



Civil Resolution Tribunal

Date Issued: May 13, 2021

File: SC-2020-009312

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Foster v. Wasylyshen*, 2021 BCCRT 510

B E T W E E N :

RICHARD FOSTER and Sharon Foster

APPLICANTS

A N D :

ROBERT WASYLYSHEN and Rostka Enterprises

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about allegedly deficient kitchen renovations. The applicants, Richard Foster and Sharon Foster say the respondent contractors, Rostka Enterprises (Rostka) and Robert Wasylyshen caused various deficiencies and damage during the renovation. The Fosters claim \$2,236.47 for repair costs and damage. In their

submissions, the Fosters also claim “miscellaneous damages” and punitive damages in unspecified amounts.

2. Mr. Wasylyshen denies the Fosters’ claims and says all work was performed to industry standard and did not cause any damage.
3. The applicants are self-represented. Mr. Wasylyshen represents both Rostka and himself.

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.

8. Rostka, a named respondent in this dispute, did not file a Dispute Response. Normally, this would result in Rostka being found in default, with liability assumed against it. For the following reasons, I decline to find Rostka in default.
9. In this dispute, Rostka was added as a respondent to the dispute after Mr. Wasylyshen had already filed his Dispute Response to the original Dispute Notice. Mr. Wasylyshen accepted service of the Amended Dispute Notice on Rostka's behalf and advised CRT staff that he was Rostka's representative for this dispute. Rostka does not appear to be a separate legal entity, but rather a business name used by Mr. Wasylyshen. I am satisfied on the evidence and submissions provided by Mr. Wasylyshen that the respondent in this dispute is Robert Wasylyshen, who was doing business as Rostka Enterprises. I will proceed to determine this dispute on its merits as against both named respondents. However, given that Rostka is not a legal entity, my focus is on Mr. Wasylyshen's liability for the alleged deficiencies and damage.
10. I note that the Fosters provided links to various websites, including what I infer are YouTube videos of kitchen renovations. However, I cannot rely on live links in evidence because the websites' content may have changed. So, I have not viewed these links.
11. I also note that I was originally unable to open several items of the Fosters' evidence. I requested these items and the Fosters provided them in a readable format. The evidence consisted of what appears to be renovation information that the Fosters copied from various websites. I find the late evidence is not relevant and so I have not admitted it.

ISSUE

12. The issue in this dispute is whether Mr. Wasylyshen's renovation work was deficient or caused damage, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, as the applicants the Fosters must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

The Alleged Deficiencies and Damage

14. The Fosters say Mr. Wasylyshen caused the following damage and deficiencies during the renovation:

- a. Damaged original countertop during removal,
- b. Damage to the kitchen sink drainpipe and resulting water damage,
- c. Deficient flooring installation,
- d. Deficient drywall installation and painting,
- e. Damaged backsplash and vent cover,
- f. Deficient roof vent and attic ducts installation, and,
- g. Use of pressure treated lumber in the walls.

15. Mr. Wasylyshen says none of his work was substandard, and he did not intentionally damage anything. He says he has already paid to repair the damage to the backsplash and vent cover.

16. Here, I find the Fosters have not met their burden of proving it is more likely than not that Mr. Wasylyshen is responsible for the alleged deficiencies and damage, or that they suffered any loss or damage as a result. So, I find the Fosters' claims must be dismissed. My reasons follow.

Damage to Original Countertop During Removal

17. The Fosters say Mr. Wasylyshen “yanked” the countertop off. They say the wood was broken where the clamps were attached, and the countertop’s surface was chipped and damaged. Mr. Wasylyshen says the countertop removal was not originally part of his job. He says the Fosters said they would remove all existing cabinets and countertops, but did not. He says if he had been advised of the countertop and cabinets needed to be removed beforehand, he would have brought an assistant to help him. He does not dispute that some damage was done to the old countertop, but says it was difficult to remove the countertops because the adhesive and thin laminate were old and brittle.

18. While it is undisputed that there was some damage to the original countertop during removal, the Fosters have not provided any evidence of the extent of the damage, or any loss suffered by them a result of the damage. On the contrary, the Fosters say the countertop and cupboards were sold to a third party to use in an in-law suite. The Fosters did not provide the sale price, or any evidence that the sale price was reduced because of the damage. The Fosters also did not claim any specified amount for the alleged damage to the countertop. I find I do not need to determine whether Mr. Wasylyshen’s countertop removal was negligent because I find the Fosters have not proven they suffered any damages resulting from the countertop removal.

Damaged Drainpipe

19. The Fosters say Mr. Wasylyshen’s removal of the base cabinets from the kitchen sink area resulted in a cracked drainpipe under the kitchen sink, and subsequent leak to the ceiling below. The Fosters say this happened because Mr. Wasylyshen unsuccessfully attempted to use a hammer to break apart the cabinet from around the drainpipe. The Fosters say Mr. Wasylyshen then cut and removed the drainpipe. The Fosters say the sink drainpipe cracked either when the sink “was yanked up” or when the drainpipe was cut. The Fosters claim \$675 to repair the cracked pipe and water damage on the ceiling, and \$43.67 for ceiling paint.

