Civil Resolution Tribunal

Date Issued: April 14, 2022

File: SC-2021-005687

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vaughan v. A-1 Window Mfg. Ltd.*, 2022 BCCRT 430

B E T W E E N :

CHELSEA VAUGHAN, DAVID VAUGHAN and NONNIE POLDERMAN

APPLICANTS

A N D :

A-1 WINDOW MFG. LTD.

RESPONDENT

A N D :

CHELSEA VAUGHAN and DAVID VAUGHAN

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Ms. Chelsea Vaughan, Mr. David Vaughan, and Ms. Nonnie Polderman are the 3 applicants in the main claim. They hired A-1 Window Mfg. Ltd. (A-1 Window), to install 12 windows and a patio door in their home. They say that A-1 Window's installers damaged their home and performed substandard work. They claim $2,110 from A-1 Window, the amount they say they it will cost to repair the damage and correct the remaining deficiencies. A-1 Window says that it has already addressed all of the applicants' complaints and asks me to dismiss their claim.

2. A-1 Window counterclaims against Ms. Vaughan and Mr. Vaughan, but not Ms. Polderman. In the counterclaim, A-1 Window says that the Vaughans must pay for the "extra work" A-1 Window did to address the applicants' complaints. It also claims that they owe contractual interest because they paid the final instalment of their invoice 3 months late. It claims a total of $2,500, which it does not break down. The Vaughans say that any "extra work" was A-1 Window fixing its own mistakes, which they should not have to pay for. They also say that they paid the invoice on time. They ask me to dismiss A-1 Window's counterclaim.

3. Ms. Vaughan represents the applicants. A-1 Window is represented by its director, Sarb Kaler.

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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.

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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:

    a. Did A-1 Window do the window installation work to a reasonable standard?

    b. If not, what are the applicants' damages?

    c. Is A-1 Window entitled to compensation for the work it did after the initial installation?

    d. Is A-1 Window entitled to contractual interest?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities, which means "more likely than not". A-1 Window must prove its counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

10. I note at the outset that all 3 applicants' names appear on different contractual documents. No one explained in their submissions how the 3 applicants are related to each other or to the house in question. However, I find it clear from the applicants' dealings with A-1 Window and the parties' submissions that the 3 applicants are all parties to the contract with A-1 Window.

11. While the exact date is unclear (and unimportant), in late January or early February 2021, the parties entered into a written contract for A-1 Window to supply and install 12 windows and a patio door at the applicants' house. The total cost after tax was $13,960. The applicants paid a $5,000 deposit on February 2, 2021.

12. In the contract, the parties agreed that any changes to the scope of work would only occur with a written and signed change order that would reflect any price changes. The parties also agreed that A-1 Window would do the work "according to the industry standards" but would not be responsible for "any damage to the interior plaster, drywall, wood trim, and or exterior stucco, siding, stones, bricks etc during the removal of the old windows and patio doors" (reproduced as written).

13. A-1 Window installed the windows on March 11, 2021. At the end of the day, Ms. Vaughan signed a document confirming that "order is completed and is okay to pay outstanding balance to A-1 Window – No outstanding issues" (reproduced as written). The form also had checkboxes that indicated that the caulking and cleanup were both completed. Ms. Vaughan wrote on the form that "the windows look great so far". The applicants say that the "so far" is important because Ms. Vaughan signed it at the end of a long day and had not had time to inspect the windows. She also noted that she could not have inspected the outside of the house because it was dark by the time the installers were finished. I agree with the applicants that it is unreasonable to interpret her signature as accepting the standard of A-1 Window's work, which they had not had the opportunity to properly inspect.

14. The applicants say that they discovered many problems once they had a chance to review the work, mostly in the daylight of March 12, 2021. They say that the caulking was uneven and sloppy on every window. I agree that the photos in

evidence show some uneven and lumpy caulking. They also say that the installers had damaged every windowsill, which had all just been repainted the summer prior. I agree that the applicants' photos show minor dents or scrapes to indoor windowsills, some of which chipped away the white paint.

15. The applicants say that the most significant damage was under a window in the front of the house. A-1 Window had agreed to cut the window opening lower to accommodate a larger window. The applicants say that the installers made an error and cut too low, leaving a large crack. According to the photos in evidence, this crack appears to be about 2 feet long. A-1 Window's attempt to seal the crack with caulking appears as a smear along and around the crack.

16. Ms. Polderman sent A-1 Window an email on March 22, 2021, outlining the deficiencies the applicants wanted corrected. I note that the applicants also complained about several issues other than the ones described above. While the evidence is not entirely clear, I find based on A-1 Window's service records that it eventually resolved these other issues to the applicants' satisfaction, so I see no need to specifically address them in this decision.

17. A-1 Window's first service call-out was April 6, 2021. According to A-1 Window's records, the installers did some work, but the call was "cancelled by customer" because the installers were "no longer needed". The applicants say that they stopped the recaulking work because A-1 Window had sent the same installers and they were not doing a better job than the first time.

