



Civil Resolution Tribunal

Date Issued: May 13, 2019

File: SC-2018-008673

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jinks et al v. Merek Tomanek dba Seaside Painting and Services et al*,
2019 BCCRT 567

BETWEEN:

Anthony Roger Jinks and Anne Elizabeth Jinks

APPLICANTS

AND:

Merek Tomanek, doing business as Seaside Painting and Services and
1095148 B.C. Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for painting services.

2. The applicants, Anthony Roger Jinks and Anne Elizabeth Jinks, say they hired the respondents, Merek Tomanek, doing business as Seaside Painting and Services and 1095148 BC Ltd., to paint the back deck of their home. As discussed below, the applicants' contract was with the numbered company.
3. The applicants paid the respondent's invoice in full but say the paint job was unsatisfactory. They seek reimbursement of \$2,625, what they paid for the services. The respondents say the workmanship was good, but the defects in the paint job are a result of the materials used.
4. The applicants are represented by Anthony Jinks. The respondents are represented by Merek Tomanek.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not

necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. 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.

ISSUE

9. The issue in this dispute is whether the applicants are entitled to reimbursement for an unsatisfactory paint job.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. On April 2, 2018, the respondents gave the applicants a written quote for the painting of their deck. The quote was for \$2,500, plus \$125 GST, for a total of \$2,625. The scope of the work included washing and sanding the deck as required, applying an oil primer and two coats of "Sharkskin solid stain," and all labour and

materials. It is not disputed that it was the respondents who selected the supplier for the materials.

12. The paint job was completed between May 11 and 13, 2018, and the applicants gave full payment to the respondents before they left the job site on May 13, 2018.
13. The applicants submit that while the job was being done, they noticed bubbles appearing under the paint and brought this to the respondents' attention. The applicants state Mr. Tomanek advised them the bubbles would dissipate as the paint cured. After a few days, the bubbles were still there. In their Dispute Response, the respondents stated that because the bubbles did not disappear, they contacted the supplier of the paint for assistance. The respondents also sanded down the bubbled areas and re-primed and re-painted the affected areas on the deck. Unfortunately, the bubbles reappeared. The photographs filed in evidence show significant bubbling of the deck paint in various areas.
14. The applicants asked the respondents to fix the bubble issue, but the respondents' position was that the problem was not with the workmanship, but rather a manufacturing defect with the paint supplied. In their Dispute Response, the respondents stated their supplier suggested completely re-sanding, re-priming and re-painting the deck as a solution. The respondents stated that as they had already tried that, and wouldn't be compensated for their time doing it again, they declined.
15. The respondents have not produced any evidence suggesting the bubbling issue was a result of defective supplies. In any event, I am satisfied the respondents were responsible for the materials used for the job. I am also satisfied that despite paying the respondents in full, the applicants raised concerns with their satisfaction of the job before payment was made, and they were reassured the bubbles would not remain an issue.
16. As noted above, the respondents chose not to make submissions or provide evidence in response to the applicants' submissions, despite being given the opportunity to do so. While parties are under no obligation to provide evidence or

submissions during the tribunal decision process, failing to do so can lead to the tribunal making an adverse inference.

17. In this dispute, the applicants provided a detailed explanation of the paint job defects. The respondents chose not to provide evidence or submissions, beyond the explanation provided in the Dispute Response.
18. In the Dispute Response, the respondents do not dispute that the paint job was unsatisfactory, but rather allege it was the fault of defective materials, not their workmanship. Based on all of the evidence and submissions, I do not find it appropriate to make an adverse inference against the respondents in this case. The explanation provided in the Dispute Response is relatively detailed and dealt with the issues in question.
19. Based on the all the evidence, I find the paint job was not completed to a satisfactory standard. I am unable to determine whether the defects are a result of the workmanship or the materials used. If the paint itself was defective, that is an issue between the respondents and the paint supplier. The parties' agreement was to provide labour and materials (paint) and to complete the job to a professional standard.
20. I find that the suggested next steps for correcting the paint deficiencies were to completely redo the sanding, priming and painting of the deck. Therefore, I find the applicants are entitled to a full refund of the money they paid to have their deck refinished.
21. The applicants named both Mr. Tomanek as a sole proprietor and the 1095148 BC Ltd. as respondents. I find, however, that the contract was between the applicants and the respondent numbered company. In his Dispute Response Mr. Tomanek stated the applicants had hired the respondent numbered company, and this is consistent with the invoice provided, which listed the numbered company on the letterhead. Therefore, I find the respondent 1095148 BC Ltd. must refund the applicants the total they paid for the job, \$2,625. I also find the applicants are

entitled to pre-judgment interest based on the rates set out in the *Court Order Interest Act*, from May 13, 2018, the date they paid the respondents' invoice in full. I dismiss the applicants' claims against Merek Tomanek, doing business as Seaside Painting and Services.

22. 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 see no reason in this case not to follow that general rule. Since the applicants have been successful, I find they are entitled to reimbursement of \$125 in tribunal fees. The applicants did not claim any dispute-related expenses.

ORDERS

23. Within 15 days of the date of this decision, I order the respondent 1095148 BC Ltd. to pay the applicants a total of \$2,792.07, broken down as follows:
- a. \$2,625.00 for a refund for money paid for painting services;
 - b. \$42.07 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 in tribunal fees.
24. The applicants are also entitled to post-judgment, as applicable. The applicants' claims against Merek Tomanek, doing business as Seaside Painting and Services are dismissed.
25. 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.

26. 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.

Andrea Ritchie, Vice Chair