Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Lockwood v. Kopec*, 2022 BCCRT 572

B E T W E E N :

STEWART LOCKWOOD

APPLICANT

A N D :

ALBERT KOPEC

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. In January 2020, Stewart Lockwood says that he and his spouse, SB, hired Albert Kopec to install flooring in their home. Mr. Lockwood says that Mr. Kopec did substandard work and left the house dirty and unsafe. Mr. Lockwood claims $3,719, the amount he says it will cost to fix Mr. Kopec's alleged mistakes.

2. Mr. Kopec says that neither he nor Mr. Lockwood are proper parties to this dispute. He says that the flooring contract was between SB and Mr. Kopec's company, AK Bestcoast Renovations Ltd. (Bestcoast). In the alternative, Mr. Kopec denies that there were any deficiencies. He asks me to dismiss Mr. Lockwood's claims.

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

8. Mr. Lockwood says that Mr. Kopec's submissions were written by a lawyer family member, which Mr. Kopec failed to disclose. He asks me to disregard them on that basis. While section 20 of the CRTA creates a presumption that parties will be self-represented, there is nothing in the CRTA or the CRT's rules that prevent a person from receiving legal advice or assistance during the CRT's process. Therefore, I find that nothing turns on whether Mr. Kopec received assistance from a lawyer.

ISSUES

9. The issues in this dispute are:

   a. Who were the parties to the flooring renovation contract?

   b. If Mr. Lockwood and Mr. Kopec were both parties to the contract, has Mr. Lockwood proven any of the alleged deficiencies.

   c. If so, what are Mr. Lockwood's damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Lockwood as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and arguments, I only refer to what is necessary to explain my decision.

Who were the parties to the flooring renovation contract?

11. As mentioned above, Mr. Lockwood and Mr. Kopec dispute who the parties to the flooring contract are. When determining a contract's terms, including who the parties to the contract are, the parties' subjective beliefs are not relevant. Rather, the test is what a reasonable bystander would understand the contract's terms to be. So, I find that I must determine what a reasonable bystander would understand to be the parties to the contract. See *Aubrey v. Teck Highland Valley Copper Partnership*, 2017 BCCA 144, at paragraphs 47 and 48.

12. With respect to SB, Mr. Kopec relies on the written estimate he provided for the project, which was addressed to SB and only included space for SB to sign. There is no evidence that anyone signed this estimate. Still, Mr. Kopec says that this proves that Mr. Lockwood was not a party to the contract. Mr. Lockwood says that he and SB are spouses and jointly hired Mr. Kopec. He points to the fact that despite Mr. Kopec only including SB's name on the estimate, he addressed it to "you guys".

13. I agree with Mr. Lockwood. Given that it was not signed, I find that the mere fact that Mr. Kopec only included SB's name on the estimate is not determinative. Instead, I rely primarily on the fact that it was Mr. Lockwood who accepted the estimate by texting Mr. Kopec. I also agree that a reasonable person would interpret the phrase "you guys" as indicating the estimate was going to more than one person. I find that Mr. Lockwood and SB were both parties to the contract. I therefore find that they are both entitled to pursue a claim about the alleged deficiencies.

14. The next question is whether Mr. Kopec is a party to the flooring contract in his personal capacity. It is a well-established legal principle that if a person signs a contract as an agent for a corporation, they must advise the other party of that fact or risk being personally liable. See *Pageant Media Ltd. v. Piche*, 2013 BCCA 537, at paragraph 41. Again, to determine whether the person has met this obligation, the question is not what the parties actually believed, but what a reasonable person would believe in the circumstances. See *Pageant*, at paragraph 47.

15. Mr. Kopec says that he was contracting as an agent for BestCoast. There is no evidence that Mr. Kopec ever explicitly told Mr. Lockwood or SB this. Rather, Mr. Kopec relies on the estimate to prove that a reasonable person would have understood that they were hiring Bestcoast and not Mr. Kopec.

16. I disagree with Mr. Kopec. The estimate in evidence refers to "Bestcoast Renovations" in several places, but there is nothing indicating that Bestcoast Renovations is a corporation and not Mr. Kopec's business name as a sole

proprietor. Notably, Mr. Kopec's signature line at the bottom of the estimate does not indicate he is signing on Bestcoast's behalf.

