



Civil Resolution Tribunal

Date Issued: August 18, 2020

File: SC-2020-002522

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mytilineos v. 532766 B.C. Ltd. dba Handyman Connection*,
2020 BCCRT 920

B E T W E E N :

PETER MYTILINEOS

APPLICANT

A N D :

532766 B.C. LTD. dba HANDYMAN CONNECTION

RESPONDENT

AND:

PETER MYTILINEOS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Peter Mytilineos, hired the respondent, 532766 B.C. Ltd. doing business as Handyman Connection (Handyman Connection), to do some painting work in his home. Mr. Mytilineos says that Handyman Connection did not perform the work properly and damaged his property. He asks for an order that Handyman Connection repair the damage or pay him \$5,000.
2. Handyman Connection says that it addressed Mr. Mytilineos' paint quality concerns by re-painting several areas. It denies that it caused damage to Mr. Mytilineos' property, or that it is responsible for the repairs or damages that he claims. By counterclaim, Handyman Connection asks for an order that Mr. Mytilineos pay it \$5,000 for its unpaid invoice of \$1,958.25 and time and expenses it spent to deal with this matter.
3. Mr. Mytilineos is self-represented. Handyman Connection is represented by its principal.

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, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, they 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 able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the CRT's process and that oral hearings are not necessarily required where credibility is in issue.

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.
8. Mr. Mytilineos asks for an order that Handyman Connection provide him with an apology for alleged defamation. The CRT generally does not order apologies because forced apologies are not productive or helpful. In any event, according to section 119 of the CRTA, the CRT does not have small claims jurisdiction over defamation. Therefore, I decline to order the requested apology.

ISSUES

9. The issues in this dispute are:
 - a. Whether Handyman Connection performed defective work or caused damage to Mr. Mytilineos' property,
 - b. If so, what is the appropriate remedy, and

- c. By counterclaim, whether Mr. Mytilineos must pay Handyman Connection \$5,000.

EVIDENCE AND ANALYSIS

10. In a civil dispute like this, an applicant (whether in a claim or counterclaim) bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
11. In early May of 2019, Handyman Connection prepared an estimate of \$1,958.25 for painting various areas of Mr. Mytilineos' home. This estimate covered labour only, and Mr. Mytilineos was responsible for obtaining the materials.
12. Handyman Connection completed the work in late May of 2019. Mr. Mytilineos and his spouse were not entirely happy with the work and arranged for Handyman Connection's principal to attend their home to address deficiencies in the paint work. Mr. Mytilineos was also concerned about cracks in the ceiling and a scratch on the hardwood floor in the living room that he says were not there before the painting work.
13. Although some of the deficiencies were addressed, Mr. Mytilineos says the cracked ceiling and the scratch on the floor remained. Mr. Mytilineos asks for an order that Handyman Connection repair these areas or pay him \$5,000. Handyman Connection says that it went beyond the scope of work in the estimate to try to satisfy Mr. Mytilineos. It denies that it caused the ceiling cracks or floor scratch, or that it is responsible for the damages Mr. Mytilineos claims.
14. Mr. Mytilineos' position is that the fact that Handyman Connection had to return to address deficiencies proves the poor quality of its work. He submits that Handyman Connection's attempt to fix the problems amounts to an admission that its painter, BS, caused the damage. I do not agree. In the case of defective work, the burden of

proof is on the party alleging defective work (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). Therefore, in order for Mr. Mytilineos to be successful, he must prove that Handyman Connection caused the damage to the ceiling and hardwood floor. I will address each area in turn.

15. The scope of work in Handyman Connection's estimate included painting the ceiling in several areas. Photographs in evidence show cracks on a textured ceiling. While there may be cracks in Mr. Mytilineos' ceiling after the painting work, I find that this does not establish that Handyman Connection is responsible for them.
16. The evidence before me contains several estimates from third party contractors for addressing the ceiling cracks, but these estimates do not contain any information about the cause of the problem. Further, there are no statements from painters or other industry professionals to comment on how Handyman Connection's painting or the work done to address deficiencies could have caused ceiling cracks.
17. Keeping in mind that Mr. Mytilineos bears the burden of proof, I find that he has not established that Handyman Connection caused the cracks in his ceiling.
18. Turning to the scratch on the hardwood floor, photographs in evidence show that it runs across 6 boards of hardwood. Mr. Mytilineos says that this area of flooring is ordinarily covered by a rug, which he removed when rearranging the furniture in advance of the painting work.
19. The thrust of Mr. Mytilineos' argument is that, as the scratch was not there previously, it must have been caused by Handyman Connection's painter, BS. Handyman Connection says that the scratch is not related to its work, and points out that, in a July 12, 2019 email message to a contractor, Mr. Mytilineos' spouse stated that the scratch was caused by her grandson. Mr. Mytilineos says that Handyman Connection's principal asked them to lie about the cause of the scratch when requesting a repair estimate because, if the contractor knew that Handyman Connection was involved with the matter, the quote would be higher.

