



Civil Resolution Tribunal

Date Issued: May 10, 2021

File: SC-2020-008351

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morrison Windows Ltd. v. 4 Aces Siding Ltd.*, 2021 BCCRT 496

B E T W E E N :

MORRISON WINDOWS LTD.

APPLICANT

A N D :

4 ACES SIDING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about the sale of window products. The applicant, Morrison Windows Ltd. (Morrison), sold the respondent, 4 Aces Siding Ltd. (4 Aces), 19 energy star windows and a flange. Morrison says that 4 Aces paid one-half of the purchase price as a deposit. Morrison claims \$4,405.13 for the unpaid balance.

2. 4 Aces does not dispute purchasing and receiving the window products. Further, it agrees that it has only paid one-half of the contract price. However, 4 Aces denies owing Morrison further payment because it says the products are defective and Morrison provided poor service.
3. Morrison is represented by ND, an employee or principal. 4 Aces is represented by its owner, Edward Belter.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly 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 in the interests of justice.
6. Section 42 of the CRTA says 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. Does 4 Aces owe Morrison a debt of \$4,405.13 for unpaid window products?
 - b. Were the window products defective and if so, to what extent does this reduce the amount, if any, that 4 Aces owes Morrison?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Morrison must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision. 4 Aces did not provide any evidence, though it had the opportunity to do so.
10. It is undisputed that 4 Aces purchased window products from Morrison. Morrison sent 4 Aces a \$5,590.26 quote for 19 windows and a separate quote of \$3,220 for a flange. The quote says that the payment terms are "net 25." I infer this means that the final payment is due 25 days after delivery.
11. 4 Aces paid a \$4,405.13 deposit on July 16, 2019, leaving an unpaid balance of \$4,405.13. By paying the deposit, I find that the quotes became the terms of the parties' contract.
12. Morrison provided a packing slip showing that the window products were delivered to 4 Aces on August 10, 2020. Morrison sent 4 Aces an August 12, 2020 invoice for the \$4,405.13 balance owing.
13. I note that the invoice says that payment is due on delivery rather than the "net 25" terms stated in the contract. However, I find that the invoice cannot unilaterally change the agreed payment terms. So, I find that the contract's payment terms apply and payment was due 25 days after delivery.

14. It is undisputed that this invoice is unpaid. So, subject to 4 Aces proving any windows were defective, I find 4 Aces owes Morrison the claimed \$4,405.13.
15. As noted, 4 Aces argues that it does not owe Morrison anything because the window products are allegedly defective. 4 Aces has the burden of proving the defects (see: *Lund v. Appleford*, 2017 BCPC 91).
16. 4 Aces says that there were a number of problems with the order and Morrison never fixed or replaced the defects. 4 Aces' submissions do not describe these defects. However, Morrison provided an email that 4 Aces sent on October 30, 2020 complaining of multiple defects. The email said that 6 of the windows were poorly designed and had the wrong dimensions, 2 windows lacked colour and 5 windows were missing locking devices, the screens were the wrong size and French doors had defective extrusions and hinges. The email says that Morrison did not fix the defects. Morrison did not respond to the email.
17. However, in this dispute 4 Aces did not provide any photographs or supporting evidence showing that the window products were defective. Further, 4 Aces did not provide any submissions or estimates of how much it would cost to repair or replace the alleged defects.
18. It is undisputed that 4 Aces offered to pay the invoice multiple times after delivery. 4 Aces' October 16, 2020 text message and Morrison's call log notes also show that 4 Aces promised to pay the invoice after delivery. In the absence of an explanation, I find that 4 Aces' promise to pay the invoice after delivery is not consistent with the products being defective, as 4 Aces now claims.
19. I note that Morrison has proposed repairing alleged defects if 4 Aces delivered the balance of the payment to be held in trust for Morrison until the work is completed. I have considered whether this is an admission by Morrison that the products were defective. However, I find that this proposal was an offer to resolve a disputed claim and therefore not an admission. So, I have not placed any weight on Morrison's settlement proposal in my decision.

20. For the above reasons, I find that 4 Aces has failed to prove that the window products were defective. So, I find that 4 Aces owes Morrison a \$4,405.13 debt for the unpaid window products.
21. Morrison claims contractual interest at an unspecified rate. The contract does not mention interest but the invoice says that 4 Aces must pay 2% interest. The invoice does not say whether the 2% interest is payable monthly or annually. However, I find it unnecessary to determine the interest rate because the contract does not address interest. Contractual interest must be agreed to, and cannot unilaterally be imposed in a later invoice. So, I dismiss Morrison's contractual interest claim.
22. However, the *Court Order Interest Act* (COIA) applies to the CRT. Having found there was no agreement about interest, I find Morrison is entitled to pre-judgment COIA interest on the \$4,405.13 debt for the unpaid window products, from 25 days after delivery, being September 4, 2020, to the date of this decision. This equals \$13.49.
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. I find that Morrison is entitled to reimbursement of \$175 in CRT fees. Morrison did not claim reimbursement of dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order 4 Aces to pay Morrison a total of \$4,593.62 broken down as follows:
 - a. \$4,405.13 in debt for unpaid window products,
 - b. \$13.49 in COIA pre-judgment, and
 - c. \$175 in CRT fees.
25. Morrison is entitled to post-judgment interest, as applicable.

26. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
27. 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.

Richard McAndrew, Tribunal Member