17. I find that the situation is similar to the BC Provincial Court case *Out West Windows v. Tilley*, 2014 BCPC 296. In that case, a contractor claimed that he contracted through his corporation. However, the purchase order only included his business's operating name. It did not include "Ltd." or any other indication it was a corporation. The court noted that section 27 of the *Business Corporations Act* says that a corporation must display its name on all of its contracts. While the court found that failing to include "Ltd." or "Inc." was not necessarily determinative, it found that in the absence of any explicit mention of the existence of a corporation meant that a reasonable person would understand that the contractor was operating as a sole proprietorship.

18. I reach the same conclusion here. I find that Mr. Kopec did not reasonably communicate to Mr. Lockwood or SB that "Bestcoast Renovations" was a corporation and not a sole proprietorship. I therefore find that Mr. Kopec is a party to the contract in his personal capacity. With that, I turn to the merits of Mr. Lockwood's claims.

The Project and Alleged Deficiencies

19. Mr. Lockwood and SB hired Mr. Kopec to install engineered hardwood in the eating nook, kitchen, bathroom, front and back entrances, and a staircase in their home. Mr. Kopec provided a $17,996.35 plus tax estimate for the project on November 21, 2019. Mr. Lockwood accepted the estimate on November 24, 2019. The project started on January 23, 2020, and took about 2 weeks. Mr. Kopec invoiced Mr. Lockwood $21,542.17 on February 6, 2020. Mr. Lockwood paid in full. None of this is disputed. As outlined below, Mr. Lockwood alleges that there were 10 outstanding deficiencies that he should be compensated for.

20. Before turning to the alleged deficiencies, I will address Mr. Lockwood's reliance on a settlement offer Mr. Kopec made on August 12, 2020. Mr. Lockwood argues that

by making the settlement offer, Mr. Kopec agreed to the value of some of the deficiencies. I disagree. While Mr. Kopec offered to settle, I find that his email is clear that he did not admit responsibility for any of the alleged defects. I find that he made no admissions. I note that Mr. Kopec did not argue that the settlement offer was privileged, so I have not addressed that issue.

21. Turning to the applicable law, it is an implied term of any contract for professional services that the professional will perform to a reasonably competent standard. The law does not require perfection. When a customer alleges that a contractor's work was below this standard, they must prove the deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287, at paragraph 61. Generally, an allegation that a professional's work was below a reasonably competent standard requires expert evidence to prove. This is because the standard expected of professionals in a particular industry is generally outside the common knowledge of ordinary people. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard. *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.

22. I note that Mr. Lockwood included several allegations that experts had told him that aspects of Mr. Kopec's work were substandard. While the CRT has discretion to admit hearsay evidence, I find it would be inappropriate and unfair to rely on hearsay expert evidence about central issues in dispute. I have therefore put no weight on any hearsay expert evidence.

Kitchen Appliances

23. Mr. Kopec hired a plumber and gasfitter, FS, as part of the project. FS removed and reinstalled Mr. Lockwood's gas oven. It is undisputed that FS installed a shorter gas hose as part of this process. Mr. Lockwood says that he will have to remove clamps from the shorter hose to pull the oven out to clean. In a statement, FS says that the previous long hose was unsafe. Mr. Lockwood provided no expert evidence to prove that the installation of a shorter hose was unsafe or inappropriate. I find that

Mr. Lockwood's preference for a longer hose does not mean that FS's work was obviously deficient. I dismiss this claim.

24. Next, Mr. Lockwood says that FS reinstalled the oven without attaching the anti-tipping brackets. He provided a photo showing an uninstalled anti-tipping bracket. In their statement, FS said that the brackets were not installed when they moved the oven, so they did not reinstall it. While that may be true, I find that it is obvious that a professional installer should install a safety feature like the bracket whether it was previously installed or not. That said, Mr. Lockwood provided the instructions for installing the brackets and I find that it would be a very easy job for a handyperson. On a judgment basis, I award $25 for this deficiency.

25. Mr. Lockwood says that FS reinstalled the dishwasher tilted forward. FS says that they are sure they levelled the dishwasher when they reinstalled it. There is a photo that shows a level resting against the door, which shows a slight slant. Mr. Lockwood also provided an invoice showing he paid $95 plus tax to have a different contractor level and reinstall the dishwasher. I find it unlikely that another contractor would level a dishwasher that was already level. I find that it is obvious that a dishwasher should be level. Mr. Kopec does not argue that he is not responsible for FS's work as a subcontractor and I find that he is. I award Mr. Lockwood $106.40.

Level Flooring

26. Mr. Lockwood says that the floor slopes more than the manufacturer's specifications allow. Mr. Lockwood estimates that it will take 8 hours of labour plus $130 in materials to fix the floor.