20. Mr. Wasylyshen says the plumbing leak was not reported until February 2020. He says he was present in July 2019 when the plumber pressure tested all the water lines and drains when the faucet was installed.
21. At the outset, I find the issue of whether Mr. Wasylyshen's work was deficient or caused damage is not within ordinary knowledge and requires expert evidence (See *Bergen v. Guliker*, 2015 BCCA 283).
22. It is undisputed that there was a cracked pipe that caused water damage in the Fosters home. The Fosters submitted photos of the cracked pipe, and a statement from SH, who completed a bathroom renovation for the Fosters and was hired to repair the water damage from the cracked pipe. In SH's opinion, "the break would have come from pulling force from above" (reproduced as written). I infer from SH's statement that they are a carpenter, or work for a carpentry service. However, SH did not state how they are qualified to provide opinion evidence on pipes and plumbing. I find SH's statement does not meet the CRT requirements for expert evidence, and so I place no weight on SH's opinion about the cause of the cracked pipe.
23. As noted above, the Fosters bear the burden of proving their claims. Here, I find there is insufficient evidence to prove that Mr. Wasylyshen caused the cracked pipe and subsequent leak, even if I had accepted SH's statement. I find the Fosters have not proven this claim.

Deficient Flooring Installation

24. The Fosters say Mr. Wasylyshen did not install an underlay, snapped the ends of a floorboard instead of cutting it with a saw, and installed interlocking floorboards incorrectly using a hammer instead of "a simple press and click".
25. Mr. Wasylyshen says his installation was to industry standard. He says his work was limited to installing flooring under the sink and stove with additional boards provided by the Fosters. Mr. Wasylyshen says when he arrived to do the installation, the Fosters did not have any underlay and instructed him to proceed without it. Mr. Wasylyshen says the majority of the flooring was already installed by another

company, and he observed some of the slotted tongues on the interlocking floorboards had been intentionally cut off for the flooring to fit. He says he repaired other areas of the flooring that were incorrectly installed.

26. The Fosters provided a statement from PH, who I infer is their flooring supplier. PH confirmed an underlay is required under laminate flooring, which is undisputed. However, PH did not view the flooring or provide any evidence on the condition of the Fosters' floor. The Fosters say that Mr. Wasylyshen "might have found it prudent to bring along some underlay, seeing as he was coming to do a flooring job". I do not accept this submission. It is undisputed that the Fosters supplied the floorboards. I find it was not unreasonable for Mr. Wasylyshen to assume that the required underlay would also be supplied by the Fosters. The Fosters say that Mr. Wasylyshen checked for underlay in his truck when he discovered there was none provided and they "thought he would come back with some". However, the Fosters have not provided any explanation for why they allowed Mr. Wasylyshen to continue with the flooring installation when no underlay was available.
27. The Fosters did not provide any expert evidence to confirm the condition of the installed flooring or whether using a hammer to connect interlocking floorboards and snapping floorboards rather than using a saw was negligent or below industry standard. Here, on balance, I find there is insufficient evidence to prove that Mr. Wasylyshen's flooring installation was deficient. So, I find the Fosters have not proven this claim.

Deficient Drywall Installation and Painting

28. The Fosters say Mr. Wasylyshen did not install the drywall properly. They say Mr. Wasylyshen cut the drywall by banging on it with a hammer, which caused pieces to fall inside the wall cavity. The Fosters say when Mr. Wasylyshen repaired the drywall, he only applied one thick coat of mud, instead of several layers. The Fosters say Mr. Wasylyshen told them to apply the paint immediately after he finished sanding, instead of allowing the Fosters to apply primer first. The Fosters say that as a result, the paint peeled. I do not accept this submission. I find it unlikely that Mr. Wasylyshen,

as the Fosters' contractor, would prevent the Fosters from applying primer to the walls of their own home. In any event, it is undisputed that the Fosters completed the painting themselves, and so I find any deficiency in the painting, including the alleged lack of primer, cannot be attributed to Mr. Wasylyshen.

29. Mr. Wasylyshen says the method he used to cut the narrow drywall strips to install floating shelf hardware is the industry standard and prevents damage to electrical wiring and plumbing. Mr. Wasylyshen says he used "fast set mud" to adhere new drywall strips, followed by "classic finish mud". He says he sanded the drywall and then the Fosters primed and painted the walls, as had been agreed.
30. The Fosters did not provide any photographs showing deficiencies with the drywall, or peeling paint. They also did not provide any expert evidence confirming that the drywall was installed incorrectly. The Fosters also did not claim any specified amount for the alleged deficient drywall installation. So, I find the Fosters have not proven this claim.

Damaged Backsplash and Vent Cover

31. The Fosters say Mr. Wasylyshen damaged the kitchen hood vent cover during installation. They also say Mr. Wasylyshen scratched the newly installed backsplash in the process. Mr. Wasylyshen admits that there was damage to the vent cover and backsplash, but says the damage was identified during the inspection and he has already paid for the repairs. Mr. Wasylyshen submitted the invoices for the repairs in evidence. Mr. Wasylyshen also says the Foster's kitchen ceiling was bowed which made the installation challenging. The Fosters do not dispute that Mr. Wasylyshen already paid to repair the damaged backsplash and replace the vent cover, but say the new vent cover is not the same brand or quality.

