



Civil Resolution Tribunal

Date Issued: August 10, 2020

File: SC-2020-002512

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Foster v. Laura Cruse dba LJC Designs*, 2020 BCCRT 888

B E T W E E N :

RICHARD FOSTER and SHARON FOSTER

APPLICANTS

A N D :

LAURA CRUSE (Doing Business As LJC DESIGNS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is over a kitchen renovation. The applicants, Richard Foster and Sharon Foster, claim the respondent, Laura Cruse doing business as LJC Designs, is responsible for multiple kitchen remodel deficiencies. The Fosters say their old cabinets were damaged during removal, their laminate flooring was damaged, the drywall was damaged, the range hood cover was replaced with a lower quality part,

the ducts were not properly sealed and a drainpipe was damaged. The Fosters claim damages of \$3,451.57 in compensation for their losses. The Fosters also claim punitive and aggravated damages.

2. Ms. Cruse denies these claims. Ms. Cruse says she is not responsible for any of the alleged deficiencies because that work was performed by independent contractors. Ms. Cruse also says the contractors provided appropriate quality services.
3. Sharon Foster represents herself and Richard Foster. Ms. Cruse is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.

7. 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 CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Is Ms. Cruse responsible for the contractors' conduct?
 - b. If so, were the kitchen renovation services deficient and what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their claim on a balance of probabilities. Although I have read all the evidence and submissions provided to the tribunal, I will only refer to that which is needed to explain my decision. I note that the respondent did not provide any evidence to the tribunal, despite being given the opportunity to do so.
10. It is undisputed that the Fosters hired Ms. Cruse to remodel their kitchen. The parties signed a contract on April 14, 2019 which says Ms. Cruse will provide and install kitchen cabinets, countertops and a backsplash (contract). The Fosters paid Ms. Cruse a total of \$35,135.60 for the kitchen renovation.
11. The Fosters complain of the following deficiencies from the project:
 - a. Damaged cabinets during removal,
 - b. Damaged floor and no flooring underlay
 - c. Damaged drywall,

- d. Use of improper materials,
 - e. Improper use of one thick coat of mud,
 - f. Failure to wait for drywall mud to dry,
 - g. Pattern of poor workmanship,
 - h. Damaged backsplash,
 - i. Damaged vent cover,
 - j. Improper roof vent installation,
 - k. Improper attic ducting and overcharge, and
 - l. Damage to the sink drainpipe.
12. Multiple tradespersons participated in the kitchen renovation, including Ryan Moir, electrician, Brian Lawlor, plumber, and Rob Wasylshen, general contractor. I have considered the nature of their relationships with Ms. Cruse, because this is relevant to whether she is responsible for their conduct.
13. The relevant factors to consider in determining whether a person is an independent contractor or employee are discussed in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59 and further in *Kirby v. Amalgamated Income Limited Partnership*, 2009 BCSC 1044. These factors include the level of control the employer has over the worker's activities, whether the worker provides his own equipment, whether the worker hires his own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his tasks. These factors are not exhaustive, and the relative weight of each factor depends on the facts and circumstances of each case. The central question is whether the worker is performing services as a person in business on their own account. If so, the person is more likely an independent contractor.

14. Ms. Cruse says these tradespersons were not her employees and each of the tradespersons provided a statement saying they were independent contractors. However, this does not end my analysis. I need to consider the substance of their relationships.
15. On balance, I find that Mr. Moir, Mr. Lawlor and Mr. Wasylshen were acting as independent contractors. First, I note that the services provided by Mr. Moir, Mr. Lawlor and Mr. Wasylshen were specifically excluded from the scope of the parties' contract. The contract says that Ms. Cruse will provide and install cabinets, countertops and a backsplash. However, the contract says plumbing, electrical fixtures and installations are not included. The contract also says the kitchen appliances, including the refrigerator, range and hood would be supplied and installed by the Fosters. Why would Ms. Cruse employ workers to perform tasks outside the scope of her contractual duties? I find this strongly indicates that Ms. Cruse did not employ Mr. Moir, Mr. Lawlor and Mr. Wasylshen.
16. In addition, I find that the Fosters, and not Ms. Cruse, decided to hire Mr. Moir, Mr. Lawlor and Mr. Wasylshen for this project. Ms. Cruse says she told the Fosters that they were free to retain any plumbing, electrical and general contractors they wanted and the Fosters decided to hire these tradespersons. The Fosters say that Ms. Cruse convinced them to use Mr. Moir, Mr. Lawlor and Mr. Wasylshen and that Ms. Cruse "somehow overruled" them from selecting different contractors. I am not persuaded that Ms. Cruse overruled the Fosters. Rather, I find it is more likely that Ms. Cruse recommended Mr. Moir, Mr. Lawlor and Mr. Wasylshen to the Fosters and the Fosters agreed to hire them. A recommendation does not in itself make Ms. Cruse responsible for the tradespersons' work.
17. Further, I find that Ms. Cruse did not direct the tradespersons or supervise their work. While it is undisputed that the Fosters discussed their concerns with the tradespersons' services to Ms. Cruse, I do not find that Ms. Cruse managed their work or that Ms. Cruse and the Fosters agreed that she would manage the tradespersons.

18. I have also considered the tradespersons' billings. Ms. Cruse issued a May 31, 2019 invoice for the following estimated charges for the tradespersons. Ms. Cruse charged estimates of \$3,000 for the electrician, \$750 for the plumber and \$1,000 for the general contractor. The Fosters paid Ms. Cruse the tradespersons' estimated charges in June 2019.
19. I find that Ms. Cruse collected the tradespersons' fees from the Fosters and held these fees on the tradespersons' behalf. I find this intermingling of fees makes it more likely that Ms. Cruse had an employer-employee relationship with them. However, I find this factor is outweighed by the other factors previously discussed. Overall, I find that Mr. Moir, Mr. Lawlor and Mr. Wasylshen were operating as independent businesses and not acting as Ms. Cruse's employees.
20. Why does it matter that Mr. Moir, Mr. Lawlor and Mr. Wasylshen were each an independent contractor rather than an employee? Generally speaking, an employer can be held vicariously responsible for its employee's conduct but a party is not held responsible for the negligence of an independent contractor. Therefore, I find the Fosters, who bear the burden of proof, have not proved that Ms. Cruse is responsible for the conduct of Mr. Moir, Mr. Lawlor and Mr. Wasylshen.
21. I find that each of the deficiencies the Fosters complained of related to services performed by Mr. Moir, Mr. Lawlor and Mr. Wasylshen. There is no evidence before me showing that Ms. Cruse participated in the removal of the old cabinets, the flooring repairs, drywall repairs, plumbing connections, installations of appliances or duct work. And, since I have found that Ms. Cruse is not vicariously liable for the conduct of Mr. Moir, Mr. Lawlor and Mr. Wasylshen, I find that Fosters have not proved their claims against Ms. Cruse. As Mr. Moir, Mr. Lawlor and Mr. Wasylshen are not parties to this dispute, I make no findings or orders regarding whether the alleged deficiencies are proven or their responsibility for the Fosters' claims.
22. For the above reasons, I dismiss the Fosters' claim against Ms. Cruse.

23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the Fosters were not successful in their claim, I find that they are not entitled to reimbursement of their CRT fees. Neither party requested reimbursement of dispute-expenses fees so none are ordered.

ORDER

24. I dismiss the Fosters' claims and this dispute.

Richard McAndrew, Tribunal Member