



Civil Resolution Tribunal

Date Issued: August 10, 2022

File: SC-2022-001236

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1149141 BC Ltd. v. Defrane (dba Gametime Painting)*, 2022 BCCRT 898

B E T W E E N :

1149141 BC LTD.

APPLICANT

A N D :

JEREMY DEFRANE (Doing Business As GAMETIME PAINTING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about painting services. The applicant, 1149141 BC Ltd. (114), says it hired the respondent, Jeremy Defrane (dba Gametime Painting), to paint a new

duplex. 114 says aspects of the duplex's left side were substandard. 114 says it had to hire another company to fix Mr. Defrane's deficiencies, which 114 says included not just touch ups but repainting work. 114 claims \$2,766.75.

2. Mr. Defrane says he fixed all deficiencies and that 114 signed off on his work and then paid his final invoice. Mr. Defrane says months later, when he was asked to return to do some new and separate for-pay work, there was a large amount of blue tape marking deficiencies that he says resulted from moving damage and "regular living". Mr. Defrane denies being responsible for those later fixes. In contrast, 114 says the fixes at issue were not new damage but arose from Mr. Defrane's work, despite his having already been fully paid.
3. 114 is represented by Greg Jacobsen, its owner and director. Mr. Defrane 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). 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 of this dispute call into question the credibility, or truthfulness, of the other. 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.

ISSUES

8. The issues are:
 - a. Was Mr. Defrane's final paintwork deficient?
 - b. Is 114 entitled to the claimed \$2,766.75, which is what it paid to have repainting done?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant 114 must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. Mr. Defrane had done prior painting work for 114, which was without incident for both parties. It is undisputed Mr. Defrane's July 15, 2020 quote formed the basis of the parties' contract at issue in this dispute. Mr. Defrane completed this paintwork by mid-August 2021. The year difference between the completion date and the quote is not explained but nothing turns on it.
11. The quote called for a) primer and 2 coats on interior walls and ceiling, 2 coats on trim and doors, with trim to be filled twice and caulked, and b) for the exterior, 2 coats

on trim and doors. The interior work was \$9,500 and the exterior \$3,400, both plus tax. Payment was based on draws with 100% owing “once complete”.

12. Mr. Defrane issued 4 separate invoices to 114 between June and August 2021, which 114 paid around the time of issuance, without complaint.
13. In short, 114 asserts Mr. Defrane’s paintwork was defective and claims \$2,766.75 as what it paid for repainting. In contrast, Mr. Defrane says he completed all necessary minor touch-ups and that the significant number of alleged deficiencies 114 and the homeowner complained of arose in the months after he completed his work, due to moving damage or wear and tear.
14. I note 114 asserts homeowners have 1 year to have any defects rectified, referring to the National Home Warranty. I find no evidence Mr. Defrane ever offered 114 or anyone a 1 year warranty to fix any paint damage regardless of the cause. Rather, here I find Mr. Defrane is only responsible for the claimed paint repairs if they arose from deficiencies in Mr. Defrane’s work.
15. Next, I accept that on February 16, 2022 114 paid Top Cut Painting (Top Cut) the claimed \$2,766.75 to refill and recaulk cracked trim and “repaint throughout house”, as shown on Top Cut’s invoice. However, this does not prove Mr. Defrane’s paintwork was deficient as 114 alleges, given the passage of 6 months between Mr. Defrane’s mid-August 2021 completion and Top Cut’s February 2022 work. Notably, there is nothing in Top Cut’s invoice that is critical of Mr. Defrane’s work.
16. 114 acknowledges Mr. Defrane had repainted the stairwell after mid-August and completed some touchups. In this dispute, 114’s main complaint is that there was still “flashing and inconsistencies in colour, sheen, and coverage” that 114 says were very noticeable.
17. First, 114 argues that some of the alleged defects are in areas that would be unaffected by daily living or moving damage. I cannot agree with 114 that it is unlikely movers could damage upper walls or the tops of door frames.

