



# Civil Resolution Tribunal

Date Issued: May 6, 2019

File: SC-2018-007246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wohl v. Paragon Surfacing Ltd.*, 2019 BCCRT 534

**B E T W E E N :**

Sanford (Sandy) Wohl

**APPLICANT**

**A N D :**

Paragon Surfacing Ltd.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

### **INTRODUCTION**

1. The applicant, Sanford (Sandy) Wohl, hired the respondent, Paragon Surfacing Ltd., as part of a renovation of his townhouse. The applicant claims that the respondent made several errors during the renovations and that the respondent's employees were unprofessional. The applicant seeks \$4,000 as a discount on the respondent's final invoice. The applicant also asks for orders that the respondent apologize and

develop written standards for its employees. The respondent admits that its installers failed to clean up and made 2 minor errors. The respondent says that \$150 for the applicant's time and \$240 in additional plumber costs is reasonable compensation.

2. The applicant is self-represented. The respondent is represented by its principal.

## **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 118 of the *Civil Resolution Tribunal 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 that there are no significant issues of credibility or other reasons that might require 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 9.3(2), 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. Did the respondent complete the work in a good and workmanlike manner?
  - b. If not, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision. In addition, I have reviewed the cases that the applicant provided even though I do not specifically refer to them because they stand for uncontroversial legal principles.
9. The applicant hired the respondent as part of a renovation of his townhouse. The respondent's role in the installation was to install granite countertops, backsplashes and a sink in the kitchen and 4 bathroom sinks. The respondent quoted \$10,008.75 and estimated the job would take 8 hours in a single day. The applicant paid a deposit of \$3,933.56 and a further payment of \$2,000 after the work was complete.
10. It is undisputed that there is \$4,075.19 outstanding on the invoice, which the applicant refused to pay pending the outcome of this dispute. In effect, if the applicant is successful, the amount that he receives from the respondent would roughly cancel out the amount he owes the respondent. The respondent did not counterclaim for an order that the applicant pay the outstanding amount.
11. The respondent's employees attended on August 28, 2018. The applicant has numerous complaints about the employees, which I summarize as follows:
  - a. They were 30 minutes late and stayed 4 extra hours.
  - b. One of the employees was sick.

- c. They did not bring enough drop cloths and that the drop cloths they did bring were dirty.
  - d. They had to borrow a screwdriver and bucket from the applicant.
  - e. They did not clean up after themselves, including by leaving construction waste outside the townhouse.
  - f. They nearly threw out a set of instructions about how to care for the sinks before the applicant stopped them.
  - g. The lead employee initially told him that he might not be able to install one of the backsplashes because the bathroom wall was bowed.
  - h. The respondent did not have a supervisor on site.
12. In addition, during the day an employee broke a backsplash, which meant that the employees did not complete the work. The applicant cleaned up the inside of the townhouse after the employees left. The respondent says that if the applicant had pointed out the mess, it would have sent employees to clean it up, although I note that it was late in the evening by the time the employees left.
13. On August 29, 2018, the applicant called a manager of the respondent and complained that the brackets supporting the bathroom sinks were too small. The manager agreed to install larger brackets.
14. The respondent sent 2 employees on August 30, 2018 to install the backsplashes and the larger brackets. Once again, an employee broke the backsplash. As a result, they had to attend a third time, on August 31, 2018, to install the backsplash.
15. The applicant's plumber attended on August 31, 2018, to hook up the sinks and faucets. The plumber found that one of the bathroom counter holes that the respondent drilled was too small. The plumber did not hook up any sinks but charged \$240 for his attendance. The respondent contacted the respondent but did not hear back until September 4, 2018, presumably because of a long weekend. On

September 4, 2018, an employee attended to re-drill the counter hole. The applicant's plumber attended to hook up the sinks and faucets and charged the applicant \$250.

16. After the installation was complete, the applicant says he discovered 3 further defects:
  - a. There were small globules of silicon sealant visible on 2 of the porcelain sinks.
  - b. The vertical rails under the 4 bathroom sinks were "crudely" cut.
  - c. There is a crack on a piece of wood under the kitchen sink.
17. The applicant wrote a lengthy letter to the respondent outlining all of his complaints. On September 11, 2018, the manager followed up with a telephone call, which the applicant recorded. The manager acknowledged that the project did not go as smoothly as he had expected and that he understood the applicant's frustration. After that conversation, the respondent offered to give the applicant a discount of \$150 plus the additional plumber costs if the applicant provided an invoice. The respondent also offered to inspect the other deficiencies.
18. With respect to the cost of the plumber, the applicant says that he paid the plumber in cash and that the plumber has since failed to provide an invoice, despite being asked. In this dispute, the respondent does not take issue with the amount that the applicant says he spent on the plumber. I accept the applicant's evidence that the plumber charged \$240 for attending on August 31, 2018.
19. The applicant says that there was an implied term in the parties' contract that the respondent must use reasonable care, do the work in a professional manner, and use materials of a reasonable quality. The applicant argues that the respondent's work fell well below those standards.
20. The respondent does not dispute that it had an obligation to do the work in a professional manner. The respondent also acknowledges that there were issues

with the installation. The respondent says that it stands by its previous offer of \$150 plus the plumber cost.

21. The respondent says that there is no basis for any further discounts. The respondent says that it replaced the broken backsplashes and corrected the faucet hole. The respondent says that it has offered to inspect the other deficiencies identified by the respondent but the applicant has not responded to the offer. The respondent says that the remaining critiques are unrelated to the final product.
22. For the most part, I agree with the respondent. I find that \$150 is a reasonable sum to compensate the applicant for the time he had to spend cleaning up the townhouse. By the respondent's admission, its employees should have cleaned up after themselves. I also find that the respondent should pay for the plumber's first trip to the townhouse, which was \$240.
23. I find that the applicant has proven that there were 3 further deficiencies in the respondent's work. Based on the applicant's photograph of the problem, there appears to be a small amount of sealant on at least one of the sinks. The applicant says that it can be taken off with acetone but presumably has chosen not to do it himself. The middle rails under the 4 bathroom sinks have a rough edge. It is the edge that faces inward so I find that it is not readily visible on a casual viewing. Finally, there is a crack in a piece of wood under the kitchen sink.
24. Even though the respondent offered to "inspect" them, the respondent never offered to perform any remedial work. While the evidence shows that the parties' tone remained respectful even while they strongly disagreed about the events giving rise to this dispute, I find that it was not unreasonable for the applicant to decide against have the respondent continue to work in his townhouse. I find that the applicant is entitled to be compensated for the cost of hiring someone else to do so.
25. There is no evidence before me about the cost to remedy these deficiencies. They appear to be minor issues. The applicant attempted unsuccessfully to get a quote from a handyperson, which I take as evidence that the repairs will not require any

specialized expertise. On a judgment basis, I order that the respondent deduct a further \$100 from the final invoice to compensate the applicant for hiring a handyperson to fix the remaining deficiencies.

26. As for the applicant's remaining complaints, the respondent acknowledges that the project was not perfect, but says that it fixed issues as they arose. The applicant believes that the fact that the respondent had to attend the townhouse 3 extra times is evidence of its failure to perform the work to an adequate standard. I see it differently. I find that the respondent took appropriate action to fix mistakes and make sure that the final product was up to the applicant's standards.
27. While I accept that the applicant was frustrated by the employees' level of professionalism, I find his remaining complaints are largely trivial. I agree with the respondent that they do not relate to any issues with the final product. I reject the applicant's argument that any of these remaining complaints created any compensable harm.
28. The applicant also claims that the respondent engaged in deceptive practices within the meaning of section 5 of the *Business Practices and Consumer Protection Act*. Section 4(1) of the BPCPA defines a deceptive practice as a representation or conduct that could deceive or mislead a customer. Section 171 of the BPCPA says that only the BC Provincial Court has jurisdiction to order a remedy for breaching the BPCPA. That said, I find that the provisions of the BPCPA are relevant to the question of whether the respondent complied with the implied terms of the parties' contract discussed above. I will therefore consider the applicant's argument.
29. The applicant specifically points to the employee initially telling him that a sink did not need a larger bracket. I find that this allegation is inconsequential. I find that it cannot reasonably be characterized as a deceptive practice, especially since the respondent installed the bracket that the applicant demanded. Furthermore, there is no evidence that the larger bracket was strictly necessary. It may be that the respondent decided to install the larger bracket only because the applicant demanded it.

30. Therefore, I find that it is reasonable for the respondent to pay the applicant \$490 in compensation. I find that the applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* of \$5.57, which I have calculated from September 4, 2018.
31. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I have only ordered the respondent to pay \$100 more than it had previously offered to the applicant. Given the amount that the applicant claimed, I find that the applicant has been largely unsuccessful. I dismiss the applicant's claim for tribunal fees and dispute-related expenses. The respondent did not claim any dispute-related expenses.
32. In the applicant's Dispute Notice, he asks for an order that the respondent apply a discount to the final invoice. I find that such an order would be unenforceable. However, the tribunal's mandate is to provide flexible and speedy dispute resolution. In keeping with that mandate, I find that it is appropriate for me to craft an enforceable remedy notwithstanding what the applicant asked for in his Dispute Notice.
33. I interpret the applicant's Dispute Notice as asking for an order that the respondent reimburse him for his time and out-of-pocket expenses for a handyperson and the plumber. I find that the applicant framed it as a discount to reflect the practical reality that any award would likely be offset against the amount owing under the final invoice.
34. Therefore, I order the respondent to pay the applicant \$495.57. Practically speaking, it would be simplest for the parties to consider this amount as a discount on the outstanding amount on the final invoice, as the applicant suggests in his Dispute Notice. However, as noted above, the respondent did not bring a counterclaim for payment of the final invoice. As a result, I find that I cannot make an order that the award in this dispute be offset against the amount owing under the final invoice or that the applicant pay the difference to the respondent. Nothing in



this decision prevents the respondent from starting its own tribunal proceeding to collect any balance owing on the final invoice if the applicant does not pay following this decision.

35. As for the applicant's request for an order that the respondent apologize, the tribunal does not generally order apologies. Forced apologies are not genuine expressions of remorse and are therefore unhelpful and unproductive. In any event, the respondent has already apologized. I dismiss this aspect of the applicant's claim.

36. The applicant also asks for an order that the respondent develop better practices. It is not the tribunal's role to order a business to operate in a particular way. I dismiss this aspect of the applicant's claim.

## **ORDERS**

37. Within 14 days of the date of this order, I order the respondent to pay the applicant \$495.57 to the applicant's final invoice, broken down as follows:

- a. \$240 as reimbursement for the plumber,
- b. \$250 as reimbursement for the applicant's time cleaning the townhouse and all outstanding deficiencies, and
- c. \$5.57 in pre-judgment interest under the *Court Order Interest Act*.

38. The applicant's remaining claims are dismissed.

39. The applicant is entitled to post-judgment interest, as applicable.

40. 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.

41. 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 it is an approved consent resolution order, or, 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.

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Eric Regehr, Tribunal Member