



Civil Resolution Tribunal

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File: SC-2021-007487

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jhurry (dba Arc En Ciel Painting & Renovation) v. Sharma,*
2022 BCCRT 449

B E T W E E N :

AKASHSING JHURRY (Doing Business As ARC EN CIEL PAINTING &
RENOVATION)

APPLICANT

A N D :

AMAN SHARMA and RAJNEET SHARMA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for residential painting services. The respondents, Aman Sharma and Rajneet Sharma, hired the applicant, Akashsing Jhurry (dba Arc En Ciel Painting & Renovation), to paint their home's interior. Mr. Jhurry claims the \$700 outstanding balance under the parties' \$7,000 contract.
2. The Sharmas say Mr. Jhurry's paint work was substandard and incomplete. They say they owe nothing further.
3. Mr. Jhurry is self-represented and Ms. Sharma represents the respondents.

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). CRTA section 2 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. CRTA section 39 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, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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. Mr. Sharma did not file a Dispute Response as required. Technically, this means he is in default. However, here I decline to find him in default. I say this because his spouse Ms. Sharma participated in the dispute and her submissions make it clear she represents both herself and Mr. Sharma. This means I have not assumed Mr. Sharma's liability and have assessed the merits of Mr. Jhurry's claim below.

ISSUES

9. The issues in this dispute are:
 - a. Did the Sharmas unreasonably refuse to allow Mr. Jhurry to return to fix minor deficiencies?
 - b. Was Mr. Jhurry's painting work substandard or incomplete?
 - c. To what extent, if any, is Mr. Jhurry entitled to the claimed \$700 invoice balance?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Jhurry must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. The background facts are undisputed. Mr. Sharma signed Mr. Jhurry's undated contract for \$7,000. On July 17, 2021, Ms. Sharma paid a \$200 "booking" deposit.

The contract specified Mr. Jhurry would: “prepare” the Sharmas’ property, apply 2 coats of paint, and clean paint drops and debris to Mr. Jhurry’s “best abilities”.

12. It is undisputed and the evidence shows that as of September 4, 2021, Ms. Sharma had paid \$4,300. Similarly, it is undisputed that on September 7, 2021 Ms. Sharma paid a further \$2,000, leaving the claimed \$700 balance. The contract required 2/3 of the \$7,000 price (\$4,666.67) to be paid after preparation and the 1st coat of paint, and the final 1/3 “upon completion and satisfaction of the work”.
13. Central to this dispute is whether the Sharmas unreasonably refused to let Mr. Jhurry return to fix any deficiencies after September 7, and, whether the work Mr. Jhurry did complete was substandard.
14. Mr. Jhurry undisputedly last worked at the Sharmas’ home on September 4, 2021. He says he left the jobsite with “touch ups to be done” and expected he would return once a bathroom counter install was finished. I accept that this installation was outstanding because the Sharmas do not dispute it and because it is consistent with Mr. Jhurry’s September 22, 2021 text asking about that installation and when he could return to finish the work.
15. The parties agree Mr. Jhurry sought a payment on September 4, 2021 but that Ms. Sharma asked to pay on September 7, after the long weekend. Mr. Jhurry says that he accepted the Sharmas’ \$2,000 payment on September 7, 2021, with the \$700 outstanding, because he agreed he had not finished the job. He says that for the next 2 weeks he was waiting for the Sharmas to contact him about the bathroom vanity install. As noted above, he texted Mr. Sharma about the status on September 22. Again, Mr. Jhurry’s issue is that the Sharmas never allowed him to complete the job and refused to pay the \$700 balance.
16. Ms. Sharma says that on September 7, 2021 Mr. Jhurry attended her home and aggressively demanded payment, scaring her child. So, the Sharmas say they did not feel comfortable having Mr. Jhurry return to fix any deficiencies. Mr. Jhurry denies any aggression and says that Mr. Sharma asked why Mr. Jhurry was speaking to Ms.

Sharma about money, and so Mr. Jhurry invited Mr. Sharma outside to discuss things. In her response submission, Ms. Sharma says she could submit a witness statement from her neighbour who Ms. Sharma says overheard the allegedly aggressive exchange. Yet, Ms. Sharma submitted no witness statement though parties are told to submit all relevant evidence. There is also no statement from Mr. Sharma.

17. Because Ms. Sharma did not submit the supporting evidence she says she has, I draw an adverse inference against her. I find it unproven that Mr. Jhurry was aggressive in demanding any payment. With that, I find the Sharmas unreasonably decided not to permit Mr. Jhurry the opportunity to correct any deficiencies.
18. I turn next to the applicable law about deficiencies. I address this because the Sharmas essentially argue that Mr. Jhurry's work was such poor quality that it needs to be entirely re-done, rather than just having touch-ups for minor deficiencies.
19. When a customer alleges that a contractor's work was below a reasonably competent standard, the customer must prove the deficiencies (*Absolute Industries Ltd. v. Harris*, 2014 BCSC 287, at paragraph 61). Generally, expert evidence is required to prove a professional's work was below a reasonable standard (see *Bergen v. Guliker*, 2015 BCCA 283). The 2 exceptions to this 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).
20. The Sharmas did not provide any expert evidence expressly critical of Mr. Jhurry's painting work, but essentially say defects are obvious. I note the 2 estimates the Sharmas submitted do not assist me in assessing the extent of the deficiencies. This is because they simply quote for painting work without any comment on Mr. Jhurry's work.
21. The Sharmas' other evidence of deficiencies are a video and a number of photos, that I find show incomplete or deficient paint work in some areas. I can see haze and streaking on a wall, particularly at the seam joining the ceiling. I can also see areas where the wall paint clearly spread over onto a ceiling drop that was a different colour,

presumably resulting from inadequate masking. For this latter photo, Mr. Jhurry specifically says deficiencies are “touched up before job completes”. I agree with Mr. Jhurry that the above photos each show a minor deficiency Mr. Jhurry could have touched up.

22. Other photos show entirely unpainted areas, such as around a removed ceiling light fixture and around a kitchen wall plug. Mr. Jhurry says the Sharmas removed the light fixture after he did his painting work. Mr. Jhurry also says the Sharmas replaced a bathroom toilet paper holder and did a rough wall patch, not him. I accept this evidence as the Sharmas do not dispute it. There is nothing in the parties’ contract that said Mr. Jhurry’s preparation work would include removal of ceiling light fixtures or that he would patch over work the Sharmas did after his work was done. So, I place no weight on the kitchen ceiling photo or the photo around the toilet paper holder.
23. Next, other photos show roughly patched spots in different areas in a bathroom, which I can see has not been smoothly sanded. I find these areas fall within minor deficiencies Mr. Jhurry intended to complete as touch-ups after the vanity installation, but as noted the Sharmas unreasonably refused to allow him to do.
24. On balance, I find the Sharmas have not proven there were substantial deficiencies. Rather, I find the evidence before me shows there were minor deficiencies that the Sharmas should have given Mr. Jhurry the opportunity to correct but they unreasonably failed to do so. So, I find the Sharmas must pay the \$700 balance under the contract as claimed.
25. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Jhurry is entitled to pre-judgment interest under the COIA on the \$700. Calculated from September 7, 2021 to the date of this decision, this interest equals \$1.95.
26. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Jhurry was successful and so I find he is entitled to reimbursement of \$125 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

27. Within 21 days of this decision, I order the Sharmas to pay Mr. Jhurry a total of \$826.95, broken down as follows:
- a. \$700 in debt,
 - b. \$1.95 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
28. Mr. Jhurry is entitled to post-judgment interest, as applicable.
29. 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.
30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair