



Civil Resolution Tribunal

Date Issued: November 24, 2021

File: SC-2021-004410

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McCallum v. Quality Interior Contracting Ltd.*, 2021 BCCRT 1236

B E T W E E N :

GARY MCCALLUM

APPLICANT

A N D :

QUALITY INTERIOR CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about attic insulation.

2. The applicant, Gary McCallum, hired the respondent, Quality Interior Kontracting Ltd. (QIK), to insulate his home. Mr. McCallum paid for the job in full. After it was complete, Mr. McCallum says he noticed that QIK did not install enough insulation to meet the agreed “R80” insulation value in his 2 attics. The “R-value” is the measure of how well the insulation reduces the rate of heat flow. He claims \$2,620 in damages for the alleged breach of contract. His damages claim is based on the alleged cost to add insulation to bring the attics to the R80 value.
3. QIK says it completed the job to “satisfaction”. It says the insulation manufacturer had no recommendation over an R60 value for the quantity of insulation needed. QIK says its director’s “best guess” to achieve the R80 value was to blow in 21 inches of cellulose insulation and its crew blew this amount into Mr. McCallum’s attics. QIK says it has a standing offer to return to add more insulation at no labour cost if Mr. McCallum purchases the additional insulation. However, QIK says it is not responsible to pay Mr. McCallum \$2,620 for a third party to add more insulation.
4. Mr. McCallum is self-represented. QIK is represented by its director.
5. For the reasons that follow, I find QIK breached the contract by not blowing in the agreed amount of insulation and Mr. McCallum is entitled to \$1,720 in damages to bring his attics to the R80 values.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.
8. 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.
9. 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.
10. As a preliminary issue, Mr. McCallum submitted evidence after the CRT's deadline to submit evidence. QIK had a reasonable opportunity to respond to the late evidence in its submissions. Considering the CRT's mandate for a flexible process, I have accepted Mr. McCallum's late evidence. I find no prejudice to QIK in accepting it.

ISSUES

11. The issues in this dispute are:
 - a. Did QIK breach the terms of the parties' agreement by not installing sufficient insulation?
 - b. If so, to what extent, if any is Mr. McCallum entitled to the claimed \$2,600 in damages?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant, Mr. McCallum must prove his claims on a balance of probabilities (this means “more likely than not”).
13. 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.
14. Mr. McCallum was building a small “passive energy” home. In November 2019, Mr. McCallum sent drawings for the home to QIK and invited it to submit a bid to insulate 2 attics, plus drywall work. These facts are not disputed.
15. As shown in its bid, QIK submitted a quote of \$48,061.13 for insulation, drywall and paint. The quote’s insulation portion is an all-inclusive price of \$21,000 to “supply materials and labour to blow R80 cellulose in attics, wet spray first layer and mesh and blow high density cellulose all exterior walls, mesh and blow cellulose under suite, and sealing poly only”. The quote is not further broken down by labour and material costs.
16. The parties agree that Mr. McCallum accepted QIK’s bid and paid the full quoted price.
17. Based on the quote, I find QIK agreed to install insulation to meet an R80 rating.

Did QIK breach the terms of the parties’ agreement by not installing sufficient insulation?

18. The parties dispute the amount of insulation needed to meet the R80 rating. Mr. McCallum says that the R80 rating required a 25-inch-thick insulation depth installed and QIK says it required 21 inches installed.
19. In the Dispute Notice, QIK said it installed 21 inches based on its “best guess” from GreenFiber’s specification card. Its submissions are slightly different. QIK says the card “clearly indicates the required thickness of material to be blown, and how many bags were required to do so”. It says Mr. McCallum was relying on the wrong card.

20. I find both parties rely on the same GreenFiber card in their submissions. It does not indicate the thickness or number of bags to reach the R80 rating. It only shows a range of recommended R-values up to R60. I roughly estimate the R80 value at about 24 inches installed based on the other value amounts. However, there is no clear formula on the card to calculate precisely the amount needed for that higher value.
21. In any event, I find GreenFiber did have a recommended thickness for the R80 rating even though it was not included in its card. Mr. McCallum submitted an October 2020 email from GreenFiber that states it recommends an insulation thickness of 25 inches to reach an R80 value.
22. As a professional installer, I find QIK should have taken the necessary steps to confirm the quantity of insulation needed to fulfil the parties' contract. Since QIK agreed to install enough insulation to meet an R80 rating, I find it should have blown in enough insulation to meet the manufacturer's recommendation at 25 inches deep.
23. Mr. McCallum submitted photographs with measurements that he says show one attic's insulation was 17 inches in settled depth and the other attic was 15 inches settled, which QIK disputes. QIK says Mr. McCallum could not accurately measure the insulation depth with a tape measure. However, Mr. McCallum did not use a tape measurer. As shown in the photographs, he measured the depth in several different ways using a level and metal ruler with reference to a 24-inch-high attic hatch and plywood baffles. In the circumstances, I prefer Mr. McCallum's photograph evidence of the insulation depth over QIK's assertion that it blew in 21 inches. QIK did not submit its own evidence, such as its insulation receipts or measurements of its installed work. As there is no contrary evidence, I accept Mr. McCallum's measurements of 17 and 15 inches respectfully. Since the parties agree that blown-in insulation settles by about 2 inches, I find QIK blew in about 19 inches in one attic and 17 inches in the other.

