



Civil Resolution Tribunal

Date Issued: December 16, 2021

File: SC-2021-005027

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thompson v. Recktenwald (dba Adorn Countertop)*,
2021 BCCRT 1316

B E T W E E N :

CATHRYN THOMPSON and CARMAN THOMPSON

APPLICANTS

A N D :

DETLEF RECKTENWALD (Doing Business As ADORN
COUNTERTOP)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about kitchen countertop coatings. The applicants, Cathryn Thompson and Carman Thompson, hired the respondent, Detlef Recktenwald (doing business as Adorn Countertop), to supply and install coatings on their kitchen countertops. The

Thompsons say the coating installation was seriously flawed, so they had the coated countertops removed and replaced. They claim \$4,128.47 as a refund of the amount paid to Mr. Recktenwald for the coating, the additional cost of removing the coated countertops, and a plumber fee.

2. Mr. Recktenwald denies that the installation was defective. He says the Thompsons' expectations were unreasonable, and the Thompsons used an inappropriate cleaning fluid that damaged the coating. Mr. Recktenwald says he owes nothing.
3. Mrs. Cathryn Thompson represents the Thompsons in this dispute. Mr. Recktenwald is self-represented.

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.

ISSUE

8. The issue in this dispute is whether the countertop coatings installed by Mr. Recktenwald met an acceptable quality standard, and if not, does he owe the Thompsons \$4,128.47 or another amount?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the Thompsons as the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). 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.
10. Mrs. Thompson signed an Adorn Countertop quotation for \$3,663.67 on June 26, 2020, to prepare her existing kitchen countertop and apply a “Marble, white” epoxy coating to it. The Thompsons have undisputedly paid the invoice amount, and although they say they actually paid \$3,663.72, I find the evidence does not prove they paid an additional 5 cents. The coatings were applied in multiple layers over a period of days in July 2020, with drying or curing time between each application.
11. Mr. Recktenwald says he applied a coloured epoxy layer, followed by a clear epoxy layer, and then a final non-epoxy top coat layer. The Thompsons say they liked the white marble design, and they acknowledge Mr. Recktenwald’s significant efforts installing the coatings and addressing some of their later concerns. The Thompsons identified some deficiencies with the coating, such as edge drips, rough areas, and bubbles and blemishes. Mr. Recktenwald returned and repaired many of these issues, but not entirely to the Thompsons’ satisfaction. The Thompsons also say, and Mr. Recktenwald does not dispute, that they began to notice and complain about progressive yellowing of the white countertops in September 2020.

12. Mr. Recktenwald attended the Thompsons' kitchen again in March 2021, and admits that the "entire countertop looked stained, dull and ocher in colour" (reproduced as written). Photos in evidence also show that the whole countertop was extremely yellowed, and looked very different than when the coatings were first applied. I find Mr. Recktenwald admits that this yellowing was a major, obvious defect.
13. The Thompsons say the defects are due to Mr. Recktenwald's substandard work and materials. Mr. Recktenwald says the yellowing is a typical sign that an acidic cleaner was used, but I find the evidence before me does not support that acids will yellow the types of coating he applied. The Thompsons admit that they occasionally used a homemade spray cleaner that contained vinegar (an acid), isopropyl alcohol, and a bit of soap, diluted with approximately 3 times as much water. Mr. Recktenwald says that the Thompsons' use of this acid and alcohol spray cleaner was unreasonable and caused the yellowing, so he is not responsible for it.
14. There is no formal, written contract in evidence, only the signed estimate. The estimate does not say anything about cleaning fluids. Mr. Recktenwald submitted an Adorn Countertop document titled "Epoxy Coating Surfaces Explained" that said one should avoid various cleaners including vinegar and alcohol, and that related damage was not covered under a warranty. Mr. Recktenwald does not explain why it would be appropriate to provide kitchen countertop coatings that were not compatible with diluted vinegar and alcohol, which I find are common household and kitchen items.
15. Mr. Recktenwald also says he "extensively discussed" with the Thompsons which cleaning products should not be used on the coatings. However, there is no evidence of such discussions, and Mr. Recktenwald does not say whether he mentioned vinegar or alcohol. Further, the Thompsons say, and on balance I find, that Mr. Recktenwald did not give them the care document, and did not instruct them to avoid vinegar and alcohol cleaners until long after the coatings had been applied and they began to experience problems with them, at which point they ceased using them. I find the Thompsons are not bound by the damage limitations in the document, and I find that their use of diluted vinegar and alcohol was reasonable in the circumstances.

