr. Buurman tried to get the City involved in his cause, and told Mr. Girard that he would ruin him so that he would never again work in the Yukon. Mr. Buurman did not dispute any of these allegations.

[10] Eventually, Mr. Buurman contracted with another plumber in July 2017 to correct the problem of the freezing drain and, according to an affidavit executed by Mr. Buurman's tenant and filed by Mr. Buurman, there have been no problems with the drain since that time.

Damages Claimed:

[11] Mr. Buurman claims the following:

- \$1,359.51 - plumber to fix freezing drain problem;
- \$1,230.00 - based upon his and his father's time spent dismantling and reassembling the bathroom to address the drain problem;
- \$608.81 - based upon a rent rebate to tenant due to the disruption of construction (of construction or because of the wonky plumbing?).

Total: \$3,198.32

[12] Mr. Buurman also claimed a further \$10,000 - \$20,000 plus \$4,531.30 in materials to add insulation to the foundation and its perimeter which he asserts should

have been installed during the build. On the uncontradicted evidence of Mr. Girard, I find no basis for this claim.

[13] Also of significance is the previously mentioned \$1,000.00 “hold back” which Mr. Girard never received, as well as a \$1,995.00 credit given to Mr. Buurman as a result of the project taking longer than anticipated. Mr. Girard indicated though that much of the delay was due to diversions and modifications not in the original contract.

[14] Nevertheless, Mr. Girard accepts responsibility for the frozen drain problem. He, at the risk of over-simplification, says that the drain was not placed properly because the foundation of the duplex was moved closer to the property line at Mr. Buurman’s request. He indicated that the pipe, in these circumstances, required some further insulation which was overlooked. The pipe was vulnerable to freezing as a result.

[15] At a pre-trial hearing Mr. Girard offered to settle the matter with a \$3,198.32 payment to Mr. Buurman.

[16] In reviewing the evidence, materials submitted, observing both Mr. Buurman and Mr. Girard as they testified under oath, and the submissions made by each, I prefer the version of events as relayed by Mr. Girard. Much of the basis for the accusations made by Mr. Buurman appears to be founded upon misunderstandings and inexperience. The problem in need of correction was a relatively simple one with a simple solution had cooler heads prevailed. Unfortunately, the relationship between Mr. Buurman and Mr. Girard deteriorated to an unsalvageable state and Mr. Buurman, through his own research and misapprehensions, made things more rather than less complicated.

[17] Mr. Girard, at the pre-trial conference in January of this year, accepted, appropriately, his responsibility for the freezing drain and made an appropriate offer to settle which was in line with Mr. Buurman's claim. This was not accepted by Mr. Buurman. The matter was forced on to trial with further claims that were without merit.

[18] Notwithstanding Mr. Girard's offer to settle at the time of the pre-trial conference in January of this year, he is now of the view that the amount claimed for plumbing expenses is excessive given the nature of the repairs required. Further, given the behaviour of Mr. Buurman over the course of this matter, he takes the position that Ovation should be found to owe Mr. Buurman nothing.

[19] At this point, given the matter's profoundly unfortunate history, I am of the view that a fair and equitable resolution is an award in the amount of \$968.32 to the Plaintiff. This reflects the cost associated with the plumber (\$1,359.51) plus the rent rebates granted to the tenant (\$608.81), less the \$1,000.00 'holdback' for the build project. I decline to consider the estimated cost of Mr. Buurman's labour.

SCHNEIDER T.C.J.