18. A-1 Window says that on April 27, 2021, the applicants asked A-1 Window to return to complete the work that was supposed to have been done on April 6. A-1 Window says it sent someone on May 1, 2021. A-1 Window says the applicants sent another list of deficiencies on May 11, 2021. So, on May 20, 2021, A-1 Window's director went to meet with them on-site. A-1 Window says they agreed on another deficiency list that A-1 Window would address. The applicants do not specifically dispute any of these points, so I accept A-1 Window's evidence of this timeline.

19. On May 21, 2021, Ms. Vaughan emailed A-1 Window that although they wanted A-1 Window to fix flashing around 1 window, they wanted to hire someone else to fix the remaining deficiencies. They asked for a discount to pay for this. The applicants say that they no longer trusted A-1 Window's ability to fix the remaining issues.

20. On May 28, 2021, Mr. Kaler responded that A-1 Window would replace the flashing as requested. He said he would send a new crew out to fix the remaining issues, which he described as aesthetic in nature. He declined a discount. According to A-1 Window's records, the applicants paid a further $6,850 towards the invoice on June 8, 2021.

21. Apparently, the applicants accepted this offer because A-1 Window attended on June 15, 2021. According to A-1's records, they replaced the flashing, removed some pencil marks and excess foam from the house's exterior, and redid the caulking for 3 windows.

22. The applicants were still not entirely satisfied and told A-1 Window that they did not want to pay the remaining balance. Mr. Kaler again told the applicants that A-1 Window would not provide a discount and demanded payment, threatening a lien. He also repeated his offer to fix any outstanding issues. The applicants paid the last $2,110 the same day.

23. I turn then to the applicable law. When a party alleges substandard work, they must prove that the work was below a reasonably competent (but not perfect) standard (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287, at paragraph 61). When the allegation involves subjects beyond common knowledge and experience, such as whether a professional's work was below a reasonable standard, the party must generally provide expert evidence to prove it (see *Bergen v. Guliker*, 2015 BCCA 283). The exceptions to this general rule are when the deficiency is not technical in nature or where the work is obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112).

24. The applicants did not provide any expert evidence about the quality of A-1 Window's work. I find that most of the outstanding complaints are about relatively minor aesthetic issues. While I accept that the applicants' photos show imperfections, I am not satisfied that the caulking is obviously below a reasonable standard. I make the same finding about the minor dents on the windowsills. I therefore find that without expert evidence about the standard of a reasonable window installer, the applicants have not proven most of their claims.

25. I find that the only exception to this is the crack in the siding. The crack is fairly large, and I find would likely be visible from the street. I find that A-1 Window's "repair" of covering it with caulking may have solved any potential water ingress issues, but it left the crack more visible. I find that this work was obviously below a reasonable standard.

26. The applicants provided no evidence about damages, other than the bare assertion that it would cost $2,110 to fix all the remaining deficiencies. For example, there is no quote from another contractor. I have no evidence about whether the siding can be replaced or repaired, let alone the cost of doing so. In the absence of such evidence, I find that the applicants are only entitled to compensation for the aesthetic loss. On a judgment basis, I find that $200 is reasonable.

27. As for A-1 Window's counterclaim, I find that it is not entitled to compensation for any additional work it did after the main installation. I acknowledge that A-1 Window may have been within its rights under the contract to refuse to do any repair work, given the exclusion of responsibility for damage to the house. However, I find it clear from the parties' communications and actions that they all understood A-1 Window's service calls to be at no charge. I say this primarily for 2 reasons. First, when A-1 Window demanded payment of its invoice in June 2021, it made no mention of any pending further charges. I find that if A-1 Window had expected to charge for the service calls, it would have insisted on payment at that time. Second, A-1 Window never had the applicants sign a written change order for services

beyond the initial scope of work, which its own contract required it to do. I therefore dismiss A-1 Window's claim for compensation for extra work.

28. A-1 Window also claims contractual interest because the applicants did not pay in full until July 5, 2021, almost 4 months after the initial installation. The parties' contract had several terms about contractual interest, but I find them unclear. First, the contract said that payment was due "in the amounts and at the time as per the terms of the contract" and that A-1 Window will file a lien if it is not paid within 30 days of "completion of the project". This term mentions 26.82% annual contractual interest but does not say when A-1 Window can start charging it. The only other contractual term about payment dates said that for windows that A-1 Window manufactured, payment is due within 30 days of the "expected ship/pickup date", and that contractual interest will apply after this. However, this term does not appear to apply to windows that A-1 Window installs. I find that the most reasonable interpretation of these unclear terms is that A-1 Window could charge contractual interest 30 days after the project's completion. I find that the installation project here was not "complete" until June 15, 2021, the last time A-1 Window attended the applicants' home to do repairs. The applicants paid in full less than 30 days later, so I find that A-1 Window is not entitled to contractual interest.

29. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the $200 from March 11, 2021, the date of the damage, to the date of this decision. This equals $0.98.

30. 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. The parties were both partially successful. In the circumstances, I decline to order reimbursement of CRT fees or dispute-related expenses.

ORDERS

31. Within 30 days of the date of this order, I order A-1 Window to pay the applicants a total of $200.98, broken down as follows:

    a. $200 in damages, and

    b. $0.98 in pre-judgment interest under the COIA.

32. The applicants are entitled to post-judgment interest, as applicable.

33. I dismiss the applicants' remaining claims. I dismiss A-1 Window's counterclaims.

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.

Eric Regehr, Tribunal Member