



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robertsen et al v. 1007820 B.C. Ltd.*, 2018 BCCRT 107

B E T W E E N :

Kory Robertsen and Dan Beaudoin

APPLICANTS

A N D :

1007820 B.C. Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Michael Kleisinger

Date of Hearing:

March 28, 2018

INTRODUCTION

1. The respondent, 1007820 B.C. Ltd., hired the applicants, Kory Robertsen and Dan Beaudoin, to create two tabletops for the respondent's pub. Unfortunately, the tabletops became stained and discoloured after installation. The applicants later refinised the tabletops and submitted an invoice for this work. The respondent

refused to pay. It believed that the refinishing was included under a warranty. This dispute is about whether the respondent must pay for the refinishing.

2. The parties represent themselves in this dispute.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing. I decided to hear this dispute through written submissions because I found no significant issues of credibility or other reasons that might have required an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. What did the parties contract to do for each other?
 - b. Did the parties do what they were contractually required to do?
 - c. Is the respondent responsible to pay for all or any part of the tabletop refinishing?

EVIDENCE AND ANALYSIS

Evidence

8. Although not certified carpenters, the applicants are experienced woodworkers.
9. In November 2015, the respondent hired the applicants to make a new wood top for the main bar at the pub and install it in January 2016. The parties agreed that the respondent would provide the slab of wood for the applicants to make into a bar top. The applicants accepted the second wood slab that the respondent proposed.
10. The applicants proposed covering the wood with a hard epoxy finish to protect the underlying wood. The epoxy finish would protect the wood be from spills, dents and other wear and tear, while allowing the wood to be seen through the finish. The respondent agreed with this approach.
11. The applicants now say that the conditions for work were not ideal. The budget was too small and the timeline too short. The wood slab was too wet, too soft and contained too much sap. The applicants say these constraints required them to use the epoxy.

12. The applicants selected and purchased an epoxy from a local supplier. After preparing the wood, the applicants applied and cured the epoxy finish. They say they followed the manufacturer's instructions.
13. On January 8, 2016, the applicants installed the bar top at the pub and submitted an invoice for \$2,897. The respondent paid promptly.
14. Shortly after installation, alcohol spilled on the new bar top and left a dark stain in the epoxy finish. The respondent immediately told the applicants about the stain. The applicants did not know why the stain seeped into the finish, but agreed to investigate.
15. In March 2016, the respondent hired the applicants to create a tabletop for the pub from the same wood slab. The applicants used the same epoxy and process so that the tabletop would match the bar top. The applicants installed the tabletop on April 15, 2016 and submitted an invoice for \$1,923. The respondent paid promptly.
16. The parties agree that both tabletops discoloured shortly after installation. In addition to the dark stain on the bar top, the respondent says that both tabletops grew dull and sticky. The respondent says that by the end of 2016, the tabletops deteriorated to the point they were difficult to clean.
17. At some point in 2016, the parties agreed that the applicants would need to repair the tabletops. The parties did not discuss payment. The applicants say they assumed the respondent would pay them for the refinishing work. The principals of the respondent say they assumed that the applicants were performing the work under warranty.
18. On January 10, 2017, after refinishing the tabletops, the applicants delivered a third invoice for \$2,461. The respondent refused to pay.
19. Both sides agree that the epoxy failed which caused the dark stain and the discolouration of the tabletops. The applicants admit they did not cure the epoxy

for long enough. The epoxy was not hard enough to prevent alcohol spills from seeping into the finish.

20. Both sides agree that the refinished tabletops look good and perform well.
21. The parties did not have any written contracts.

Positions of the Parties

22. The applicants, who bear the burden of proof in this dispute, want to be paid for refinishing the tabletops. They say that:
 - (a) They never said that they would provide a warranty for their work.
 - (b) The epoxy's failure was not their fault because they followed the manufacturer's instructions (which, they say, turned out to be incorrect).
 - (c) Both tabletops showed significant wear and tear and required maintenance.
 - (d) They did not want to use epoxy in the first place, but had to because of the constraints the respondent put on them.
23. The respondent says that the applicants did not deliver what they promised and were responsible for fixing the problems with the epoxy.

Analysis

a. What were the express terms of the contracts?

