



Civil Resolution Tribunal

Date Issued: August 28, 2018

File: SC-2017-002671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alpine-Progress Installations Inc. v. Yarmush et al*, 2018 BCCRT 482

B E T W E E N :

Alpine-Progress Installations Inc.

APPLICANT

A N D :

Dirk Yarmush and Jessica Stark

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for gutter replacement work the applicant, Alpine-Progress Installations Inc¹, did for the applicants, Dirk Yarmush and Jessica Stark. The applicant says the respondents owe the claimed \$2,047.50. The respondents say water is bypassing the gutter and causing soil and landscape erosion. The applicant admits this erosion is occurring, but says it is caused by a roof problem, and is unrelated to their gutter work.
2. The applicant is represented by Darren Pelling, a principal or an employee, and the respondents are represented by Dirk Yarmush.

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, because I find I can fairly resolve the dispute based on the documentary evidence and submissions before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282.

¹ The applicant started this proceeding under its former corporate name, Syntrek Enterprises Inc. but on February 8, 2018 changed its name to Alpine-Progress Installations Inc. After hearing submissions from the parties, and with no objection from the respondent, I find it is appropriate to reflect the applicant's new name and I have amended the style of cause accordingly.

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 issue in this dispute is to what extent, if any, the respondents must pay the applicant its outstanding invoice for gutter replacement services.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. As referenced above, the applicant completed the replacement of the respondents' gutters on November 8, 2016. On November 13, 2016, the applicant gave the respondents its invoice for \$2,047.50 (\$1,950 plus GST). It is undisputed that the applicant replaced the respondents' gutters and that the respondents have not paid anything towards the applicant's invoice.
10. The applicant's "16-928 quote", which became the parties' contract, described the "High Alpine Steel" gutter replacement work as follows: tear off (of gutters) required, and "gutter & downpipe". Fascia, soffit, "heat trace", and "clean & cap" were expressly not included. I find it is clear the applicant was not hired to do anything with the respondents' roof, other than to install the gutters to it.
11. On December 14, 2016, the respondents advised there was a problem with the gutters, and said they would pay 50% of the applicant's invoice and the balance

when the work was corrected. On around December 16, 2016, the applicant attended but did not see any problems with the gutters, as discussed further below. On several occasions through May 3, 2017 the respondents promised to pay at least 50% of the applicant's invoice, although they never did so.

12. On May 4, 2017, the parties met at the respondents' home and discussed the water problem. The applicant denies the erosion is caused by its gutters having been made "too short". Instead, the applicant says the water bypassing the gutter is entirely due to the incorrect slope of the roof edge flashing, in that it is sloped outwards from the roof rather than inwards as required. The applicant says that a longer gutter will not resolve or alleviate the water bypass issue, because the incorrect roof edge flashing slop makes it impossible for the gutter to collect the water, even if it were extended in length. The applicant also says that the respondents never requested nor authorized it to modify the roof flashings and extend the gutter past the end of the fascia board, which is undisputed. The applicant says it completed the work it was hired to do. The applicant says the respondents' concerns about the water bypass issue should be directed to its roofing contractor.
13. The respondents submit they never had problems with water pooling before. I accept this evidence generally, but it does not address the applicant's fundamental point about the new roof flashing slope being the cause of the problem. The respondents instead rely on the fact that their neighbours, with similar roofs, have gutters that extend past the roof edge, including one couple who they say had the applicant do their gutters. The respondents however do not deny that the applicant is not responsible for the gable cap flashing, which is part of the roof edge flashing. In reply, the applicant reiterates again that it is the improperly installed gable cap flashing that is the cause of the respondents' water and erosion problem.
14. The respondents also say the applicant's worker D installed diverter flashing after the respondents complained about water pooling. The respondents say D said it had been installed improperly. Contrary to the applicant's suggestion, the tribunal

has flexibility in accepting evidence, including hearsay evidence. The applicant submits that it always told the respondents that a diverter flashing is needed at that particular location of the roof to ensure water does not bypass the gutter, because the gutter is installed tight to the gable cap flashing. Because of the way the roof was installed, the applicant says water is directed to this area and needs to be diverted away from the small gap created by the roofing materials at this junction. I agree with the respondent on this point, given their professional experience in gutters and based on the photo and video evidence before me, which shows no rain getting through where the diverter is located. The applicant also says the diverter flashing is part of the roofing installation, not the gutter installation, which I accept and I find is essentially undisputed. The applicant denies that it or its worker D ever stated its own workmanship was completed incorrectly. The applicant says it only ever stated that the roofing work was completed incorrectly. I accept the applicant's submission on this point, as I find it is not consistent with the overall evidence before me. In any event, I find nothing turns on the diverter as water is not coming from that location.

15. There is no independent expert evidence before me. The quote for new gutters provided by the respondents says nothing about the applicant's work or the cause of the water problem. I attach little weight to the respondents' submission of what appears to be Youtube-type videos from contractors (or perhaps other homeowners) giving generic advice about gutter installation. There is no evidence before me that those contractors had any knowledge of the respondents' roofing installation. Further, these videos do not address the respondents' type of water bypass problem.
16. On balance, I prefer the applicant's own professional evidence and submission about how it installed the respondents' gutters and why the water is causing the problem, as assessed against the respondents' submissions as the homeowners. Based on the photos and videos before me, I find the applicant's gutter replacement work is not the cause of the respondents' water bypass and consequent erosion problem. In other words, I accept that even if the gutters were

longer and extended past the roof edge, it would make no difference. I say this because I find the photos and videos support the applicant's analysis of how the water problem is occurring: it is coming over the gable cap flashing that is incorrectly sloped away from the roof, and dripping down along the face of the fascia board. I agree with the applicant that a longer gutter would not solve this problem.

17. The respondents question the applicant's statement that it installed gutters according to industry standard. The applicant says there is more than one industry standard, but that one standard is to keep the end of the gutter back $\frac{1}{4}$ " to $\frac{1}{2}$ " from butting into other materials, at the end of an eave, such as: gable fascia tails, gable cap flashing, lower gable fascia. There is nothing in the parties' agreement that specifies the gutter length. On balance, I accept the applicant's submission that it reasonably installed gutters that are about $\frac{1}{4}$ " short of the fascia board edge, given the roofing materials that were already in place. As noted above, I also accept that the applicant's work is not the cause of the respondents' water bypass problem. I find there are no other substantive issues to address with respect to the applicant's gutter replacement work and therefore the respondents must pay the outstanding invoice.
18. In summary, I find the respondents must pay the applicant's outstanding \$2,047.50 invoice. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), from November 14, 2016.
19. As the applicant was successful in this dispute, in accordance with the Act and the tribunal's rules I find it is also entitled to reimbursement of \$125 in tribunal fees. The applicant also claimed \$122.60 in dispute-related expenses, stating that it was for service of the Dispute Notice. However, the applicant provided no receipts, and in the absence of such evidence I therefore dismiss the applicant's claim for \$122.60.

ORDERS

20. Within 30 days of this decision, I order the respondents to pay the applicant a total of \$2,205.70, broken down as follows:
 - a. \$2,047.50 as payment of its outstanding gutter replacement invoice,
 - b. \$33.20 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
21. The applicant's claim for dispute-related expenses is dismissed. On the monetary award set out above, the applicant is entitled to post-judgment interest under the COIA, as applicable.
22. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
23. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair