



Civil Resolution Tribunal

Date Issued: February 21, 2024

File: SC-2023-003015

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Didmon (dba Basswood Custom Homes) v. Didyk*, 2024 BCCRT 160

B E T W E E N :

KELLY DIDMON (Doing Business As BASSWOOD CUSTOM HOMES)

APPLICANT

A N D :

PENNY DIDYK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about drywall repairs. In the winter of 2022 Penny Didyk hired Kelly Didmon (doing business as Basswood Custom Homes) to repair damaged drywall in her home. Ms. Didyk has not paid Mr. Didmon. He claims \$1,000 for the work.

2. Ms. Didyk says the work is incomplete and deficient, and that Mr. Didmon's actions frustrated the contract. She says she does not owe him anything.
3. Both parties are 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. 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 court.
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 Mr. Didmon is entitled to \$1,000 for the drywall repairs.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Didmon must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
10. In February 2022, the parties agreed that Mr. Didmon would repair some damaged drywall on the ceiling in Ms. Didyk's laundry room and primary bedroom, and around the skylights in her living room. Mr. Didmon says the parties agreed Ms. Didyk would pay \$1,300 for the work in the laundry room and living room, and an additional \$200 the work in the primary bedroom, for a total of \$1,500. Ms. Didyk does not dispute this, and I find the text messages in evidence support the contract's amount.
11. Mr. Didmon says he completed his work over 4 days in February and March 2022. He says the work included meeting with Ms. Didyk to discuss the work's scope, measuring the laundry room and skylights, picking up the required materials and delivering them to Ms. Didyk's home, demolishing and removing the existing drywall, boarding and framing around the skylights and in the laundry room, cleaning up and disposing of garbage at the gypsum dump in New Westminster, and coordinating with his subcontractor to tape and mud the drywalled areas. Ms. Didyk does not dispute the scope of Mr. Didmon's work.
12. Ms. Didyk was unhappy with the work, so Mr. Didmon went to her home on April 18, 2022 to discuss her concerns. The parties disagree about what they discussed during that meeting, which I address in more detail below. It is undisputed that after that meeting Mr. Didmon planned to do additional work in Ms. Didyk's home.
13. Mr. Didmon says, and I find the evidence shows, that after the April 18, 2022, meeting with Ms. Didyk, he contacted her many times to attempt to address her concerns. He says he followed up with her in August and October 2022 and January 2023, but Ms. Didyk refused to meet with him because she was busy dealing with her family's health issues.

14. On January 24, 2023, Mr. Didmon invoiced Ms. Didyk \$1,050 for the work. He said in a text, "I'm sending the invoice for the job I did at your place last year. You will notice, I have subtracted \$500 as a holdback to be paid upon completion...whenever things calm down for you, I will finish the final details of the job." In another text on the same date, Mr. Didmon said Ms. Didyk needed to pay the invoice within 30 days.
15. The \$1,050 invoice charges \$1,300 for the drywall repair board, mud and tape, skylight, bedroom ceiling, laundry ceiling, and disposal of the old drywall. It also charges \$200 for an additional patch on the laundry room ceiling, and \$50 for GST. The invoice deducts a \$500 hold back. Since Mr. Didmon only claims \$1,000 in this dispute, I find his claim is limited to that amount.
16. Ms. Didyk refuses to pay the invoice because she says Mr. Didmon has failed to prove the expenses he incurred, and his work was incomplete and deficient in various ways. She also says his behaviour towards her frustrated the contract. I address each specific allegation in turn.

Expenses

17. Ms. Didyk says Mr. Didmon has failed to provide sufficient evidence of what he paid his subcontractor and the cost of his materials and garbage disposal fees. Mr. Didmon says these expenses are irrelevant because Ms. Didyk agreed to pay \$1,500 for the work. I agree. I find Mr. Didmon's failure to prove his expenses does not relieve Ms. Didyk of her responsibility to pay the invoice.