24. I acknowledge QIK says it has completed 12 Passive Home certifications utilizing the same material and application provided for Mr. McCallum. It argues the amount of insulation it installed is enough to meet the Passive Home certification. However, QIK provided no evidence to corroborate this assertion. In any event, I find the parties' agreement was that QIK would install insulation to an R80 rating and not to install the amount of insulation QIK itself determined would meet the certification minimums. I also find nothing turns on Mr. McCallum's home passing a municipal inspection as the inspection was not about the R80 rating.
25. Based on my conclusions above, I find QIK breached the contract by not installing enough insulation to meet the R80 rating at 25 inches.

Is Mr. McCallum entitled to the claimed \$2,600 in damages?

26. Mr. McCallum claims it will cost him \$2,600 in damages for materials and labour to hire a third-party to complete the attic insulation job. As set out in the Dispute Notice, Mr. McCallum claims \$980 for insulation, \$80 for 2 days blower-machine rental, \$120 for a 2x4 walkway in the attics, and \$1,440 for 2 days labour for 2 workers.
27. QIK says it offered Mr. McCallum many times that it would return to install more insulation with no labour or rental costs if Mr. McCallum purchased the materials. It says Mr. McCallum has unreasonably refused its offer. Mr. McCallum disagrees. He says QIK's offer "makes no sense" because, based on QIK's inclusive quote, he already paid for enough insulation to reach the R80 rating. He also says he lost trust in QIK's work and there is no reason he should have accepted the offer.
28. Several BC Provincial Court decisions have concluded that in a construction contract, the contractor should have a reasonable opportunity to rectify the deficiencies unless they go to the heart of the contract: see *Meszarics et al v. Hart Modular Homes et al*, 2020 BCPC 234, *Lind v. Storey*, 2021 BCPC 2, and *Klondike Contracting Corporation v. Abadian*, 2021 BCPC 145.

29. QIK's offer was contingent on Mr. McCallum paying for more material when I find Mr. McCallum already paid QIK for R80 rating insulation. In the circumstances, I find QIK should have returned to finish the job for free. So, I find nothing turns on Mr. McCallum refusing the "offer".
30. The normal measure of damages for breach of contract is to put Mr. McCallum in the position had there been no breach of contract. Since Mr. McCallum already paid QIK to install R80 rating insulation, I find the appropriate damages are Mr. McCallum's reasonable costs to add 6 and 8 inches of extra insulation to reach the R80 rating at 25 inches ($25-19 = 6$ inches and $25-17 = 8$ inches). Mr. McCallum calculates that this will require about 65.5 bags of insulation. I find his calculation is reasonably consistent with the square footage and the bag coverage per square foot in the GreenFiber card. Based on per unit price quotes from Ace Building Centre and House Kootenays, I find the extra insulation will cost him between about \$1,040 and \$1,220, plus tax. However, Mr. McCallum only claimed \$980 in the Dispute Notice. So, I find he is not entitled to more. I find QIK must pay Mr. McCallum \$980 for the extra insulation.
31. Mr. McCallum has not paid anyone yet to perform the work and his contractor's \$1,400 quote does not break down their labour costs. The parties dispute how long the job will take. An "AttiCat" brochure in evidence states that blown-in attic insulation can be topped up "quick and easy" by 2 people and a blower machine. The brochure says each insulation bag takes approximately 5 minutes to install and appears to be a "do-it-yourself" type system. According to the brochure, it should take about 5 hours and 45 minutes for 2 people to blow 65.5 bags of insulation, plus time to set up, take down, and clean-up. So, I find it would be about 1 day of work to add the insulation. On a judgment basis, I allow Mr. McCallum \$700 for reasonable labour costs, plus 1 day rental at \$40 as supported by a rental rate quote.
32. Mr. McCallum asserts that he will need to install a walkway with 2x4s for workers to walk across the attic to add the extra insulation, which QIK disputes. There is no evidence from the manufacturer or otherwise supporting Mr. McCallum's assertion that the blower machine requires the installer to walk around the open attic. One of

Mr. McCallum's photographs shows he already has a walkway or partial walkway in at least one of his attics. I find there is insufficient evidence overall that Mr. McCallum needs to build a walkway to install the extra insulation. So, I dismiss this part of his claim.

33. Based on my conclusions above, I find QIK owes Mr. McCallum a total of \$1,724.80 in damages as reasonable compensation for the unfinished job. This is calculated as \$980 for materials, \$700 for labour, and \$44.80 for the machine rental.
34. The *Court Order Interest Act* applies to the CRT. Since Mr. McCallum has not paid the \$1,724.80 to finish the job, I decline to award prejudgment interest.
35. 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. As Mr. McCallum was partially successful, I find he is entitled to reimbursement of half his paid CRT fees for a total of \$62.50. Mr. McCallum did not claim any specific dispute-related expenses.

ORDERS

36. Within 30 days of the date of this order, I order QIK to pay Mr. McCallum a total of \$1,787.30, broken down as follows:
 - a. \$1,724.80 in damages, and
 - b. \$62.50 in CRT fees.
37. Mr. McCallum is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
38. 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.

39. 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.

Trisha Apland, Tribunal Member