



Civil Resolution Tribunal

Date Issued: June 19, 2020

File: SC-2020-000998

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Circle Developments Ltd v. Bossio*, 2020 BCCRT 686

B E T W E E N :

CIRCLE DEVELOPMENTS LTD

APPLICANT

A N D :

TRISHA BOSSIO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a vinyl decking agreement. The applicant, Circle Developments Ltd (Circle), says that the respondent, Trisha Bossio, did not pay

20% of the final invoice because she said its work was defective. Circle says the defect was minor and that it was a simple repair. Circle requests the \$576.43 outstanding on the final invoice. Circle is represented by a business contact.

2. Ms. Bossio says that Circle did not properly repair the defective vinyl decking and that the caulking job was also defective. She says she should not have to pay the full amount of the final invoice. Ms. Bossio represents herself.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the vinyl decking and caulking was defective and, if so, to what extent must Ms. Bossio pay the claimed \$576.43.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant Circle must prove its claim on a balance of probabilities. However, where one party asserts defective work, that party has the burden of proving the defects, see *Lund v. Appleford*, 2017 BCPC 91 at paragraph 124. Here, Ms. Bossio is the party asserting defective work and therefore has the burden to prove this on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. Most of the evidence is not in dispute. The parties entered into a signed contract on July 4, 2019 for Circle to install a new vinyl membrane, including caulking, on Ms. Bossio's deck. The contract stated that the decking was warranted to be free from defective material and work quality for 60 months from the date of installation. The total cost was \$2,882.25, less a \$1,400.00 deposit, leaving an outstanding balance of \$1,482.25.
11. On August 13, 2019, Ms. Bossio sent Circle an email saying that the deck had just been finished but upon inspection one of the full sheets had a slice with caulking in it because a piece of debris was caught underneath. Ms. Bossio indicated that the area was already discolored because of the caulking and dirt. She said that she was also worried about leaking and the warranty.
12. Circle sent a representative on August 15, 2019 to perform repairs. Ms. Bossio submits that the repair was not sufficient and that there was still a piece lifting from the deck that her toe would catch on. On that same day, Ms. Bossio again wrote to Circle and said that its representative had inspected the vinyl membrane and he

said he could either heat seal and try to remove some of the staining around the debris area or he could cut a piece out and patch it, but that this would be more noticeable. Ms. Bossio stated that she chose the heat seal. She pointed out that Circle's representative also said that the caulking job was deficient and there were gaps and spaces along the house and smears up the stucco in parts. Ms. Bossio stated that Circle's representative said that he would try to fix it. Ms. Bossio indicated that she was agreeable to getting the deficiencies fixed as best as possible but that she was expecting a substantial discount given the defects.

13. Ms. Bossio was out of town from August 15th to August 28th so she taped off the area and told Circle that her son would be there to allow them to make the repair. She says when she returned the deck was untouched. She says she called Circle and told them she wanted it fixed and a discount or a full replacement of the vinyl sheet.
14. On August 29, 2019, Ms. Bossio sent another email saying she had not heard back and again told Circle that she expected a discount. On September 1, 2019, Ms. Bossio again emailed Circle indicating that after she returned the defective work had still not been repaired. She stated that she did not authorize any further payments on her credit card until the defective work was repaired and again that she expected a discount.
15. Ms. Bossio says that on September 2, 2019 she got a call from Circle's representative apologizing for the delay and admitting that its installer was let go for not following proper procedure for what to do when debris is caught under the decking. She says that the representative told her that the proper procedure was to use a piece of wood and pound in the debris and not to cut the decking material. Circle does not deny this conversation happened.
16. Circle's representative inspected the decking the following week and agreed that the repair was inadequate and arranged for another attempt. Ms. Bossio was not at home at the time, so her husband dealt with the representative who gave Ms.

Bossio's husband a \$100 restaurant gift card. Circle did not provide evidence that Ms. Bossio accepted this as the discount she had been requesting.

17. Circle submitted a repair order form from August 15, 2019 which shows that it spent 2 hours rewelding the cut and repairing the caulking. A second repair order indicates that a small cut was repaired. Ms. Bossio says that the September 6, 2019 second repair was better, but it was still noticeable. She says that it easily stains around the area and that it is still lifting on one side. Ms. Bossio submitted multiple pictures showing the slice in the vinyl deck, including a current one from March 2020, which shows a slice through the material.
18. Ms. Bossio's final payment subtracted 20% of the outstanding amount and she wrote on the October 29, 2019 cheque that this was because of the caulking and the vinyl damage. Ms. Bossio says she chose this amount after talking to other decking installers who suggested a range between 15% to 25%. Ms. Bossio did not provide evidence of these statements. Ms. Bossio also points out that Circle did not provide her with a warranty.
19. Circle submits that it had been willing to split the remaining amount outstanding and then send Ms. Bossio the warranty. It says it cannot provide the warranty until the outstanding balance is paid.
20. Based on the evidence, I find that Ms. Bossio has proven that the cut in the vinyl decking amounted to a defect. I note that Circle has not submitted that the cut in the vinyl was not defective but rather the focus of its submissions is that it tried to fix it. Circle also admits that the vinyl was heat welded and this resulted in discoloration. I also note that Circle indicated that it had agreed to discount the amount outstanding by half, resulting in Ms. Bossio receiving a 10% discount overall. I find that Circle's cutting the vinyl decking resulted in defective work which was not completely repaired.
21. Ms. Bossio also submits that part of her claim is that the caulking was defective. Ms. Bossio says that Circle's representative admitted this and promised to fix it. Circle's

repair forms show its employee spent 2 hours repairing both the cut in the vinyl and the caulking. Ms. Bossio provided multiple pictures of the cut but none of the caulking. She also made no submissions on the state of the caulking now. I find that Ms. Bossio has not proved that the caulking work is still defective. Therefore, I find she is not entitled to a discount for the caulking.

22. I find that Ms. Bossio is only entitled to a deduction for the vinyl cut and discoloration. Considering only the vinyl cut and discoloration, on a judgement basis, I find that a 10% discount is reasonable for the defect that still exists in the vinyl after the repairs. This means that Ms. Bossio has to pay the other 10%, or \$288.22, she withheld when making her final payment
23. Circle is also entitled to interest from the October 29, 2019 date Ms. Bossio withheld payment until the date of this decision. In its Dispute Notice Circle requests a 1.5% rate of interest. In its submissions it then said it was not claiming contractual interest. Therefore, I find Circle is entitled to pre-judgement interest under the *Court Order Interest Act* (COIA) on the \$288.22 outstanding from October 29, 2019 until the date of this decision, which is \$3.62.
24. Under section 49 of the CRTA and CRT rules, the CRT 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. As Circle was partially successful, I find that it is entitled to half of its \$125.00 tribunal fees, or \$62.50. Neither party requested expenses.

ORDERS

25. Within 30 days of this decision, I order Ms. Bossio to pay Circle a total of \$354.34, broken down as follows:
 - a. \$288.22 in debt under the agreement,
 - b. \$3.62 under the COIA, and

c. \$62.50 in tribunal fees.

26. Circle is entitled to post-judgement interest, as applicable.

27. I dismiss Circle's other claims.

28. Under section 48 of the CRTA, 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. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

29. Under section 58.1 of the CRTA, 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.

Kathleen Mell, Tribunal Member