16. I find Mr. Recktenwald gave no express warranties about the coating. However, I find it was an implied term of the parties' countertop coating agreement that Mr. Recktenwald's work would be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). I find that because the Thompsons are alleging deficiencies in Mr. Recktenwald's work, they must prove that he failed to perform the work in a reasonably good manner (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). I find that coating defects, including any yellowing, are subjects beyond common knowledge and experience. In the circumstances, I find that the defects and their causes require expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124) or direct testing to prove.
17. The Thompsons submitted a report from Scott Guthrie, who says he has over 5 years experience working with and installing epoxy. Under the CRT's rules, I find Mr. Guthrie is qualified to give an expert opinion on epoxy installations. Mr. Guthrie personally inspected the countertop coatings and addressed whether they met industry standards for finishes and durability. He said that from experience he knew that lower quality epoxy would yellow faster, and that this is what he saw in the countertops. Mr. Guthrie was also able to pull up chunks of the coating easily by hand, and said there was bubbling, drips, and the edges were thin enough to see through. Mr. Guthrie's opinion was that the coating did not meet industry standards, as there were signs of poor installation and that a lower quality product was used. He said that level of yellowing and "falling apart" should not be happening because the coatings were only a few months old. Given Mr. Guthrie's expertise with epoxy installations and his personal inspection of the coatings, I accept his opinion and give it significant weight. I find it supports a conclusion that the yellowing was caused by lower quality coatings, and that the coatings were too weak and too thin at the edges.
18. The Thompsons say that the yellowing is not their fault. It is undisputed that when Mr. Recktenwald sanded off part of a portion of the top coat in 2021, the yellow colour disappeared, leaving the white coloured epoxy below. So, I find that the yellowing likely occurred in the upper, transparent coating layers.

19. The Thompsons say that they occasionally used the spray cleaner and wiped it off immediately. However, they say, and I find, that they never applied the cleaner to certain countertop areas, such as in an “appliance garage,” yet those areas still yellowed. They also say that the yellowing was no different in areas that were kept out of both daylight and electric light, such as in the appliance garage, than it was in other areas. I find this is supported by the photographs in evidence, which show roughly even yellowing in all areas. I find this evidence supports a conclusion that the spray cleaner and light exposure did not cause the yellowing.
20. Further, the Thompsons say they performed tests on a taped-off area of the countertop, regularly applying the spray cleaner and letting it dry, and protecting the area from light, from May 3, 2021 to June 26, 2021. Photos show that the Thompsons kept a log of their spray applications and clearly taped off an area of the countertop. I accept that they performed the tests as alleged. They say, and I find photos in evidence show, there was no change between the test area and other areas. I find this supports a conclusion that the spray cleaner did not cause the yellowing.
21. Mr. Recktenwald submitted a report from Camilo Calvo, a research and development chemist at Polymer Science Corp with more than 15 years’ experience formulating epoxy coatings. I find Mr. Calvo is qualified to provide expert evidence on epoxy coatings. Mr. Calvo said that in a test where a vinegar-soaked cotton ball was left to dry on an unspecified epoxy surface, a mark or shadow was left where the cotton ball was placed, although it was not very noticeable. He said it was unclear what the effects are when mixing vinegar with other substances like alcohols, but that it was not advisable to use any acidic cleaner with 99% alcohol, and daily use could damage the surface. I find Mr. Calvo’s opinion is of little use here, because he did not comment on the likely effects of applying diluted vinegar or alcohol to the specific epoxy used on the countertops or to the non-epoxy top coat. He also did not comment on whether those fluids did or could cause yellowing in any material. So, I find the Thompsons’ direct tests of the cleaning fluids on the countertop are more persuasive, as they were performed with the actual fluids and coatings disputed here.

