Civil Resolution Tribunal

Date Issued: December 12, 2022

File: SC-2021-007877

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Proline Roofing Ltd. v. Wahl*, 2022 BCCRT 1331

B E T W E E N :

PROLINE ROOFING LTD.

APPLICANT

A N D :

SHAUNA WAHL and GORDON WAHL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about payment for roofing services.

2. The respondents, Shauna Wahl and Gordon Wahl, hired the applicant, Proline Roofing Ltd. (Proline), to replace their roof. Proline says the Wahls did not pay the

entire agreed price for the roof replacement. Proline claims $3,304.25 for the outstanding balance.

3. The Wahls say that Proline damaged 4 of their skylights while completing the roof replacement and that the new roof leaks. So, the Wahls say they do not owe Proline anything further.

4. Proline is represented by an employee. The Wahls are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.

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 Proline is entitled to the claimed $3,304.25.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Proline must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision. I note that Proline did not provide any final reply submissions, despite being given the opportunity to do so.

11. The background facts are undisputed. Proline provided the Wahls with a March 23, 2021 roof replacement quote totalling $26,402 plus tax. The quote set out a detailed list of the services and materials included. At the top of the quote's second page was a note in bold lettering that said any deviation from the stated inclusions would result in separate charges.

12. The parties signed a March 24, 2021 contract for the roof replacement, which stated it included all items listed on the March 23, 2021 quote for $27,722.10, inclusive of tax. The Wahls paid Proline a $2,722.10 deposit, leaving a $25,000 balance payable upon the roof's completion. The contract stated that work was scheduled to begin "mid-end of May 2021".

13. When the project was complete, Proline provided the Wahls with a June 21, 2021 invoice for the $25,000 balance, plus $404.25 for "extra work" involving installation of a flapper vent on the bathroom roof. It is undisputed that the parties discussed installation of this vent sometime during the roof replacement, and that it was not part of Proline's initial quote. However, the Wahls say Proline never told them there would be any extra charge for installing the vent. In a June 22, 2021 email to Proline, the Wahls disputed this charge.

14. I note that one of the terms and conditions set out on the contract's first page stated that any modifications or unforeseen work was not included and would affect the final

price. The contract's second page set out 13 additional clauses. Clause 5 stated that the Wahls agreed to pay Proline the cost of any "agreed" extras. It goes on to state that the parties must agree to all extras in writing before proceeding with that part of the work. I find that clause 5 applies to the "extra" flapper vent work.

15. Proline did not submit or provide any evidence that the Wahls agreed in writing to the extra cost for the flapper vent. Therefore, I find Proline was not entitled to charge the Wahls $404.25 for that work. This means that the Wahls owed Proline only the original $25,000 outstanding from their contract upon the project's completion.

16. It is undisputed that the Wahls e-transferred Proline $10,000 on July 20, 2021 and provided a $12,100 cheque that Proline processed on July 22, 2021. This leaves $2,900 outstanding, which the Wahls admit they have not paid. Given Proline undisputedly completed the work set out in the parties' contract, I find the Wahls owe Proline $2,900, subject to any set-off for deficient work discussed below.

17. The Wahls say they deducted the $2,900 from Proline's invoice because Proline damaged 4 of their skylights during the roof replacement. I find they are claiming a set-off of the amount outstanding to Proline based on the law about deficiencies. I note that the Wahls argue they did not deduct enough, as it will cost them more than $2,900 to fix the skylights. However, the Wahls did not file a counterclaim. So, I find their claim to a set-off in this dispute is limited to the $2,900 I have found they owe Proline.

18. When a customer alleges that a contractor's work was below a reasonably competent standard, the customer (here, the Wahls) 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 or trade's work was below a reasonable standard: *Bergen v. Gulliker*, 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: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.

19. The Wahls say that since Proline installed the new roof, there has been condensation in 4 of their 10 skylights, which they say indicates that Proline broke the skylights' seals. They believe this happened when Proline's workers leaned on the skylights. The Wahls say that 3 of the skylights with condensation have also leaked when it rains, causing damage inside their home and to their porch.

20. I find that the cause of condensation and leaking in the skylights is a matter outside ordinary knowledge and experience that requires expert evidence to prove. Here, the Wahls have provided no such expert evidence. While the Wahls provided quotes to replace their skylights, there is no evidence from another roofing or skylight expert that Proline's work likely damaged the skylights' seals or otherwise caused them to leak. This is despite the Wahls' submission that they had a professional contractor experienced in roofing come to look at their skylights. There is also no evidence about the skylights' age or typical lifespan.

21. The Wahls submitted photos that appear to show some moisture on the porch roof near the skylights and a crack and some bubbling on the interior drywall near another skylight. However, I find I cannot conclude from those photos that the moisture and drywall issues are caused by leaking skylights or that Proline's work was substandard such that it caused the skylights to leak.

22. I find the evidence is simply insufficient to find that Proline's work was obviously deficient. In the absence of any expert evidence, I find the Wahls have not met their burden to prove Proline's work was substandard. Therefore, I find the Wahls have not shown they are entitled to any set-off of the $2,900 balance owing to Proline, and I order them to pay Proline that amount.

23. The *Court Order Interest Act* (COIA) applies to the CRT. It says that unless the parties had an agreement about interest, pre-judgment interest must be applied to a monetary judgment from the date the cause of action arose. Here, clause 11 of the parties' contract stated that 24% annual interest was payable on overdue amounts. So, I find the parties had an agreement on interest and the COIA does not apply.

However, Proline did not make a claim for contractual interest in this dispute, and so I decline to order contractual interest.

24. 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. I find Proline was largely successful and is entitled to reimbursement of $175 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

25. Within 30 days of the date of this decision, I order the Wahls to pay Proline a total of $3,075, broken down as follows:

    a. $2,900 in debt, and

    b. $175 in CRT fees.

26. Proline is entitled to post-judgment interest under the COIA, as applicable.

27. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member