



Civil Resolution Tribunal

Date Issued: April 20, 2022

File: SC-2021-007638

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wesco Glass Restorations Ltd. v. Ashton*, 2022 BCCRT 451

BETWEEN:

WESCO GLASS RESTORATIONS LTD.

APPLICANT

AND:

JANICE ASHTON

RESPONDENT

AND:

WESCO GLASS RESTORATIONS LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about replacing window glass. The respondent (and applicant by counterclaim), Janice Ashton, hired the applicant (and respondent by counterclaim), Wesco Glass Restorations Ltd. (Wesco), to replace 13 glass window panes in the existing frames and tracks in her home. Wesco says it completed the agreed work, but Ms. Ashton refused to pay the balance owing. Wesco claims \$2,942.42 for the unpaid balance.
2. Ms. Ashton says Wesco failed to properly replace all the windows and also damaged her sliding patio door. She says the cost of completing the unfinished work and remedying deficiencies exceeds the \$2,942.42 balance, so she owes nothing. Ms. Ashton counterclaims for \$4,864.17, which she says is the cost of installing 2 windows that Wesco did not provide and for purchasing and installing a new patio door. Wesco denies owing anything.
3. I find Ms. Ashton's counterclaim duplicates amounts she says should also be deducted from Wesco's invoice for unfinished or poor work on the 2 windows and the patio door. Given these duplications, it is unclear on the evidence before me whether the combined value of Ms. Ashton's alleged set-off to Wesco's \$2,942.42 claim and her \$4,864.17 counterclaim exceeds the maximum Civil Resolution Tribunal (CRT) small claim amount of \$5,000. However, given the outcome of my decision below, nothing turns on this.
4. In this dispute, Wesco is represented by its owner, Scott Johnson. Ms. Ashton is self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.

ISSUE

9. The issue in this dispute is whether Wesco completed the agreed work to an applicable quality standard and without causing damage. If so, must Ms. Ashton pay the outstanding \$2,942.42 balance, and if not, must Wesco pay \$4,864.17 or another amount in damages?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Wesco must prove its claims on a balance of probabilities, meaning "more likely than not." Ms. Ashton must prove her counterclaim to the same standard. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.

11. Ms. Ashton undisputedly accepted Wesco's June 2, 2021 estimate for the supply and installation of 13 windows and 1 set of rollers into existing window frames. I find the estimate sets out the parties' contract for that work. It said that payment was due upon completion. I find neither the estimate nor other submitted evidence, including each party's notes and submissions, confirms exactly which 13 window panes the parties agreed to replace. I also find that the estimate did not include any need for a "final inspection", contrary to Ms. Ashton's suggestion.
12. I find the photo, video, and documentary evidence shows that Wesco ordered glass, installed it in Ms. Ashton's window frames over multiple visits, and corrected some identified deficiencies. A September 7, 2021 invoice matches the work set out in the estimate and said that a \$2,942.42 balance remained. A September 14, 2021 Wesco letter requested payment of the invoice and said that all of the work in the estimate had been completed. Ms. Ashton undisputedly did not pay the \$2,942.42 balance. I find that unless the evidence shows that Wesco did not adequately complete all of the agreed work, or damaged Ms. Ashton's home, Ms. Ashton owes Wesco that unpaid balance.
13. Ms. Ashton says the work was not completed, and some of it was done improperly, so she does not owe anything. Although Wesco gave no express warranties about its work, I find it was an implied term of the parties' agreement that the window work would be of reasonable quality (see *Belfor (Canada) Inc. v Drescher*, 2021 BCSC 2403 at paragraph 18). As the party alleging deficient work, Ms. Ashton bears the burden of proving that Wesco failed to perform the work in a reasonably professional manner (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61).
14. First, Ms. Ashton says that Wesco agreed on August 25, 2021 that it would correct deficiencies in 6 windows, but did not. I find that the evidence, including surveillance video, does not show that Wesco agreed to this. In saying it would "happily take care of that for you," I find Wesco only agreed to fix some installation issues with the patio door and 1 other window. Except as noted below, I find the submitted evidence does

not show that Wesco failed to address those issues. Wesco says no deficiencies remain.