20. Whatever Mr. Mytilineos' spouse told the contractor, I find that this exchange is not determinative of the scratch's cause. I find that the remainder of the evidence before me is of more assistance in establishing whether Handyman Connection is responsible for the scratch on the floor.
21. Although Mr. Mytilineos says BS must have scratched the floor, BS provided a statement in which she says that she did not have any equipment that could have caused the scratch, as she kept her scraper in her pocket and all of her ladders have soft feet on them. I note that Mr. Mytilineos disputes BS's statement that her ladders had soft feet on them.
22. The evidence also includes a statement from a carpenter, TR, who attended the home to view the damaged floor. TR stated that the scratch on the floor was a "deep gouge" that "wasn't consistent with any tools or ladders a painter would use". There is no other opinion from an industry professional to offer a competing view of the scratch's cause. In the absence of this information, I give TR's opinion significant weight.
23. Based on the evidence before me, I find that Mr. Mytilineos has not established that Handyman Connection caused the scratch on the hardwood floor.
24. Even if I had come to a different conclusion about the cause of the damage to the ceiling and floor, I would not have awarded the damages Mr. Mytilineos claims. The cost to repair the scratch was estimated to be between \$850 and \$900 (based on a cost of \$150 per board), and the ceiling repair was quoted at \$650 plus taxes or \$2,274 (with a larger scope of work). Even if the repair work was at the high end of each estimate, it would not cost \$5,000. In any event of my conclusion about the cause of the damage, I find that Mr. Mytilineos did not prove his claim for damages of \$5,000.
25. The next consideration is Handyman Connection's counterclaim for \$5,000. As noted, this claim is for its \$1,958.25 invoice and \$3,041.75 in time and materials

Handyman Connection says it spent in an attempt to address deficiencies and satisfy Mr. Mytilineos.

26. The \$1,958.25 invoice amount matches the amount on Handyman Connection's estimate. Based on the evidence before me, I find that Handyman Connection performed the work outlined on the estimate (although it took longer than expected due to the need to address deficiencies). Mr. Mytilineos admits that he has not paid Handyman Connection's invoice because Handyman Connection did not address the scratch on his hardwood floor.
27. As discussed above, I have found that the evidence does not establish that Handyman Connection caused damage to the ceiling or hardwood floor. Based on the evidence before me (particularly the detailed statement from Mr. Mytilineos' son), I find that Handyman Connection reasonably addressed the remaining deficiencies for which it was responsible. Accordingly, I find that Handyman Connection is entitled to payment of its \$1,958.25 invoice.
28. The remaining \$3,041.75 of Handyman Connection's counterclaim is for materials and time spent to address the deficiencies. As noted above, Mr. Mytilineos was responsible for obtaining materials for the original scope of work. The parties' agreement did not provide that he would be responsible for any materials required to address deficiencies. The agreement also did not allow for additional sums for labour or time spent to rectify problems with the original scope of work. I find that, under the terms of the parties' agreement, Handyman Connection is not entitled to any additional amounts from Mr. Mytilineos.
29. In summary, I find that Mr. Mytilineos must pay Handyman Connection \$1,958.25. Handyman Connection is also entitled to pre-judgment interest under the *Court Order Interest Act*. Under the parties' agreement, Handyman Connection was entitled to payment upon completion of the job. Although the original job was completed on May 31, 2019, Mr. Mytilineos says, and Handyman Connection does not dispute, that the work to address deficiencies was not completed until "the end

of August”. Calculated from August 31, 2019, the pre-judgment interest equals \$33.09.

30. 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.

31. As Mr. Mytilineos was not successful, I dismiss his claim for reimbursement of CRT fees. Handyman Connection is entitled to reimbursement of the \$125 it paid in CRT fees. Neither party made a claim for dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Mr. Mytilineos to pay Handyman Connection a total of \$2,116.34, broken down as follows:

- a. \$1,958.25 for the outstanding invoice,
- b. \$33.09 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 for CRT fees.

33. Handyman Connection is entitled to post-judgment interest, as applicable.

34. The remainder of Handyman Connection’s claims are dismissed.

35. Mr. Mytilineos’ claims are dismissed.

36. Under section 48 of the CRTA, the CRT 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 CRT’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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

37. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Lynn Scrivener, Tribunal Member