Reused Materials

18. Ms. Didyk says Mr. Didmon reused some old materials for the drywall repair work. She says some of the drywall he used was marked with an "x" to indicate that it had already been used and was unsuitable for a new job. She provided no evidence to support this allegation. Mr. Didmon denies this. He says he used all new materials, and that he marked the new drywall with a pencil for measurements before cutting. Without more, I find Ms. Didyk has failed to prove that Mr. Didmon used inappropriate materials for the work.

Minor flaws to drywall finishing

19. Ms. Didyk says that during the parties' April 2022 meeting she told Mr. Didmon the laundry room drywall was incomplete, there was crumbling plaster debris falling from the skylights, and there were visible dips in the primary bedroom. She says Mr. Didmon did not inspect the laundry room or primary bedroom, blamed the skylight issues on his subcontractor, and did not propose any solutions. She says he simply told her the next step was painting.
20. Mr. Didmon disagrees with Ms. Didyk about what happened at that meeting. He says Ms. Didyk only mentioned minor flaws in the drywall at that time. In particular, he says she told him the line between the drywall and poly plastic in the laundry room was not smooth. He says she did not mention any further deficiencies and specifically did not mention crumbling debris falling from the skylight or the dips in the primary bedroom. In any event, based on my findings below, I find nothing turns on whether she raised these alleged deficiencies at the time.
21. Mr. Didmon says the parties decided at that meeting that Ms. Didyk would prime over the drywalled areas of concern, then Mr. Didyk's contractor would repair the minor flaws. Mr. Didmon says it is a standard recommendation to prime over mudding before touching it up as it makes it easier to see minor inconsistencies. He says that after this was complete, the parties agreed Ms. Didyk would paint the drywalled areas, then Mr. Didmon would caulk and paint around the skylights because Ms. Didyk was unable to reach that area on her own. I find the extensive text messages in evidence generally support Mr. Didmon's version of events. I am satisfied that there were some minor flaws in the drywall, but since Ms. Didyk prevented Mr. Didmon from returning to address her concerns, he held back \$500 from the invoice to account for this incomplete work. Ms. Didyk does not specifically dispute that \$500 was a reasonable amount to hold back for these minor repairs, so I find it was reasonable based on Mr. Didmon's explanation of the required repairs.

Dips in Bedroom Ceiling

22. Ms. Didyk says there were visible dips in the drywall in the primary bedroom, which Mr. Didmon denies. Since the standard of care of a drywall installer is beyond common knowledge, expert evidence is generally required to establish that Mr. Didmon's work was deficient. Since Ms. Didyk did not provide any expert evidence, any alleged deficiencies must be obvious or non-technical (see *Schellenberg v. Wawanese Mutual Insurance Company*, 2019 BCSC 196 at paragraph 12). Not only did Ms. Didyk not provide expert evidence, she provided no photos or other evidence to support her allegation about drywall dips in the primary bedroom. Without more, I find Ms. Didyk has failed to prove this deficiency.

Trim Around Skylights

23. Ms. Didyk says the drywall Mr. Didmon installed around the skylight has raw, unfinished edges abutting the metal skylight frames, but she provided no photos to support this allegation. She says the original drywall had metal J-bead trim protecting the edges from mechanical and moisture damage if the skylight was removed for servicing or replaced. She says Mr. Didmon's failure to install this trim caused drywall and plaster debris to fall into the living room area below the skylights when opening or closing them. The only evidence Ms. Didyk provided to support this allegation is a link to a YouTube video that she says shows an example of the J-bead trim.

24. Mr. Didmon says Ms. Didyk did not raise this alleged deficiency with him at their April 2022 meeting. He says there are several different types of skylights, and each one has a different installation method, so the YouTube video is unhelpful. He says if mud fragments are falling, it is because the drywall around the skylights has been left unprimed and unsealed. He says this is especially problematic near a window where there is more potential for moisture and temperature change.

