



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Daradics v. McChesney (dba Refresh Renovations)*, 2021 BCCRT 737

B E T W E E N :

BUCK DARADICS

APPLICANT

A N D :

THOMAS MCCHESENEY (Doing Business As REFRESH
RENOVATIONS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about allegedly defective soffit and light installation.
2. The applicant, Buck Daradics, hired the respondent, Thomas McChesney (dba Refresh Renovations), to replace the applicant's wood soffits with aluminum soffits and reinstall the porch lights in the soffits. The applicant says the respondent's soffit

installation was deficient, that he incorrectly moved the lights, and that the respondent, or one of his crew, damaged the applicant's railing. The applicant claims \$1,000 to fix the soffit and lights, and \$200 for the railing damage.

3. The respondent denies the applicant's claims. The respondent denies there was any agreement about light placement. He also says the applicant agreed to take the respondent's \$200 refund to resolve the dispute.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issues in this dispute are:
 - a. Did the parties agree to resolve this matter with a \$200 refund?
 - b. Did the respondent install the lights in the wrong spots?
 - c. Was the respondent's soffit installation deficient?
 - d. Did the respondent, or his crew, damage the applicant's railing?
 - e. If the answer to any of the above is "yes", what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one, the applicant must prove his claim on a balance of probabilities. I have reviewed the parties' submissions and weighed the evidence but only refer to that necessary to explain and give context to my decision.
11. The parties agree to the following facts:
 - a. On February 11, 2021, the respondent estimated \$2,514.65 to remove the applicant's old wooden soffits and replace them with aluminum soffits. Neither party submitted a copy of the estimate, but they agree that it does not address light placement or deficiencies.
 - b. On February 22, 2021, the respondent's crew removed the old soffits. On February 23 and 24, 2021, the crew installed the new soffits and reinstalled 4 existing lights and 2 new lights in the soffits.

- c. On February 24, 2021, the respondent billed \$2,567.37 for the work and the applicant paid the full invoice the same day.

Alleged Resolution Agreement

12. The applicant texted the respondent on February 25, 2021 with concerns about the lighting placement and the use of putty or cement to seal the electrical mast entry into the soffit. The parties met at the applicant's house the following day and discussed the lighting placement, the mast, and the railing damage. The respondent declined to do anything about the lighting placement. None of this is disputed.
13. The respondent says the applicant agreed to take a \$200 refund and find his own solution to the problems and so this dispute has already been resolved. The applicant denies that he ever agreed to take the \$200.
14. In order for an agreement to be binding there must be an offer, acceptance of that offer, and the transfer of consideration (something of value). Based on the respondent's electronic transaction record, and the parties' text messages, I find the applicant did not take any steps to accept the \$200 e-transfer but, rather, the e-transfer was automatically deposited into the applicant's account. I further find the applicant told the respondent, by text message the next day, that he had not agreed to take \$200 to resolve the dispute and offered to return the money.
15. Additionally, the respondent offered to pay the applicant a further \$200, for a total of \$400, which I find indicates there was no agreement between the parties for \$200. On balance, I find the parties did not have a binding agreement to settle this dispute for \$200.

Lighting Placement

16. The applicant says the respondent did not reinstall 3 soffit lights in the correct location at the front of the applicant's house, contrary to his agreement with the respondent.
17. It is undisputed that the respondent reinstalled 4 lights in the soffits at the front of the applicant's house, 2 above the front door and porch located in the middle of the

house, and one each on the left front corner and right front corner of the house. Based on the applicant's photos, I find each of the corner lights were reinstalled just above the outside corners of the front windows whereas they were originally located further away from each window, toward the corners of the house. I also find the 2 front porch lights are not evenly centered above the door whereas they were before.

18. In the parties' text messages, the respondent acknowledged that his crew reinstalled 3 of the front lights in different spots. In his submissions, the respondent denies there was any agreement about the location of the soffit lights and so he says he was free to install the lights where he saw fit.
19. Based on the parties' text messages on February 23, 2021, prior to the soffit installation, I find they only had a verbal agreement about the placement of the new lights installed at the back of the house. I find no indication of any verbal, or other agreement about the front soffit light placement.
20. The applicant says that, because the respondent did not contact him to discuss any change to the front light placement, he should have reinstalled all the front soffit lights in the same spot. I infer the applicant argues that it was an implied term of the parties' agreement that the lights would be reinstalled in the same positions. I agree. I find that the respondent's agreement to reinstall the soffit lights implies that the reinstalment occurs in the same location as the original installment, otherwise the scope of work would include moving the lights.
21. On February 25, 2021 the respondent told the applicant that the corner front lights were moved closer to the center of the house because the aluminum corner soffits could not accept the weight of the lights. While this may be accurate, I find the old light placement would not require the lights to be reinstalled on the corner soffits, based on the photos in evidence. I find the lights were moved a significant distance toward the center of the house on a straight soffit. I further disagree with the respondent that the applicant accepted the new light positions because he did not say anything contrary on February 23, 2021, when the lights had already been placed but before the soffit installation had been completed. I accept the applicant's

undisputed statement that he was not able to accurately check the location of the front soffit lights on February 23, 2021 because it was dark when he returned home from work and the lights had no power yet. In such circumstances I do not take the applicant's lack of objection to be consent. Further, the applicant raised the issue with the respondent in the morning of February 25, 2021 when he could first examine the lights in daylight.

