



Civil Resolution Tribunal

Date Issued: July 8, 2019

File: SC-2018-008678

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Deschamps v. A-1 Window Mfg. Ltd.*, 2019 BCCRT 822

B E T W E E N :

Susan Deschamps

APPLICANT

A N D :

A-1 WINDOW MFG. LTD.

RESPONDENT

A N D :

PRAISEWORTHY PAINTING LTD.

THIRD PARTY RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about vinyl windows the applicant, Susan Deschamps, hired the respondent, A-1 Window Mfg. Ltd. (A-1), to manufacture and install in her home. The applicant says she paid an additional \$3,300 so the windows would colour match her Hardiboard siding, saying the paint company Benjamin Moore (BM) guaranteed a colour match. BM is not a party to this dispute. The applicant claims \$3,300 for a lack of colour match. The applicant also claims \$700, for a round window that she says is defective and so it needs drywall work to hide 'bubbling'.
2. Ultimately, A-1 did not carry the desired beige colour, and so when the applicant chose the custom beige colour A-1 hired a company, the third party Praiseworthy Painting Ltd. (Praiseworthy), to paint the windows. A-1 says the best colour match possible was obtained, but says if anyone is liable, it is Praiseworthy. A-1 denies liability for the alleged defective round window. A-1's third party claim against Praiseworthy is for \$3,300, the amount of Ms. Deschamps' claim about the failed colour match.
3. Praiseworthy says it was never provided a colour sample, and so it relied on a "colour deck" to match the colour. Praiseworthy says it never provided a colour match guarantee.
4. The applicant is self-represented. A-1 is represented by Sarb Kaler, an employee or principal, and Praiseworthy is represented by Andrew Dollinger, a principal or employee. For the reasons that follow, I dismiss the applicant's claims and the third party claim.

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* (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. In the circumstances 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 BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in 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: 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.

ISSUE

9. The issue in this dispute is to what extent, if any, the respondents owe the applicant for a failed colour match in vinyl windows and for a defective window.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. Although I have reviewed all of the parties'

evidence and submissions, I have only referenced what I find necessary to give context to my decision. I note Praiseworthy chose not to provide any evidence.

11. Ms. Deschamps' December 23, 2016 contract with A-1 shows "custom beige colour – Benjamin Moore Smokey Taupe 983". The \$16,720 order was for 16 windows and 5 skylights, with an estimated ship date of around June 2, 2017.

Colour match

12. Ms. Deschamps claims \$3,300 because she says she did not receive the colour match she paid for. She provided little evidence in support of this claim. Her email thread with A-1 after her concerns arose show she chose beige vinyl windows that were close, but not an exact, match to her siding. She chose to buy A-1's windows rather than making a custom window order, to save money. A-1's April 19, 2017 email to Ms. Deschamps said it cost \$300 to bring in a custom colour. A-1 wrote that the colour was accurate to the paint chip. The additional \$3,000 at issue was the cost of the paint job.
13. In its April 19, 2017 email to Ms. Deschamps, A-1 says it told her at the time of order that while the colour will be similar, there will always be a slight difference, in part because the colour is on vinyl windows which is a different material than the siding.
14. In A-1's July 2017 email to Ms. Deschamps, it wrote that it seemed there was an exact colour match in one of her photos but in another it was less clear given the lighting. I have no photos in evidence of the window and siding to compare. Instead, apart from the above email threads with A-1, Ms. Deschamps only provided an email exchange she had with what appears to be a BM store. In it, the author told Ms. Deschamps that based on the photo, the colours are not a match to the Smokey Taupe paint chosen. Again, I was not provided a comparison photo.
15. Based on the evidence and submissions before me, I find the evidence does not establish that A-1 breached its contract with Ms. Deschamps. First, there is no

evidence that A-1 guaranteed a colour match. Ms. Deschamps only says BM guaranteed a match, but BM is not a party to this dispute. Second, A-1 says it explained there would be a slight difference, given the paint was going on vinyl windows and the match was to Hardiboard siding. Ms. Deschamps does not dispute this evidence. Third, there is insufficient evidence that there was no colour match. I am not prepared to rely solely on the email from the BM paint store that the colours were not a match based on a photo that store saw but which is not before me. I note Praiseworthy says it was not provided a colour sample and relied instead on a “colour deck”. However, there is no evidence or submission before me that this was inappropriate.

16. Ms. Deschamps also now submits that the custom beige is no different than stock beige, and so she should not have had to pay for the \$3,300 additional charges for the custom paint and installation. Again, I have no evidence, such as photos of the windows in stock beige and in the custom, so I have no way to compare. Next, nothing turns on the fact that A-1 may have originally carried ‘stock beige’. After Ms. Deschamps placed her order and left a deposit A-1 advised that it no longer carried it. There is no evidence before me that she could not have cancelled her order at that point and had her deposit refunded. I find Ms. Deschamps chose to proceed with the custom beige order.
17. Given my conclusions above, I dismiss Ms. Deschamps’ claim for the alleged failed colour match. As A-1 is not liable for it, this means I also dismiss A-1’s third party claim against Praiseworthy. The round window defect claim, discussed below, involves only A-1.

Round window defect

18. As noted above, the applicant says the round window is “defective with bubbling/rippling in the vinyl”. She wants A-1 to fix its appearance with drywall, and claims \$700.

19. In A-1's September 30, 2018 email to Ms. Deschamps, it wrote that it did not see any bubbling on the window. It wrote that vinyl windows need to be manually welded into shapes and so the alignment would not be "absolutely perfect". A-1 said the result was within an acceptable margin of error.
20. The applicant provided an undated photo of the allegedly defective round window. It shows some black marks, but I cannot tell from the photo whether this is a defect or dirt. It also shows some slight variation in the vinyl frame. While the applicant says the photo shows "ridges or bubbling", I find this is not clear in the photo or that what is shown amounts to a defective installation by A-1.
21. Given there is nothing in the photo evidence that is obviously a flaw or defect, I find the evidence does not show that A-1's installation was sub-standard. The applicant provided no evidence from another window manufacturer or installer saying that A-1's work was defective. I find the evidence does not support a conclusion that A-1's window or installation was defective. I dismiss the applicant's claims.
22. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find she is not entitled to reimbursement of tribunal fees. There were no dispute-related expenses claimed.

ORDERS

23. I dismiss the applicant's claims and the third party claim, and thus I dismiss this dispute.

Shelley Lopez, Vice Chair