25. Without more, I find Ms. Didyk has failed to prove any deficiencies with the drywall trim around the skylights.

Vapour Barrier

26. Ms. Didyk says that when Mr. Didmon removed the old drywall around the skylights, he cut away the vapour barrier extending down into the skylight vault. She says he failed to repair the vapour barrier or install a new one. However, she provided no photos or other evidence to support this allegation. She also says Mr. Didmon did not use any poly or red tape, which she says is typically used for this type of work, though again, she provided no evidence to support this assertion. She says she gave Mr. Didmon 2 opportunities on February 25 and 26, 2022 to meet with her roofer to determine what repairs were required to ensure the vapour barrier's integrity and comply with the BC Building Code. She says Mr. Didmon failed to show up on either of these dates. Ms. Didyk says that to check the vapour barrier's integrity, she will have to have the drywall removed, make any necessary repairs, reinstall the drywall, mud, tape, and sand. She says her roofer may also be required to attend. Again, she provided no evidence to support this assertion.
27. Mr. Didmon denies cutting into the vapour barrier or compromising it in any way. He says Ms. Didyk's roofer was at her home in February 2022 to reinstall the skylight square, and the roofer's work had nothing to do with his cosmetic drywall work, which is why he did not attend. He says Ms. Didyk never mentioned any concerns about the vapour barrier until raising them in this dispute.
28. Without more, I find Ms. Didyk has failed to prove that Mr. Didmon compromised the vapour barrier as she alleges.

Drywall Screw Pops

29. Ms. Didyk says some "screw pops" have appeared in the drywall in the skylight vault because Mr. Didmon did not secure the drywall properly when he installed it. She says the drywall must be re-secured before it can be painted. She submitted a printout from the website "drywall101.com" entitled, "How to repair drywall screw pops". She also submitted a photo showing a skylight, though it is unclear whether it is her own skylight. Even if it is, I find it is not obvious from the photo that there are any issues with the drywall.

30. Mr. Didmon says that if there is an issue with the drywall around the skylight as Ms. Didyk alleges, it likely developed over time from the mud not being sealed soon after drying, which he had recommended to her. He says the mud has likely shifted because it has not been sealed to protect against moisture and temperature changes since March 2022.
31. Without more, I find Ms. Didyk has failed to prove the existence of “screw pops” in the drywall, or that they were caused by any failure on Mr. Didmon’s part to meet his required standard of care.
32. In summary, I find Ms. Didyk has failed to prove any deficiencies with Mr. Didmon’s work. I find Mr. Didmon is entitled to \$1,000 for the drywall repair work he completed in February and March 2022, subject to my findings below about contract frustration.

Contract Frustration

33. Ms. Didyk says Mr. Didmon’s actions since April 2022 frustrated the contract, making it impossible for him to complete the work or repair the deficiencies. However, I find it is unnecessary to determine whether the contract was frustrated. This is because if a contract is frustrated, it is not void from the start of the contract, rather it relieves the parties from any future obligations under the contract. Mr. Didmon’s \$1,000 claim is for work he undisputedly performed in February and March 2022. This means that even if the contract was frustrated after April 2022, Mr. Didmon is still entitled to any money he is owed under the contract up to the time it is frustrated. Having found Mr. Didmon is entitled to \$1,000 for the work he completed, I find nothing turns on whether the contract was frustrated after April 2022.
34. The *Court Order Interest Act* applies to the CRT. Mr. Didmon is entitled to pre-judgment interest on the \$1,000 owing calculated from February 24, 2023, which is 30 days after he invoiced Ms. Didyk, to the date of this decision. This equals \$47.85.
35. 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 see no reason in this case not to follow that general rule.

Since Mr. Didmon was successful, I find he is entitled to be reimbursed the \$125 he paid in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

36. Within 14 days of the date of this order, I order Ms. Didyk to pay Mr. Didmon a total of \$1,172.85, broken down as follows:
- a. \$1,000 as payment for the work,
 - b. \$47.85 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 CRT fees.
37. Mr. Didmon is entitled to post-judgment interest, as applicable.
38. 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.

Sarah Orr, Tribunal Member