24. The parties did not write down their contracts. I must look at the parties' evidence to determine what they intended and promised to do for one another.
25. I find that the respondent promised to supply a wood slab for the applicants' approval and to pay the invoices for the tabletops.
26. I find that applicants agreed to transform the supplied wood slab into two tabletops appropriate for use in the respondent's pub.

b. Were there any implied terms?

27. The applicants say that they did not provide any warranties for this work.
28. The law may include terms in contracts even if the parties did not specifically consider the terms, say them to each other, or write them down. These added terms are called implied terms. For example, the *Sale of Goods Act* automatically implies terms into certain contracts that goods sold are reasonably durable and fit for the purpose for which they were purchased.
29. The respondent says that the *Sale of Goods Act* applies to this dispute. I do not agree. The contracts in question were primarily for work and materials, and not for the sale of goods.¹
30. Although I find the *Sale of Goods Act* does not apply, contracts for work and materials may still include implied terms. Judge-made law, which is known as the common law, may also imply terms into contracts for work and materials. At common law, unless the circumstances suggest otherwise, a person performing work and supplying materials impliedly promises:
- (a) to use materials of good quality;
 - (b) to do the work with care and skill; and
 - (c) that the work and materials will be reasonably fit for the purpose for which they were required.
31. The court or tribunal will look at the nature of the contract and the relationship between the parties in order to assess whether the parties intended to include the above-mentioned terms in the contract.²
32. I find that the above noted terms are implied into the contracts between the parties. By their own evidence, the applicants intended to provide the respondent with suitable tabletops. Although they are not certified tradespeople, the applicants

¹ *ter Neuzen v. Korn*, [1995] 3 S.C.R. 674 at para. 67

² *ter Neuzen*, at paras. 73 – 84.

are skilled and experienced woodworkers. The applicants knew that the tabletops were going to be used in a commercial establishment where alcohol is both served and spilled. The respondent relied on the applicants' knowledge and skills to provide them with tabletops that were appropriate for such a setting. I find that the applicants impliedly agreed to use their skills and knowledge and to choose appropriate materials for the job, even if the parties did not expressly discuss these terms.

33. In summary, I find that the respondent was required to provide the applicants with a slab of wood acceptable to the applicants, and to pay the applicants after they completed the tabletops. In exchange, the applicants were required to select and use appropriate materials, and to use the skill and care needed to provide the respondent with two tabletops that were appropriate for use in the pub.

c. Did the parties do what they were contractually required to do?

34. In providing the wood slab and promptly paying the first two invoices, I find that the respondent did all that it promised to do under the contracts.
35. I find the applicants did not initially deliver what they promised. The applicants chose and applied an epoxy finish for the express purpose of protecting the tabletops against damage, including spills. The bar top immediately stained after installation. The applicants admit their failure to cure the epoxy long enough led to the stain. As time passed, both tabletops discoloured and became difficult to clean. Either the applicants did not select the appropriate epoxy or did not use the appropriate care and skill to mix, apply, and cure the epoxy properly. In either case, the result is the same. The applicants delivered defective tabletops that were not appropriate for use in the pub. I find they breached the contracts in doing so.
36. The applicants say that they should only be responsible for repairing the dark stain, if anything. In their view, they should be paid for all of the refinishing outside of the relatively small area of the dark stain. I do not agree. By the applicants' own account, the epoxy's failure was not limited to the dark stain. The applicants cured

both tabletops incorrectly. Both tabletops needed to be refinished because of their shared defective surface.

37. The applicants also say they that the respondent should pay the third invoice because the respondent was responsible for the less-than-ideal working conditions. I do not agree. The applicants knew of the time, budget and material constraints when they agreed to do the work. If they believed these constraints would prevent them from providing suitable tabletops, the applicants could have refused the work or could have asked the respondent to be responsible for any failures. They did neither. I find that they accepted the job knowing of the constraints and were required to complete the contract as promised.
38. The contract required the applicants to provide the respondent with two tabletops that were appropriate for use in a pub. I find that they did not do so until after they refinished both tabletops in January 2017. As such, I find the applicants are not entitled to any further payment from the respondent.

ORDER

39. I dismiss the applicants' dispute.

Michael J. Kleisinger, Tribunal Member