Civil Resolution Tribunal

Date Issued: December 22, 2023

File: SC-2022-009678

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vanbrabant dba VB Custom Exteriors v. Bogstie*, 2023 BCCRT 1136

B E T W E E N :

ANTOINE VANBRABANT (Doing Business As VB Custom Exteriors)

APPLICANT

A N D :

DOUGLAS BOGSTIE and MAXINE HAFFEN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. The applicant, Antoine Vanbrabant (Doing Business As VB Custom Exteriors), did exterior home renovations for the respondents, Douglas Bogstie and Maxine Haffen. The respondents undisputedly have not paid the applicant's final invoice in full. The applicant claims $3,223.75 for the unpaid work.

2. The respondents say they have not paid the applicant due to various deficiencies in his work. They also say that the applicant has overcharged them $500 for renting a lift without their consent.

3. The parties are all 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.

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 without an oral hearing.

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.

Preliminary Issues

8. Douglas Bogstie undisputedly died in August 2023. After learning of Douglas Bogstie's death, the applicant asked to remove Douglas Bogstie from this dispute. Maxine Haffen did not consent to the withdrawal and also said that the applicant had named Douglas Bogstie incorrectly as "Douglas Haffen" in the Dispute Notice.

9. Maxine Haffen said that Douglas Bogstie had previously made note of this error, but the error had not been corrected. The naming error was not apparent in the respondents' Dispute Responses, their written argument, or in the evidence before me. However, CRT staff confirmed Douglas Bogstie had made a note on the CRT's online portal asking that their name be corrected from Douglas Haffen to Douglas Bogstie when they submitted their Dispute Response. Through an inadvertent CRT error, this naming issue was not brought to the applicant's attention during the CRT's case management stage.

10. So, at my request, CRT staff raised the naming error with the applicant. The applicant agrees that the style of cause for this dispute should be changed to reflect Douglas Bogstie's correct name. So, as the parties all agree, and given the parties all clearly operated on the basis that Douglas Bogstie is the correct respondent, under section 61 of the CRTA, I have amended the style of cause to reflect Douglas Bogstie's correct name.

11. Finally, as noted above, Douglas Bogstie is now deceased. Under section 150(5) of the *Wills, Estates and Succession Act*, a person is entitled to continue a legal proceeding against a deceased person that could have been continued if the deceased were living, whether or not a personal representative has been appointed. So, I find the claim against Douglas Bogstie can proceed despite their death.

ISSUE

12. The issue in this dispute is whether the respondents must pay the applicant the claimed $3,223.75, or some other amount, for the unpaid exterior home renovation work.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). I have considered all the parties'

submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

14. On August 26, 2022, the applicant gave the respondents a $4,698.75 quote for exterior home renovation work. The quoted work included:

    a. Supplying and installing vinyl siding on the front of the house and on the chimney,

    b. Putting 2 ½ inch wide trim around the windows and front door, and

    c. Putting aluminum fascia on the house.

15. The respondents accepted the applicant's quote, which became the parties' contract. The applicant says, and the respondents do not dispute, that in order for the applicant to install the siding on the chimney, the respondents agreed they would move a shed located by the chimney so that the applicant could have proper access. However, the respondents left town for a number of days without first removing the shed. So, the applicant says he paid $500 to rent a lift to complete the chimney siding work.

16. To date, the respondents have paid the applicant $2,000 for the work. However, based on his November 21, 2022 invoice, the applicant says $3,223.75 remains owing with $2,698.75 from the original contract price and $500 for the lift rental.

17. As mentioned above, the respondents have not paid the applicant anything further as they say there are various deficiencies in the applicant's work. I infer the respondents argue they owe the applicant nothing as a result.

Did the applicant substantially complete the work?

18. I turn now to the applicable law. In general, contractors are entitled to be paid for their work once the work is substantially complete. If there are deficiencies with the contractor's work, the customer may claim for damages. The customer bears the burden to prove any alleged deficiencies (see *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 16 and *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287).

19. Here, the respondents argue the work was not completed to their satisfaction. However, based on photographs in evidence, I find that the applicant substantially completed the work by November 21, 2022. The respondents do not dispute that the parties agreed to a $4,698.75 price for the work, as set out in the August 26, 2022 quote. So, taking the respondents' $2,000 payment into account, I find they still owe the applicant $2,698.75, subject to any proven deficiencies.

20. As for the $500 lift rental charge, I find the applicant has not proven that he is entitled to this amount. As noted above, the applicant's quote did not include a lift rental charge. The respondents say, and the applicant does not dispute, that the applicant rented the lift without notifying them in advance or obtaining their consent. While I accept that the respondents had agreed to move the shed for the applicant, the applicant has not explained why he did not obtain the respondents' approval before renting the lift.

21. The applicant says that he rented the lift "in order to complete the job as winter was arriving". However, there is no evidence that the parties agreed the work had to be done by a certain date, or that the weather was expected to change rapidly during the respondents' absence. Overall, I am not satisfied that there was any urgent need for the applicant to rent the lift to complete the siding work on the chimney instead of waiting for the respondents to return and move the shed for him.

22. Further, other than listing the $500 charge on his own invoice, the applicant provided no supporting evidence to show how much he actually paid for the lift rental. I find the applicant has failed to show that he actually incurred the $500 rental fee he claims for. So, for the above reasons, I find the applicant is not entitled to any amounts for the lift rental.

23. I turn now to consider whether there are any proven deficiencies, entitling the respondents to a reduction to the $2,698.75 they owe the applicant.

Was the applicant's work deficient?