27. Mr. Lockwood provided a photo showing that at one end of a room, there is a noticeable gap between the floor and trim. It appears that Mr. Kopec attempted to make the gap less noticeable by painting underneath the trim. While I agree this is unsightly, it does not prove that there is a larger issue with the floor's slope. The photo is too close up to observe whether the floor is sloped or not. I agree with Mr. Kopec that Mr. Lockwood could have had another flooring contractor assess the

slope. I find that without more evidence, it is impossible for me to conclude that the floor is sloped, or to what extent.

28. That said, I find that the photographed area shows work that is obviously substandard. There is no evidence of how, or whether, this poor work can be fixed in isolation. On a judgment basis, I award $100 for the decreased aesthetic value of this area. I dismiss the remaining claim about sloped floors as unproven.

Oven Fan and Shroud

29. Mr. Lockwood says that SB failed to reinstall the oven's overhead fan and ripped the fan's shroud. He provided a photo showing a ripped shroud. He also provided a July 31, 2020 invoice for $519.21. It is not clear what this invoice was for because it only described the work done as "installed parts tested fine". As Mr. Kopec points out, the invoice says nothing specific about what part or parts the contractor installed, or why. FS denies ripping the shroud. FS says nothing about the overhead fan.

30. In the absence of a denial and given Mr. Lockwood's evidence, I find that FS likely failed to reinstall the overhead fan. I find that it is obvious that this should have been done. In the absence of any evidence about how long it took Mr. Lockwood's contractor to reinstall the overhead fan, on a judgment basis I award $100 for this deficiency.

31. However, I find that Mr. Lockwood has not proven that FS ripped the shroud. I dismiss the remaining claim.

Excess Flooring Restocking Fee

32. Mr. Lockwood says that Mr. Kopec instructed him to order an excessive amount of flooring. It is undisputed that Mr. Kopec told him to order 1,277 square feet of flooring for a roughly 1,000 square foot area. However, Mr. Kopec only used about 1,085 square feet of flooring. The flooring supplier charged Mr. Lockwood a $450.50 restocking fee to take back the excess floor. Mr. Lockwood says that Mr. Kopec

should have known that 1,277 square feet was excessive and asks to be reimbursed for the restocking fee.

33. Mr. Kopec says that he typically adds 10% to the square footage of flooring jobs and an additional 10% if the job involves stairs, which require more cutting. Mr. Kopec says that the amount of wood he recommended purchasing was within industry standards, and that if he had not been so efficient with the flooring, Mr. Lockwood would have received a smaller refund.

34. I find that how much extra flooring is reasonable for a particular job is beyond ordinary knowledge and requires expert evidence. Mr. Kopec provided a statement from Scott MacDougall, who sold Mr. Lockwood the flooring. They said that they were a floor installer for over 30 years and a salesperson for the last 12 years. I find that Scott MacDougall is an expert in floor installation under the CRT's rules, which Mr. Lockwood does not dispute. Mr. Lockwood does question Scott MacDougall's neutrality, but I find his arguments speculative. Scott MacDougall says that the typical waste for flooring is 10% to 15%, but it can be "as high as 20%" for jobs with stairs. In the absence of any expert evidence contradicting Scott MacDougall's opinion, I find that Mr. Kopec's advice was consistent with industry standards. I dismiss this claim.

Dirty Ducts

35. Mr. Lockwood says that Mr. Kopec failed to cover the heating registers and cold air returns during demolition and construction, which led to significant dust accumulation in the ducts. He says that he spent a day vacuuming debris from the ducts. Even with that, he says that dust came out of the vents whenever the furnace was on. He says the ducts need to be professionally cleaned. Mr. Lockwood's photos show a considerable amount of construction debris in several ducts, including small pieces of wood, screws, and piles of dust.

36. Mr. Kopec says that he told Mr. Lockwood that there would be lots of dust. He says that it was Mr. Lockwood's responsibility to take whatever steps he considered

appropriate to reduce the impact of dust on his house. He says that Mr. Lockwood chose to do nothing. Mr. Lockwood says it is unreasonable to expect that a homeowner would understand a general warning about dust to require them to cover heat registers and other openings.

37. I find that it is not obvious that it is a flooring contractor's responsibility to cover heating ducts or take other steps to prepare a home for a renovation. Without expert evidence, I cannot conclude that a reasonably competent flooring contractor would proactively do so. I dismiss this claim.