22. On balance, I find the respondent breached the parties' agreement by failing to reinstall 3 of the 4 front soffit lights in the same locations. I will address the appropriate remedy below.

Alleged Deficiencies

23. The applicant alleges that the respondent's work was deficient because he used too few screws, did not align the soffits with the siding, used putty around the electrical mast, and allowed the soffit above the front porch to sag. The respondent denies any deficiencies and says his crew did its best given the applicant's older and uneven fascia and stucco siding.
24. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency. Other times, a breach of the standard may be so obvious that it does not require expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283)
25. In this case, I find expert evidence of the industry standard is required to show that the soffits were deficiently installed. Although the applicant's close-up photo shows a slight misalignment between the fascia and the soffit, I find it barely noticeable and so find it is not an obvious defect. I further find the photos do not contain any obvious sagging or other visible defects.
26. The applicant says another contractor, CC, told him that the respondent did not use enough screws to fasten the J-trim to the house, which caused the soffit to sag. CC's March 7, 2021 estimate to remove and reinstall the soffits contained no such opinion

or explanation about the allegedly sagging soffits. I find the applicant's recollection of CC's verbal opinion does not qualify as expert evidence under the CRT rules, as it is second-hand information and there is no indication how CC is qualified to provide such opinion.

27. I find the applicant's photo of how he says the electrical mast should have been inserted into the soffit is also not expert evidence, as there is no indication of the source of the photo and whether it applies to the applicant's circumstances.
28. Overall, I find the applicant has not provided any expert evidence that the respondent failed to meet the expected industry standard in installing soffits. So, I find the applicant has failed to prove the respondent's work was deficient.

Railing Damage

29. Based on the applicant's February 25, 2021 photos, I find the top of his black front railing was muddy and scuffed with a few small scratches. The applicant says the respondent's crew must have stood on his front porch railing to install the soffit thus causing the scuffs and scratches. The respondent says his crew denied standing on the railing but provided no statements from any crew members in support.
30. The applicant says the railings were installed less than 1 year before the soffits were installed. He provided no photos of what the railing looked like prior to the soffit installation, or any evidence about when he last looked at the railing, prior to noticing the scratches and dirt on February 25, 2021. I find it likely that the applicant noticed the damage on February 25, 2021, when he was carefully inspecting the soffit installation and light placement. However, that does not necessarily mean the damage was done sometime in the 3 days leading up to February 25, 2021, when the respondent's crew was on site. Without something more, I find the applicant has failed to prove that the respondent's crew stood on the railing and that this caused scuffs and scratches to the railing.
31. On balance, I find the applicant has failed to prove the respondent, or his crew, damaged the railing. I dismiss the applicant's \$200 claim for a new railing.

Remedy

32. In summary, I find the respondent breached the parties' agreement by failing to reinstall the front soffit lights in the correct locations. Damages for a breach of contract are intended to place the innocent party in the same position as if the contract had been performed. In this case, I find this means to relocate the 3 front lights to their correct location. In the parties' messages the respondent said the only way to fix the incorrect light placement is to take down the soffits and replace them, which would take a full day. So, I find replacing the front soffits is required to fix the light placement issue.
33. I find the applicant is not entitled to reimbursement of the full cost of removing and replacing all the soffit the respondent installed, as I find the applicant has not proven the installation was deficient. So, I do not rely on CC's March 7, 2021 estimate of \$1,417.50 to replace all the soffits.
34. In his February 24, 2021 invoice, the respondent charged \$2,193 to remove the old soffits and install new ones, plus electrical costs. The applicant provided a March 5, 2021 estimate for \$840 to fix the uneven J-trim portions, re-install the soffit around the power mast, and replace the soffits around the lights. Neither the February 24, 2021 invoice nor the March 5, 2021 estimate identify the estimated cost of replacing only the front soffit. However, based on those estimates and my estimate that the front soffits are likely approximately $\frac{1}{4}$ to $\frac{1}{2}$ of the entire soffit area, I find \$700 is a reasonable estimate to replace the front soffits, on a judgment basis. From this, I deduct the \$200 which the respondent deposited in the applicant's account on February 25, 2021 which the applicant has undisputedly not returned. So, I find the respondent must reimburse the applicant \$500 for the cost of replacing the front soffit.
35. The *Court Order Interest Act* applies to the CRT. However, as the applicant has not yet paid to replace the front soffits and light placement, I find he has not yet suffered any loss and so is not entitled to pre-judgment interest.

36. 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. In this case, the applicant was only partially successful, so I find he is entitled to reimbursement of \$62.50 which is half his paid CRT fees. He did not claim dispute-related expenses.

ORDERS

37. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$562.50, broken down as follows:

a. \$500 in damages, and

b. \$62.50 in CRT fees.

38. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

39. I dismiss the applicant's claim for railing damage.

40. 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. Under the *COVID-19 Related Measures Act*, the CRT may waive, extend or suspend mandatory time periods. This is in effect until 90 days after June 30, 2021, which is the end-date of the March 18, 2020 state of emergency, 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.

41. 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.

Sherelle Goodwin, Tribunal Member