



Civil Resolution Tribunal

Date Issued: March 13, 2023

File: SC-2022-004373

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Riddell v. Chris Garden Home Improvements Ltd.*, 2023 BCCRT 206

B E T W E E N :

LORRAINE RIDDELL

APPLICANT

A N D :

CHRIS GARDEN HOME IMPROVEMENTS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, Lorraine Riddell, hired the respondent, Chris Garden Home Improvements Ltd. (CGHI), to replace her front porch and stairs. Ms. Riddell says the resulting porch was smaller than what the parties agreed upon, and that CGHI's work was deficient. Ms. Riddell claims a full refund of the \$4,221 she paid.

2. CGHI denies any deficiencies and says it completed the job Ms. Riddell asked for. Further, CGHI says Ms. Riddell appeared satisfied upon completion and paid the full price requested.
3. Ms. Riddell represents herself. CGHI is represented by its owner, Chris Garden.

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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. Ms. Riddell submitted new evidence and submissions after the deadline to do so had passed. Ms. Riddell says that she submitted copies of the parties' emails after the

porch was built to respond to CGHI's response submissions and evidence. However, due to technical difficulties uploading the evidence, she submitted it after the deadline for her final reply had passed. As CGHI was provided with copies of the late evidence and a chance to respond, I find it is not unfairly prejudicial to accept and consider the late evidence and submissions. I find this is consistent with the CRT's mandate for flexible and speedy dispute resolution in the interests of justice and fairness. I allow the late evidence and have considered it in my analysis below.

ISSUES

9. The issues in this dispute are:
 - a. Whether CGHI failed to build the porch and stairs agreed on,
 - b. Whether CGHI's work was deficient, and
 - c. If either answer is "yes", what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ms. Riddell must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.
11. I find the parties' initial contract is set out in CGHI's July 21, 2021 estimate. For an estimated price of \$4,221 including taxes, CGHI agreed to:
 - a. Remove and dispose of the existing front deck, stairs, and railing (\$400).
 - b. Supply and build new front entry deck and stairs – 8x8 feet including vinyl decking (64 x \$30 = \$1,920).
 - c. Supply and install new aluminum railings (30 x \$50 = \$1,500).

- d. Supply and install new vinyl siding around deck skirting and replace front post on overhang (\$200).
12. Ms. Riddell says, and CGHI does not dispute, that the porch was completed on October 30, 2021. I find this is likely correct, as CGHI's final invoice notes that Ms. Riddell paid the outstanding \$2,221 balance on November 1, 2021.

Did CGHI fail to build the agreed upon porch?

13. As noted above, Ms. Riddell says the finished product was not what the parties agreed to, because the deck area was much smaller than agreed upon.
14. CGHI does not specifically address the porch size. Rather, it says Ms. Riddell added more work onto the estimate, which Ms. Riddell denies. CGHI does not explain what additional work Ms. Riddell requested. Rather, it says that all the changes were included in the final invoice.
15. The only piece of evidence CGHI submitted was a \$4,221 "Paid" invoice dated February 1, 2022. In the paid invoice, the deck size is 6x8 feet, rather than 8x8 feet in the original estimate. The other difference is that the \$1,920 price for supplying and building the new front deck and stairs also includes "supply and build framing for skirting". I find the skirting framing and deck size are likely the changes CGHI refers to in its submissions, as the remaining scope of work is the same as the original estimate. Further, CG refers to skirting framing in his emails to Ms. Riddell, as described below.
16. Ms. Riddell submitted emails between her and CG from January 14 to 17, 2022. There, CG acknowledged that the finished deck was only a total size of 6x8 feet, including the stair space. In the email CG wrote that was the only way to keep the cost at \$4,221 while including the framing around the skirting that Ms. Riddell had requested. In the emails, and in this dispute, Ms. Riddell denies asking for, or agreeing to, a deck smaller than 8x8 feet or framing for the skirting.

17. Contrary to CGHI's submissions, I find the final invoice does not prove that Ms. Riddell requested, or agreed to, any changes to the parties' agreement, because the invoice is dated 3 months after the project was completed. Further, as argued by Ms. Riddell, I find the original estimate specifically including vinyl siding as skirting, to enclose the area under the completed porch. I find that a reasonable person would interpret this to include building any required framing for the skirting. Given this, I find it unlikely that Ms. Riddell expressly asked for, or agreed to, reduce the deck space for framing that appeared to already be included in the estimate. I find neither the final invoice, nor the parties' emails, support that the parties agreed to change the deck size. Rather, I find CGHI alone decided to make the change, during the actual construction. So, I find the parties' contract is what was included in the estimate, an 8 x 8 feet porch with stairs.
18. Ms. Riddell submitted several photos of the completed deck and stairs, which show an "L" shaped deck with a front door at the bottom of the "L", the corner of the "L" cut off by an angled wall, and steps taking up the negative "L" space. Although Ms. Riddell's photos include no measurement references, I find it obvious that the total deck area is not 8 feet wide or deep at any point. So, I find CGHI did not provide the deck size it contracted to provide. I will address Ms. Riddell's requested remedy below.

