



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alpine-Progress Installations Inc. v. Zenyk*, 2024 BCCRT 8

B E T W E E N :

ALPINE-PROGRESS INSTALLATIONS INC.

APPLICANT

A N D :

DEENA ZENYK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about payment for gutter and fascia work the applicant, Alpine-Progress Installations Inc., did for the respondent, Deena Zenyk. The applicant says the respondent did not pay its \$3,306 invoice. So, it claims \$3,306 for the work.

2. The respondent says the applicant overcharged her. She says the invoice included an additional \$880 for fascia removal, but the parties did not discuss or agree to an extra charge for this work, so she should not have to pay the \$880. In the Dispute Response, the respondent offered to pay \$2,352 for work she says the parties agreed to and the applicant completed. However, in submissions, the respondent appears to dispute the entire invoice amount.
3. An employee represents the applicant. The respondent 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). 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. In some respects, the parties 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. 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.
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.

ISSUE

8. The issue in this dispute is whether the respondent must pay the applicant \$3,306, or another amount, for gutter and fascia work the applicant did.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence, but only refer to the evidence and argument I find necessary to explain my decision.
10. The respondent initially contacted the applicant about gutter and fascia work in September 2020. In February 2021, the respondent engaged the applicant to do the work on her house. I summarize the applicant's written quote as follows:
 - a. Remove and dispose of existing gutters,
 - b. Supply and install new gutters, and
 - c. Supply and install new painted fascia.
11. The quote included \$2,440 for the gutter work and \$1,120 for the fascia work, for a total of \$3,738, including GST. The respondent accepted the applicant's quote by paying the required \$600 deposit. I find the quote became the parties' contract.
12. The applicant began the job on March 1, 2021, and completed the gutter work. On March 15, 2021, the applicant emailed the respondent to advise it had run into problems removing the existing fascia due to the way the respondent's new roof had been installed. The applicant told the respondent completing the fascia removal was going to be expensive for her, and it did not feel comfortable continuing with that work. The respondent said she understood. The applicant sent the respondent a \$3,306 invoice for the work completed or partially completed, including amounts for gutter removal and installation, fascia removal, and new fascia installation. The invoice accounted for \$571.43, which is the pre-tax deposit amount.

13. The respondent disputed the invoice. She said since the applicant had never mentioned an additional amount for fascia removal nor had this appeared on the quote, she had no obligation to pay it. I infer the respondent's position is that the cost of fascia removal was included in the contract price.
14. The applicant responded that while the quote specifically included the cost of gutter removal, it did not include the cost of fascia removal. In submissions, the applicant says it charges for fascia removal on an hourly basis, and its standard practice is to verbally communicate to each of its customers that it is a separate cost.
15. The applicant provided a May 9, 2023 statement from its sales and service manager, MC. MC said they tell every customer the cost of fascia removal is not included in the quote, as it is not possible to determine how the existing fascia is fastened to the house before removing the gutters. MC also said they clearly recalled verbally communicating this to the respondent, which the respondent denies.
16. In essence, the applicant says the parties had a separate verbal contract for fascia removal.
17. I find both parties are incorrect. First, I find fascia removal was not included in the contract based on its express terms. I considered whether the contract implied a term that removal of existing fascia was included, as it seems a necessary precursor to new fascia installation. However, since the contract explicitly included removal of existing gutters, but did not explicitly include removal of existing fascia, I find fascia removal was not an implied contractual term.
18. Next, the alleged verbal contract. I give limited weight to MC's statement because it was made about 20 months after MC says they told the respondent the cost of fascia removal was not included in the quote. I find this is a relatively long time to recall a particular conversation. I acknowledge MC's statement spoke to what they routinely communicate to customers. However, the applicant did not provide evidence of this practice, such as confirmation from other customers that this is what they were told. In addition, as the applicant's employee, MC is not neutral or independent, so I find

their statement is unlikely to be objective. Further, MC did not say they told the respondent they billed for fascia removal on an hourly basis, or the rate. I find these are essential contractual terms that were absent here. Based on all of this, I find there was no separate verbal contract for fascia removal.