15. Ms. Ashton also says that 2 of the 13 windows were never installed. I infer from her submissions and correspondence that she alleges 2 of the new window panes were installed in the wrong location, and replaced other windows that were not part of the agreement. However, as noted, it is not clear on the submitted evidence exactly which windows the parties agreed to replace, or whether the parties agreed to replace the 2 windows at issue. Further, I find there are no photos or other supporting evidence showing that those 2 windows still contain old glass and were not replaced. I find the evidence does not show that 2 new windows were not installed as agreed.
16. Ms. Ashton also alleges various other installation deficiencies, such as a garden window lock, scratches on window frames, uneven window “trim” which I infer means window gaskets, and debris lodged between glass panes. I find photos show a very slightly misaligned window lock, but the evidence does not show that the lock is inoperable. I find photos show marks on window frames, but it is unclear whether those marks are scratches or dirt or something else, and whether they were already present when Wesco began its installations. In any event, the approved estimate said that any touch-up paint required after installation was Ms. Ashton’s sole responsibility. I find Wesco is not responsible for any of the alleged scratches.
17. Further, other than in the patio doors, discussed below, I find submitted photos and video do not show any obvious unevenness in window gaskets or significant debris. I find that proving whether the window gaskets were installed correctly and whether there was inappropriate debris from installation involves subject matter beyond ordinary knowledge and understanding, which requires expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124). Ms. Ashton submitted no expert opinion. So, I find Ms. Ashton has not proven that those window gaskets were deficient or that there was inappropriate window debris.
18. Turning to the patio door, Ms. Ashton alleges that Wesco installed 2 used glass panes rather than new ones, relying on the number “2009” etched on the panes. A submitted

photo of the etching shows it actually reads “ANSI Z97.1 2009”, which I find likely refers to a specific material or safety standard from the American National Standards Institute and not a manufacturing date. Further, regardless of the glass’ age, I find that nothing before me shows it was used. Ms. Ashton also says that the glass was scratched, and submitted a blurry, extreme close-up photo of a horizontal white line. I find the evidence does not show what that line was or that it was visible to the naked eye. I find the evidence fails to prove a scratch in the patio door glass. I also find the evidence does not show that the patio glass was too small, as alleged by Ms. Ashton.

19. However, I find there were some minor but plainly obvious deficiencies in the patio door glass, roller, and lock installation, which do not require professional expertise to prove. I find photos show that there was a gap between the window gasket and the door frame in the corner of one of the patio doors, with what appears to be daylight shining through the gap. I find photos show a screw-adjustable patio door track lock that is slightly misaligned, so that the locking pin does not slide into the receiving hole. Wesco does not comment on the gasket issue or track lock.
20. Submitted video shows that a Wesco employee was able to easily slide the partially reinstalled patio door shut with one hand, but Ms. Ashton later used significant effort and 2 hands to close the fully reinstalled door. Wesco says the door is still operable. Contrary to Ms. Ashton’s allegations, I find the video and photo evidence shows the door is still operable and closes fully, despite some apparent stiffness. I find Ms. Ashton has not proven that the “stiff” door requires anything more than an adjustment, such as to the new rollers installed by Wesco or something else. Further, I find that proving the patio door was somehow damaged and needs more extensive repairs than a minor adjustment would require expert evidence to prove, and as noted there is none before me. I find none of the evidence shows that Wesco damaged the patio door, let alone to a degree that an entirely new patio door was required.
21. In summary, I find the only alleged deficiencies or incompletions Ms. Ashton has proven are the patio door gasket, track lock, and rolling stiffness issues. However, I find she has not proven, through repair bills or estimates from window companies or

otherwise, how much it would cost to make the necessary adjustments or repairs. On a judgment basis, find that remedying these minor deficiencies would likely cost \$300. So, I allow Wesco's claim for the remaining invoice balance less \$300, which equals \$2,642.42.

22. Ms. Ashton counterclaimed \$4,864.17 to replace the allegedly damaged patio door, and to supply and install the 2 windows that Wesco allegedly failed to replace. As noted, Ms. Ashton has not proven that Wesco failed to replace the 2 windows as agreed, that Wesco damaged the patio door beyond repair or at all, or that a new patio door is required. I find that the \$300 offset to the invoice balance awarded above accounts for all proven deficiencies and incompletions, including those alleged in the counterclaim. So, I dismiss Ms. Ashton's counterclaim.

CRT Fees, Expenses, and Interest

23. The *Court Order Interest Act* applies to the CRT. I find Wesco is entitled to pre-judgment interest on the \$2,642.42 owing, calculated from the September 7, 2021 invoice date (due on completion) until the date of this decision. This equals \$7.36.
24. 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. Wesco was largely successful in its claim, so I find it is entitled to reimbursement of the \$125 it paid in CRT fees. Ms. Ashton was unsuccessful in her counterclaim, but Wesco paid no CRT fees for that counterclaim. Neither party claimed CRT dispute-related expenses.

ORDERS

25. Within 30 days of the date of this decision, I order Ms. Ashton to pay Wesco a total of \$2,774.78, broken down as follows:
- a. \$2,642.42 in debt,

- b. \$7.36 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

26. Wesco is entitled to post-judgment interest, as applicable.

27. I dismiss Ms. Ashton's counterclaim.

28. 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.

29. 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