Was CGHI's work deficient?

19. As the person alleging deficiencies, Ms. Riddell bears the burden of proving them. In general, expert evidence is required to prove work is deficient, or that a professional's work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry, such as porch construction. However, expert evidence is not necessary when the work is obviously sub-standard or the deficiency relates to something non-technical (see *Absolute Industries Ltd. v. Harris*, 2014 BCCA 287 and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).

20. First, Ms. Riddell says the deck stairs are only 33 inches wide, which is less than the 36-inch width required in the building code. However, Ms. Riddell's photos contain no measurements or reference, and I find it is not obvious that the stairs are less than 36 inches wide. Nor has Ms. Riddell provided any expert evidence to say that 36-inch wide stairs are required under the applicable building code. So, I find Ms. Riddell has not proven the stair width is deficient.
21. Second, Ms. Riddell says the support post has a 4-inch wide 'gash' in it, which I find is obvious in her photos.
22. Third, Ms. Riddell says the black edging attached to the vinyl flooring is coming off. Her photos show a small area of edging separated from the vinyl flooring, which is lifting away from the top stair lip.
23. In summary, I find Ms. Riddell has proven the provided deck is smaller than agreed, that the support post is gouged, and that the vinyl decking edging is coming loose in a small area. I find these are all obvious deficiencies. So, I find CGHI breached the parties' contract.
24. I acknowledge CGHI's argument that Ms. Riddell seemed satisfied with the finished porch and stairs, as she paid the remaining balance the same day and she did not complain for 3 months. In response, Ms. Riddell says she was upset and expressed her discontent about the size of the framed deck during construction, that she was so upset with the finished product she struggled to write a cheque, and that she thought CG would fix some of the problems when he returned in a few weeks' time to do another small job they had agreed upon.
25. I find the parties' January 2022 emails support Ms. Riddell's statement that she believed CG would come back to her house for another job in a short time, and that she planned to further discuss the porch with him then. So, I find the delay between the porch's completion and Ms. Riddell's emailed complaints do not indicate that she was satisfied with the deck when it was completed. Nor do I find Ms. Riddell's payment meant she accepted the porch "as built" with its smaller than agreed on size

and deficiencies. Rather, I find Ms. Riddell completed her contractual obligation (paying for the porch) and then chose to sue CGHI for damages, which she is entitled to do.

What remedy is appropriate?

26. Damages for breach of contract are generally meant to put the innocent party in the same position as if the contract had been performed as agreed upon (see *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319).
27. Ms. Riddell argues that the deck must be removed and completely replaced. She specifically says that she is “pretty sure” she cannot have the deck extended. The difficulty for Ms. Riddell is that she has not proven that replacement is necessary, rather than repair. She has provided no expert or other evidence to show that the structure is faulty or unsafe or, for other reasons, cannot be extended. While I find the deck and stairs she received were not what she paid for, Ms. Riddell has not proven it must be torn down and rebuilt. So, I find Ms. Riddell has not proven that she is entitled to a full reimbursement of what she paid for the porch and stairs. In this case, I find a full refund would amount to betterment, as she Riddell has received the benefit of a new deck and stairs, albeit a small one with deficiencies. However, I find Ms. Riddell is entitled to some compensation.
28. Ms. Riddell has not provided any evidence about how much it would cost to possibly have the porch's deck area extended, the support post gauge repaired, and the vinyl edging fixed. On a judgment basis, I find Ms. Riddell is entitled to reimbursement of \$2,000, which is approximately half what she paid for the porch and stairs.
29. The *Court Order Interest Act* applies to the CRT. Ms. Riddell is entitled to pre-judgment interest on the \$2,000 from the October 30, 2022 completion date to the date of this decision. This equals \$23.42.
30. 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 Ms. Riddell is entitled to reimbursement of \$175 in paid CRT fees. She claimed no dispute-related expenses.

ORDERS

31. Within 30 days of the date of this order, I order CGHI to pay Ms. Riddell a total of \$2,198.42, broken down as follows:
 - a. \$2,000 in damages,
 - b. \$23.42 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
32. Ms. Riddell is entitled to post-judgment interest, as applicable.
33. 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.

Sherelle Goodwin, Tribunal Member