



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *retroteck window mfg. ltd. v. vellella*, 2018 BCCRT 291

B E T W E E N :

retroteck window mfg. ltd.

APPLICANT

A N D :

mose vellella

RESPONDENT

A N D :

retroteck window mfg. ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant retroteck window mfg. ltd. (Retroteck) and the respondent mose vellella (Mr. Vilella) had an agreement about installation of windows in Mr. Vilella's home. Retroteck says Mr. Vilella has failed to pay the \$3,000 balance owing for work done under the parties' May 9, 2016 contract.
2. In his counterclaim, Mr. Vilella claims Retroteck failed to properly finish the work as required by the parties' contract and industry standards. Mr. Vilella claims \$4,179.15, being the difference between the \$7,179.15 in estimates he received from another contractor to finish the job and the \$3,000 claimed by Retroteck. The parties are self-represented.

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, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, and I note that neither party requested 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 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are: a) to what extent has Retroteck proved it completed the windows job under its agreement with Mr. Villella, such that it is entitled to payment of its outstanding \$3,000 invoice balance, and b) to what extent has Mr. Villella proved he is entitled to offset the \$3,000 with the \$7,179.15 quote he received to finish the windows job.

EVIDENCE AND ANALYSIS

8. In a civil claim such as these, the applicant bears the burden of proof, on a balance of probabilities. This means Retroteck must prove it is entitled to payment of the \$3,000 invoice balance. In his counterclaim, Mr. Villella must prove the quoted \$7,179.15 is a reasonable offset to the \$3,000 invoice balance. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. On May 9, 2016, the parties agreed that Retroteck would replace 7 of Mr. Villella's aluminum windows with vinyl windows and screens. Retroteck's May 9, 2016 contract shows the \$5,250 total, Mr. Villella's \$2,250 deposit, and the \$3,000 claimed balance. It shows the \$3,000 was paid on May 26, 2017, which was by credit card. Mr. Villella later disputed the charge and MasterCard reversed it.
10. Retroteck's contract, signed by Mr. Villella, sets out the dimensions of each of the windows. There is a typed paragraph on the form that asks the customer to "review all sizes shown above to be sure those are the units you require", which someone scribbled through, which I infer was done by Retroteck's salesperson as his initials appear beside the paragraph. I am unable to discern from the contract each window's pricing.

11. The back of the contract contains a number of terms not relevant to this dispute. Contrary to Mr. Villella's submission, nothing turns on the back of the contract.
12. Retroteck says it completed the job on May 26, 2016, with its installer J doing the work. Mr. Villella signed a 'Customer Satisfaction Sheet' with a checkmark that he was "extremely satisfied". He also handwrote "great work" on the form. Mr. Villella says that he did so in good faith, because the installer seemed eager to leave. He says the sheet was given to him last minute, after he had given his credit card. It is undisputed that Mr. Villella is a journeyman carpenter. I find Mr. Villella's explanation difficult to accept as it does not explain why he took the extra step of adding a specific comment like "great work" when he says he had not yet looked at any of the windows. This is only relevant because the inconsistency causes me to place less weight on what Mr. Villella says another Retroteck installer, D, told him upon inspection, as discussed below.
13. It is undisputed that Mr. Villella was home during the installation and did not express any concerns. I agree with Mr. Villella that nothing turns on this in that Mr. Villella was not contractually required to monitor or manage Retroteck's installation.
14. Mr. Villella agrees that he disputed the MasterCard charge, after he did a walk-through with his neighbour after Retroteck left and noticed the windows sagging and not level.
15. After Mr. Villella expressed concern, Retroteck had another installer, D, go by and inspect their installation on June 5, 2017. Retroteck submits that D was satisfied it was done to industry standards. D's signed statement in evidence said the windows "were put in the way I would have installed them and could find no defects".
16. In contrast Mr. Villella submits that his brother was a witness to D's agreement during the inspection that J had not installed the windows properly and they should have had supports installed. Mr. Villella says that the front 3 windows were not

made with room to make final adjustments and so they would have to be re-made. Both Mr. Villella and his brother provided sworn Affidavits about what D allegedly said.

17. So, what is the expert evidence before me as to whether the windows were reasonably installed in accordance with industry standards and the parties' contract?
18. Mr. Villella says the windows "were not square, level, and plumb" as per good trade practices and industry standards. He says it was J, not his wife as alleged by Retroteck, who brought up deficiencies with the 2 bedroom windows. Mr. Villella does not explain the timing, given his submission is otherwise that he noticed the problems with his neighbour after the installation was completed and J had left.
19. In any event, Mr. Villella acknowledges these 2 bedroom windows were fixed on July 11, 2016. Mr. Villella says that when J fixed those windows, he agreed with Mr. Villella that the "front 3 windows" were not all lined up. Mr. Villella says J tried to adjust them, but there was not enough room to do so. Mr. Villella also says the large living room window required an extra person and that it required filler pieces. Mr. Villella says that without the filler pieces, the large window began to sag due to the weight. Mr. Villella concludes from this that J never installed supports in any of the windows. Mr. Villella says that while J said he would return with an extra person to try and fix this window, he never did so.
20. As noted above, the tribunal has flexibility in accepting different forms of evidence. A formal sworn Affidavit is not necessarily required. In his signed statement, J wrote that he installed the windows according to industry standards. J denied that Mr. Villella ever asked him about the way the windows were being installed and that at the end of job Mr. Villella signed the customer satisfaction sheet. I do not accept that J ever told Mr. Villella the windows had been installed poorly at the time of installation or that J told Mr. Villella's wife that, and here I note I have no evidence from Mr. Villella's wife. It does not make sense that Mr. Villella would sign "great work" on the customer satisfaction sheet if J had said 2 windows were

installed incorrectly. However, I note that J does not mention that he re-attended at Mr. Villella's home on July 11, 2016, and based on Retroteck's submission that it fixed the bedroom deficiencies I find that J did so. However, I am not prepared to accept that J made the comments about the 3 front windows, as alleged by Mr. Villella.

21. Mr. Villella produced a number of photos with annotations pointing out deficiencies. I am not a window installation expert and am not prepared to conclude based on Mr. Villella's submission and photos that Retroteck failed to meet the relevant industry standard for all of the windows at issue. Further, the parties' contract does not state Retroteck was required to install supports, bearing in mind the job was to replace windows in an existing frame. Also, I find I cannot reasonably discern from the evidence before me whether a completely square and level installation was possible.
22. Mr. Villella obtained an estimate from West Coast Windows (WCW) in October 2017, for \$4,366.95 for the installation of 3 new front windows, 1 of which is in the living room. A separate October 2017 quote from WCW is for \$1,927.59 to remove 3 other windows, "block the bottom properly", and re-install them. This latter quote says it is for pricing purposes only as WCW declined to do the work. Apart from "block the bottom properly", there is nothing in WCW's quotes that is critical of Retroteck's work.
23. It was open to Mr. Villella to ask WCW to provide an opinion about Retroteck's work and for reasons unknown to me, he did not do so. There is no explanation for why WCW's quotes to deal with 6 windows far exceeds Retroteck's contract price to replace and install 7 windows. WCW does not indicate if their windows are the same as Retroteck's.
24. J and D are Retroteck's employees, and I find they are not particularly objective. They also do not address the specific issues Mr. Villella raised about the windows' installation. On the other hand, Mr. Villella's brother is also not at arms' length

given his relationship with Mr. Villella. I have addressed my concerns above about Mr. Villella's evidence about what J and D said to him.

25. Based on the evidence before me, I find that I am left with WCW's brief reference to Retroteck failing to "block the bottom properly" of 3 windows. I am unable to discern from the evidence whether "block the bottom properly" refers to installing supports in larger windows to prevent sagging or to setting the windows plumb and/or level. As noted above, the parties' contract is for the replacement of windows only, and does not on its face address any re-framing requirements to accommodate the vinyl windows. It may be that Retroteck should have recommended re-framing or blocking, but if so that likely would have increased the contract price. WCW's larger invoice supports this conclusion.
26. The parties' respective claims before me come down to the burden of proof. I find Retroteck has not proved it is entitled to the \$3,000 balance claimed. The evidence from J and D is brief and Retroteck's submissions do not address Mr. Villella's particular allegations of gaps, and the lack of plumb and level. While I found above Mr. Villella failed to produce expert evidence of an industry standard and that Retroteck failed to meet it, Retroteck in its claim has not met its burden of proving that it did meet the required standard. Significantly, Retroteck also does not address WCW's quotes in any particular way or the issue of "blocking". I dismiss Retroteck's claim.
27. At the same time, I find Mr. Villella has not proved his claim. As noted above, he did not provide evidence from WCW that Retroteck had improperly installed the windows under the parties' contract. I am not prepared to rely on Mr. Villella's own assessment in the above circumstances. WCW's quote referencing "block the bottom properly" of 3 windows is not sufficient to warrant an order beyond the \$3,000 credit Mr. Villella is receiving due to my dismissal of Retroteck's claim. This is particularly so, given the parties' contractual terms did not appear to include re-framing or "supports" costs. Again, Mr. Villella has not provided any expert evidence of what the industry standard is that he says Retroteck failed to meet.

Contrary to Mr. Villella's submission, the fact that MasterCard allowed the reversal of the credit card charge is not determinative. I dismiss Mr. Villella's counterclaim.

28. In accordance with the Act and the tribunal's rules, I find that the unsuccessful parties must each bear the cost of their respective tribunal fees and dispute-related expenses.

ORDERS

29. The parties' respective claims and disputes are dismissed.

Shelley Lopez, Vice Chair