24. At law, a contractor is required to perform their work to a reasonable standard (see *Lund v. Appleford Building Ltd. et al.*, 2017 BCPC 91 at paragraph 124). The law does not require perfection. Generally, expert evidence is required when a customer alleges that a professional's work fell below a reasonably competent standard because an ordinary person does not know the standards of a particular profession or industry. The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company,* 2019 BCSC 196 at paragraph 112).

25. First, I note that many of the deficiencies the respondents complain about have already been remedied by the applicant. The respondents are not entitled to any reduction for the deficiencies that have already been fixed by the applicant as they have not incurred any expense for those. So, I find no need to address the already fixed deficiencies in this decision.

26. The applicant does not dispute that there is one area by the living room window where a fascia joint has not been properly clipped in. The respondents brought this issue to the applicant's attention in late November 2022. The applicant says that this is a quick, 5 minute job that he will fix once the respondents pay him.

27. Based on the photographs in evidence, I accept that the fascia joint issue is a minor deficiency. I find the applicant has had an opportunity to address this deficiency but has failed to do so. So, on a judgment basis, I find the respondents are entitled to a $20 reduction for this deficiency.

28. The applicant also agrees that there is an area where he missed a piece of metal trim by the porch roof. However, he says that the respondents never brought this issue to his attention before this dispute. Contractors are generally entitled to a reasonable opportunity to address deficiencies. If an owner does not give the contractor that opportunity, they are generally not entitled to claim damages for having the deficiencies fixed (see *Lind v. Storey*, 2021 BCPC 2). There is no evidence before

me that the respondents alerted the applicant about the missing metal trim before this dispute. So, I find the applicant has not had a reasonable opportunity to address this issue. As a result, I find the respondents are not entitled to any reduction for this deficiency.

29. Next, the respondents argue that the applicant used the wrong screws for the fascia installation. I find what screws are appropriate for metal fascia installation is a technical issue that requires expert evidence to prove. As there is no expert evidence before me addressing this issue, I find this alleged deficiency unproven.

30. The respondents also argue that the applicant installed the wrong size of fascia. In particular, they say that the applicant should have installed fascia that was 6 inches by 2 inches but instead he installed fascia that was 6 inches by 1 inch. The respondents say that all of the fascia will need to be removed and the proper fascia re-installed, which will cost them between $2,000 and $2,300.

31. The respondents rely on a letter from a contractor, RP, as expert evidence about the alleged incorrect fascia. In the June 29, 2023 letter, RP says that the fascia the applicant installed was approximately 3.5 inches by ¾ inches. RP says that the previous fascia was “a full 2 x 6 which is a full 1.5 inch thick piece of wood”. RP’s opinion is that the metal fascia that the applicant installed should have covered all painted areas on the existing painted wood fascia.

32. The applicant says that RP’s evidence is not reliable. He says that RP is wrong about the size of fascia the applicant used. He also notes that in an estimate in evidence, RP quoted the respondents for the fascia replacement based on 400 feet, whereas there is only 250 feet of fascia on the respondents’ house. So, the applicant says that RP is clearly not familiar with the work the applicant completed, making RP’s opinion unreliable.

33. The applicant also argues that RP is not qualified to give an opinion about the fascia issue because RP allegedly does not typically do this type of work. I note that CRT rule 8.3 requires an expert to state their qualifications in any written expert opinion,

which RP did not do here. I agree with the applicant that there are concerns about the reliability of RP's evidence. So, without evidence of RP's qualifications, I decline to accept RP's letter as expert opinion in this dispute. Accordingly, I give RP's letter no weight.

34. The respondents also rely on a March 18, 2023 estimate they received from another unidentified contractor for removing and installing new fascia trim. The contractor noted that the existing aluminum trim does not cover exposed wood. Not only is the contractor unidentified and their qualifications unknown, but I also find the notes in this estimate fall short of establishing a proven deficiency in the applicant's fascia installation work.

35. So, I find there is no reliable expert evidence before me showing that the applicant installed the wrong type of fascia and I find this deficiency unproven.

36. Finally, I note the respondents provided numerous photographs of various other alleged deficiencies in the applicant's completed work. While I find some of the photographs show some minor imperfections, I am unable to find that these imperfections mean that the applicant failed to complete the work to a reasonable standard. Further, as noted by the applicant, the respondents' photographs were taken in spring 2023, approximately 6 months after the applicant completed the work. The applicant says that many of the alleged issues occurred after his installation work. On balance, I find the photographs alone do not prove that the applicant's work was substandard. As there is no expert evidence before me addressing these additional deficiencies, I find them unproven.

37. In conclusion, I find the respondents owe the applicant $2,698.75 for the unpaid siding, trim, and fascia work. I find the respondents are entitled to a $20 reduction to this amount for the fascia joint deficiency over the living room window. So, I order the respondents to pay the applicant $2,678.75.

38. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant is entitled to pre-judgment interest on the $2,678.75 from November 21, 2022, the date of the applicant's invoice, to the date of this decision. This equals $127.80.

39. 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. As the applicant was largely successful, I find he is entitled to a $175 reimbursement for his paid CRT fees. None of the parties claim any dispute-related expenses, so I award none.

ORDERS

40. Within 30 days of the date of this decision, I order the respondents, jointly and severally, to pay the applicant a total of $2,981.55, broken down as follows:

    a. $2,678.75 in debt for the unpaid work,

    b. $127.80 in pre-judgment interest under the COIA, and

    c. $175 in CRT fees.

41. The applicant is entitled to post-judgment interest, as applicable.

42. 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.

Nav Shukla, Tribunal Member