19. So, I find the parties did not contract for fascia removal at all. However, where parties do not have a binding contract, a contractor is still entitled to be paid a reasonable amount for work performed based on *quantum meruit*, meaning “value for work done” (see *Johnson v. North Shore Yacht Works Corp.*, 2014 BCSC 2057 at paragraph 100). Here, the applicant undisputedly removed some fascia, for which it charged the respondent \$880. The difficulty for the applicant is that it did not submit evidence to support this amount, such as the number of hours worked or the rate. The applicant provided 1 picture of disassembled roofing material to access fascia boards. I find this is insufficient to prove the applicant is entitled to \$880 for fascia removal. On a judgment basis, I allow \$100 for fascia removal, including GST.
20. I turn to the remainder of the invoice. As noted above, in the Dispute Response the respondent offered to pay the applicant \$2,352 for work done. However, I find the respondent miscalculated the amount for the work. The respondent added the invoiced amounts for partial fascia installation (\$400) and gutter work (\$2,440), deducted the entire \$600 deposit, and then added GST to the total. I find the correct calculation is:

$$\$400 + \$2,440 = \$2,840$$

$$\$2,840 + 5\% \text{ (GST)} = \$2,982$$

$$\$2,982 - \$600 = \$2,382$$

Since the respondent does not dispute the applicant did the partial fascia installation and gutter work, I find the applicant is entitled to payment of \$2,382 for this work.

21. However, in submissions, the respondent says the applicant deliberately installed the gutters on disintegrating fascia, and she will have to incur costs to have this remedied.

She also alleges the applicant made false statements and attempted to portray her in a poor light. I infer the respondent challenges the rest of the invoice for these reasons.

22. I find the allegation that the applicant made false statements vague. To the extent the respondent is saying MC's statement was intentionally untruthful, there is no evidence of this. Further, I find it unproven the applicant tried to "taint" the respondent's character. In any case, it is unclear how, if proven, these allegations would invalidate the applicant's entitlement to payment for work undisputedly performed under the parties' contract.
23. As for the allegation the applicant installed the gutters on disintegrating fascia, I find the respondent asserts the applicant's gutter work was substandard. As the party alleging substandard work, the respondent bears the burden of proving 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 an ordinary person's common knowledge. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.)
24. I find whether the applicant's installation of the gutters was deficient must be proven with expert evidence. Though the respondent submitted photos of the gutters installed on fascia that appear to be in poor condition, it is not obvious to me that the fascia adversely affected the gutter installation's quality such that it fell below a reasonably competent standard. In the absence of expert evidence, I find the respondent's allegation of deficient gutter installation unproven. Even if the respondent had proven the applicant's work was deficient, there is no evidence of the cost to redo it to the applicable standard.
25. Overall, I find the applicant is entitled to \$2,382 for partial fascia installation and gutter work, and \$100 for fascia removal, for a total of \$2,482.

26. The applicant claims 24% annual contractual interest, as indicated in its invoice. However, interest cannot be unilaterally imposed in an invoice. In addition, there is no mention of interest in the parties' contract, and no other evidence the respondent agreed to pay interest. So, I find the applicant is not entitled to contractual interest.
27. In the absence of an agreement about contractual interest, pre-judgment interest under the *Court Order Interest Act* (COIA) applies. The respondent says the applicant is not entitled to any interest because she offered to pay that part of the invoice she did not initially dispute both before and during these proceedings. However, there is no evidence the respondent attempted to make any payment, and she clearly changed her mind about disputing the invoice in submissions. So, I find the applicant is entitled to pre-judgment interest on the \$2,482 debt award from March 15, 2021, the date of the applicant's invoice, to the date of this decision. This equals \$153.86.
28. 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. Since the applicant was largely successful, I find it is entitled to reimbursement of \$175 in CRT fees. The applicant did not claim dispute-related expenses, so I order none.

ORDERS

29. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,810.86, broken down as follows:
- a. \$2,482 in debt,
 - b. \$153.86 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
30. The applicant is entitled to post-judgment interest, as applicable.

31. 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.

Megan Stewart, Tribunal Member