22. Mr. Recktenwald also submitted his own opinion as expert evidence. I do not accept that opinion as expert evidence, because Mr. Recktenwald is a party to this dispute and so is not sufficiently neutral. In any event, I find Mr. Recktenwald's opinion does not support his arguments, because he admits that the epoxy he used can eventually yellow, and does not comment on the top coat's yellowing properties. Mr. Recktenwald also submitted various internet articles saying that acids and other cleaners should not be used to clean other types of countertops, but nothing about cleaner compatibility with the top coat used on the Thompsons' countertops.
23. Mr. Recktenwald also submitted a technical data sheet for the non-epoxy top coat. The sheet said that the top coat was intended for use on wood floors, and that it was clear and colourless and would not change colour over time, although it would "highlight" the true colour of stained or natural wood floors. However, there are no top coat colour change test results or specifications before me, and the sheet is silent on whether the top coat is appropriate for use on epoxy coatings. I find the sheet does not directly indicate that the top coat will not yellow when used on epoxy or for other non-wood floor applications.
24. Having weighed the evidence before me, I find that the cleaners applied by the Thompsons and light exposure did not yellow the countertops. Given the limited usefulness of Mr. Calvo's expert opinion, and the significant weight I give Mr. Guthrie's expert opinion, on balance I find that the coatings supplied and installed by Mr. Recktenwald did not meet a reasonable quality standard. Specifically, I find that the coatings' yellowing was likely caused by inferior materials, and that the coatings as installed were too weak and too thin at the edges.
25. Mr. Recktenwald recommended that the yellowed countertops be re-coated over his original coatings, although I find the evidence shows he requested additional compensation in the form of produce from the Thompsons' garden. The Thompsons say, and Mr. Recktenwald does not directly deny, that Mr. Recktenwald did not plan to use different coatings if he re-applied them, so they felt this would not permanently fix the countertop problems. In the circumstances, I find it was reasonable for the

Thompsons to decline the offered repairs. The Thompsons decided to replace the coated countertops with new countertops instead, and they seek a refund of the amount paid to Mr. Recktenwald for the coatings. I allow their claim for a refund of the \$3,663.67 paid for the coatings.

26. The Thompsons say that the epoxy countertops were difficult to remove, and they claim the \$200 epoxy removal charge shown on a September 30, 2021 Colonial Countertops invoice. I accept that the Thompsons only needed to pay the epoxy coating removal fee because the coatings were defective, so I allow their claim for \$200 for epoxy removal.
27. The Thompsons also claim \$249.38 for the cost of Doug The Plumber & Gas reinstalling their kitchen sink, faucet, and dishwasher, as shown in a July 23, 2021 invoice. It is undisputed that the Thompsons also needed to remove and replace their sink, faucet, and dishwasher when Mr. Recktenwald installed the coatings in 2020. I find that the Thompsons only removed and replaced those items again in 2021 because they needed to replace the defective, coated countertops. So, I allow the Thompsons' claim for \$249.38 for plumber fees.
28. The Thompsons' CRT submissions also request \$157.50 for the cost of repairing a maple "china cabinet" where white epoxy was "raised up" onto its bottom. However, they did not request that remedy in their Dispute Notice, and they did not amend the Dispute Notice to include it. Ordinarily, I would find it would be procedurally unfair to adjudicate a remedy that was not one of the original, explicit dispute claims. However, I find there is no prejudice to Mr. Recktenwald in adjudicating this remedy, because I find it is unproven in any event. Specifically, I find the photos in evidence do not show obvious damage to a china cabinet, although they show very small white marks near the bottom of built-in cabinets on a countertop. A July 16, 2021 estimate from New Creations Vancouver Island lists an estimated cost of \$150 plus GST, circled by the Thompsons, for "Missing edge of china cabinet bottom edge. Supply and install ¼ round section to match colour/patina of existing cabinets" (reproduced as written). I find the estimate does not say it is for epoxy damage repairs, or other damage that

the evidence shows Mr. Recktenwald caused. I dismiss the Thompsons' claim of \$157.50 for cabinet damage as unproven.

29. In summary, I allow the Thompsons' claim for a total of \$4,113.05: \$3,663.67 for a countertop coating payment refund, \$200 for epoxy removal, and \$249.38 for plumber fees. I dismiss their other claims.

CRT FEES, EXPENSES, AND INTEREST

30. The *Court Order Interest Act* applies to the CRT. The Thompsons are entitled to pre-judgment interest on the \$4,113.05 owing. Interest on the \$3,663.67 coating refund is calculated from the May 21, 2021 deadline given in the Thompsons' May 14, 2021 demand letter, until the date of this decision. Interest on the \$200 epoxy removal fee is calculated from the September 30, 2021 invoice date, and interest on the \$249.38 plumber fee from the July 23, 2021 invoice date, each until the date of this decision. The total interest equals \$10.13.

31. Under section 49 of the CRTA, and the 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 the Thompsons were largely successful in their claims, so they are entitled to reimbursement of the \$175 they paid in CRT fees. Neither party claims CRT dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order Mr. Recktenwald to pay the Thompsons a total of \$4,298.18, broken down as follows:

- a. \$4,113.05 for a payment refund, epoxy removal fee, and plumber fee,
- b. \$10.13 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

33. The Thompsons are also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable. I dismiss the Thompsons' remaining claims.
34. 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.
35. 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.

Chad McCarthy, Tribunal Member