18. Second, 114 submitted a number of “before and after” photos. I find these show some roller marks in a stairwell and some apparent trim deficiencies at the top of doors. However, as noted Mr. Defrane undisputedly returned to repaint the stairwell and the photos 114 submitted are not dated. Some other photos show what could be paint inconsistency but could also be glare from the angle the photo was taken. Some photos, of trim at the top of door frames, show pink filler, which I find indicate Top Cut had already prepared the door for further work after Mr. Defrane left. Another set of photos shows the top of a door and the adjacent trim as having paint scratched off near the hinge side, but contrary to 114’s submission I find this does not show Mr. Defrane left it that way as opposed to being caused by the homeowner’s use of the door for some months. Another photo is labelled with the comment “exterior door not properly prepped and painted”. While there are pieces of green tape visible on the door’s interior window frame, I cannot tell the door was not properly prepped and painted. Further, there are some photos showing areas with alleged defects in Mr. Defrane’s work but those same areas are not included in the set of photos showing Top Cut’s repainting work. I find these photos do not assist 114 and do not prove Mr. Defrane’s paintwork was defective.
19. One of two photos labelled “issues with caulking and prep” show what I find is likely inadequate filling and painting of about 4” of trim adjacent to a stairwell’s top step. This is the only photo I can conclude shows an obvious deficiency. More on this trim piece below.
20. As the applicant and the party asserting it, I find 114 has the onus of proving Mr. Defrane failed to reasonably complete the paint job (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Based on the evidence before me, apart from the 1 trim photo noted above, I find Mr. Defrane’s paintwork was not obviously substandard. So, I find this issue is outside ordinary knowledge and requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is no expert evidence commenting on Mr. Defrane’s work.

21. I note 114 relies on BC's *Residential Construction Performance Guide*, which says on page 178, "A properly painted surface (has consistent colour, appearance and cover) shall be provided on every exposed surface where a painted finish is specified". I find this does not assist 114, because apart from the 1 trim photo there is no evidence before me that Mr. Defrane failed to meet this standard, even if it was the applicable standard of care for a painter.
22. Next, 114 effectively submits Mr. Defrane admitted his work was defective. In support, 114 submitted a series of text exchanges Mr. Jacobsen had with Mr. Defrane. The texts show Mr. Jacobsen asked Mr. Defrane in early September 2021 to attend to fix a variety of paint issues. Mr. Defrane initially responded that he would not be available until December. In a September 20, 2021 text, Mr. Defrane wrote, "Yea it wasn't a good paint job that's why I re did the stairwell I was using paint I've never used and it was [expletive] I'll take care of this stuff I'll figure out a time" (quote reproduced as written, except where noted.). This was in response to 114 identifying 3 concerns: a staircase wall, tape above a powder room door and downstairs closet, and "missed places" around the tub and showers. I cannot agree with 114 that Mr. Defrane admitted anything other than the stairwell was poorly done, and as noted, he repainted it. On Tuesday September 28, 2021, Mr. Defrane wrote he would attend to the other touch-ups on "Monday afternoon", which would be October 4.
23. On October 4, 2021, Mr. Defrane texted that there were 200 pieces of blue tape on the wall when Mr. Jacobsen had in his text identified only 3 spots. I acknowledge Mr. Defrane said he had not been in the unit for a while and he could not remember if there were other places. 114 admits that the homeowner had added the blue tape, which I find went far beyond what Mr. Jacobsen had identified in the text messages. Given the discrepancy, it is undisputed Mr. Defrane told his crew member to leave the site.
24. On a date shortly after (the exact date is not shown in the text screenshot in evidence), Mr. Defrane texted that he had again attended the unit to do some further painting as the parties had discussed but that the homeowner asked for a "full

repaint". So, again, Mr. Defrane's crew left. In the circumstances, given Mr. Defrane contracted with 114 and not the homeowner, I find Mr. Defrane's approach was reasonable.

25. Around 2 months later, on December 17, 2021, Mr. Jacobsen advised that there were aspects of the paint job that were not up to industry standards. Mr. Defrane declined to return again. 114 submits it waited until December because that is when Mr. Defrane had earlier said he would be available. I do not accept this explanation given as noted above Mr. Defrane agreed to and did attend on October 4 and again shortly after.
26. Overall, I find it more likely that over time, after having moved their furniture into the home and lived there, the homeowners identified paint areas they wanted fixed. However, I find this does not likely show Mr. Defrane left the identified deficiencies when he did his final work in August 2021.
27. So, apart from the "3 spots" and the 4" of trim that appears to require refilling or recaulking, I find deficiencies in Mr. Defrane's paintwork unproven. Top Cut's invoice did not provide a breakdown and on balance I find a touch-up of 4" of trim is likely trivial and does not warrant compensation. Further, I find in October 2021 Mr. Defrane attended to fix the "3 spots" 114 had identified and reasonably left when the homeowner undisputedly requested full repainting. Given all the above, I dismiss 114's claim.
28. 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. As 114 was not successful, I dismiss its claim for reimbursement of CRT fees. Mr. Defrane did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

29. I dismiss 114's claim and this dispute.

Shelley Lopez, Acting Chair and Vice Chair