32. The Fosters have not provided any evidence that the new vent cover is inferior to the damaged vent cover. They also have not provided evidence of any further costs they have incurred, or any loss they have suffered after the repairs were completed. So, I find that the Fosters have not met their burden of proving their claim for the damaged backsplash and vent cover.

Deficient Roof Vent and Attic Ducts Installation

33. The Fosters say Mr. Wasylyshen did not install the appropriate roof vent and the attic ducts were not properly sealed, which resulted in water leaking through their kitchen range hood and onto the stove. The Fosters claim \$603.75 for a proper roof vent installation and \$129.15 for the attic duct repair. The Fosters also request a refund of \$172.55 they say they were overcharged by Mr. Wasylyshen for the product costs of the initial roof vent, cap, and ducting. They say the product cost of the roof vent and ducting was only \$85.45 at Home Depot. The Fosters did not provide evidence of this reduced product cost, and I find they have not proven that they were overcharged for the initial roof vent, cap, and ducting.

34. Mr. Wasylyshen says the roof vent he installed was appropriate. He says when he was advised that the Fosters had concerns about the roof vent and ducts, he asked to come investigate the issue, but the Fosters refused.

35. The Fosters submitted statements from GW and DB. Both GW and DB say that the roof vent and attic ducting were installed incorrectly. However, neither GW nor DB provided their qualifications for the opinions provided. So, I find that they do not meet the CRT requirements for expert evidence, and I put no weight on their opinions.

36. As noted above, the Fosters bear the burden of proving their claims on a balance of probabilities. I find the Fosters have not proven that the roof vent and attic ducts installation were deficient. In any event, given that the Fosters did not provide Mr. Wasylyshen with a reasonable opportunity to correct the deficiencies in his work, the Fosters are not entitled to damages based on their cost to have the deficiencies repaired (See: *Lind v. Storey*, 2021 BCPC 2).

Use of Pressure-Treated Lumber

37. The Fosters say Mr. Wasylyshen did not bring lumber when installing the shelving supports in the kitchen. The Fosters say that instead, Mr. Wasylyshen took wood from their “odds and ends pile” and used pressure treated lumber for an interior wall. I note here that I find it unlikely that a contractor would attend at a client’s home without any materials for the assigned task unless they had been advised or were under the impression that the materials would be provided by someone else. The Fosters do not say whether they allowed Mr. Wasylyshen to take lumber from odds and ends pile, or whether Mr. Wasylyshen did so without their consent.
38. The Fosters rely on SH’s statement. SH says they observed treated lumber in the shared wall between the Fosters’ kitchen and bathroom. SH stated that the use of treated lumber inside is unprofessional and can lead to poor indoor air quality. SH did not provide their qualifications and so I place no weight on SH’s opinion.
39. Mr. Wasylyshen did not respond specifically to this allegation. However, the burden rests with the Fosters. Here, I find the Fosters have not proven that Mr. Wasylyshen’s alleged use of pressure treated lumber for an interior wall is a deficiency or caused any damage.

Miscellaneous Damages

40. The Fosters also claim for “miscellaneous damages or compensation”. The Fosters says that they cannot put a cost on some of the alleged deficiencies. They say their floor depresses in a few locations, but the flooring repair “is just not feasible”. They say they cannot repair the lack of primer on the drywall because the cupboards would have to be removed. They say Mr. Wasylyshen put pressure treated lumber in the wall cavity, which they now cannot remove. I find the Fosters’ claims for miscellaneous damages or compensation is too vague and it is not possible for me to assess any amount of damages on this basis. In any event, I have already found that the Fosters have not met their burden of proving Mr. Wasylyshen is responsible

for the alleged deficiencies, and so I decline to make any award for miscellaneous damages or compensation.

Punitive Damages

41. The Fosters also claim punitive damages for their ordeal and having to live with the compromised aspects of their new kitchen, but do not specify the amount they claim for punitive damages. This claim was not mentioned in the Dispute Notice, and there is no indication that it was raised until the submissions stage. I therefore find the punitive damages claim was raised too late in the proceeding, and Mr. Wasylyshen did not have a reasonable opportunity to respond to it with relevant evidence. However, given that I have found the Fosters' did not meet the burden of proving their claims against Mr. Wasylyshen, I find the Fosters would not be entitled to punitive damages in any event.
42. Punitive damages are to punish a "morally culpable" respondent and are usually granted only for malicious and outrageous acts: see *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paragraphs 62 and 68 and *Chalmers v. AMO Canada Company*, 2010 BCCA 560 at paragraph 29. Punitive damages should be resorted to in only exceptional cases and with restraint: see *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at paragraph 69). Here, I find there is no evidence whatsoever to support a punitive damages claim. I dismiss this claim.
43. 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. The respondents did not pay any CRT fees or claim any dispute-related expenses and so I award none.

ORDER

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

Leah Volkens, Tribunal Member