Stair Tread

38. Mr. Lockwood says that the tread on the staircase's bottom stair was 14 millimeters narrower than the adjacent stair tread. He says that the BC *Building Code* allows a difference of only 5 millimeters. However, the Code provision Mr. Lockwood cites does not explain how the variations must be measured. There are also no clear photos to show the variations between the stairs. I find that without expert evidence that the stair did not conform to the Code, this deficiency is unproven. Having reviewed the photos in evidence, I find that there is nothing obviously substandard about the stair's installation. I dismiss this claim.

Door Casings

39. Mr. Lockwood says that Mr. Kopec cut several door casings too high for the new flooring, leaving unsightly gaps that Mr. Kopec filled with white caulking. Mr. Lockwood provided a photo of a door casing, which shows white caulking roughly applied between the casing and the floor. I agree with Mr. Lockwood that it is obviously substandard. I find it is clearly sloppy and unsightly. Mr. Lockwood estimates that it would take 4 hours of labour and $14 in materials to correct this error, for a total claim of $254. He provides no objective evidence to support this estimate. I find that 4 hours is reasonable, but I find that an appropriate hourly rate is $30. This is because Mr. Lockwood says that a contractor would cost $30 per hour but added "100% burdens and overhead" to justify his claim for $60 per hour. I

find that as the homeowner, Mr. Lockwood has no overhead and is not entitled to a markup. I award $134 for this deficiency.

Dirty Pathway

40. Mr. Lockwood says that Mr. Kopec failed to put down a drop sheet when using a table saw outdoors. He claims $244 in labour and rental costs to power wash a concrete pathway. Mr. Lockwood provided a very close-up photo of the walkway, which shows a small number of very small pieces of wood. Mr. Lockwood took the photo more than 2 months after Mr. Kopec finished his work. Leaving aside what Mr. Kopec's obligations were to clean up after the job, I am not satisfied that Mr. Lockwood has proven that Mr. Kopec left an amount of sawdust outdoors that justifies compensation. I dismiss this claim.

Toilet

41. Mr. Lockwood says that Mr. Kopec reinstalled a toilet crooked. He also says that there is dirt under the clear caulking that Mr. Kopec used. He claims $250 in labour and materials to reinstall the toilet.

42. In the photos, if there is dirt under the caulking it is impossible to see. Mr. Lockwood also provided a photo that he says proves that the toilet is crooked. Because of the photo's perspective, I find it is not possible to conclude that the toilet is crooked. If it is, it is only very slightly so. I find that Mr. Lockwood has not proven that the toilet installation was obviously substandard. I dismiss this claim.

Plugged Furnace Filter

43. Mr. Lockwood says that his furnace was plugged with dust, so he had to call a service technician to unplug it. He provided a November 13, 2020 invoice for $182 for servicing the furnace, which includes replacing the filter. The invoice said nothing about the filter being plugged. Mr. Lockwood provided a photo of the filter, but it is blurry. I find that I cannot conclude anything from the photo. Given that the

filter replacement was 9 months after Mr. Kopec's work, I find that Mr. Lockwood has not proven that Mr. Kopec caused the filter to clog. I dismiss this claim.

Flooring Adhesive

44. Mr. Lockwood says that Mr. Kopec left flooring adhesive on his front threshold. He claims $30 to remove it. The photos show a very small amount of adhesive on the threshold. Even assuming that the photos show adhesive from Mr. Kopec's work, I find that it this is a very minor issue that is not obviously substandard. Mr. Lockwood was able to clean it up in half an hour. I dismiss this claim.

45. In summary, I award Mr. Lockwood $465.40 in damages. I dismiss his remaining claims.

46. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Lockwood is entitled to pre-judgment interest on from February 6, 2020, for the door casings and trim gap, and from the invoice dates for the other 3 claims. This equals $5.67.

47. 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. Mr. Lockwood was partially successful, so I find he is entitled to reimbursement of half of his $175 in CRT fees, which is $87.50. Mr. Lockwood made extensive submissions about dispute-related expenses, but did not actually claim any. Mr. Kopec did not pay any CRT fees or claim any dispute-related expenses. I therefore make no orders for expenses.

ORDERS

48. Within 30 days of the date of this order, I order Mr. Kopec to pay Mr. Lockwood a total of $558.57, broken down as follows:

    a. $465.40 in damages,

    b. $5.67 in pre-judgment interest under the COIA, and

c. $87.50 for CRT fees.

49. Mr. Lockwood is entitled to post-judgment interest, as applicable.

50. 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.

51. 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