



Civil Resolution Tribunal

Date Issued: August 9, 2024

File: SC-2023-002856

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crosby v. B.Q.R. Systems Ltd.*, 2024 BCCRT 763

B E T W E E N :

BARBARA CROSBY

APPLICANT

A N D :

B.Q.R. SYSTEMS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Debra Febril

INTRODUCTION

1. This dispute is about residential roof inspections and repairs. The applicant, Barbara Crosby, hired the respondent, B.Q.R. Systems Ltd., to inspect and then fix her roof. She says the respondent failed to assess her roof properly and that failure resulted in a major leak, and ultimately a full roof replacement.

2. The applicant is claiming a refund of \$4,902.75 for an ineffective roof inspection and repairs.
3. The respondent says it completed the inspection and the work it was hired to do. It says the faulty roof was an existing problem due to the previous roofing company's poor workmanship. It denies being responsible for any faulty roof work or the cost to replace an entire roof system that another company installed.
4. The applicant and respondent are both 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.
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.
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.

9. For the reasons that follow, I find the applicant has not proven her claim that the respondent failed to properly inspect and repair her roof.

ISSUES

1. The issues in this dispute are, was the respondent negligent when it inspected and repaired the roof and if so, is it liable for the \$4593.75 claimed for unnecessary work?

EVIDENCE AND ANALYSIS

2. In a civil proceeding like this one, the applicant must prove her claim on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
3. The background facts are undisputed. The applicant hired a company to do a home inspection and a report in April 2021. In one section of the report, it recommended further inspection and evaluation of the roof. The applicant later hired the respondent as an independent contractor to assess her roof for repairs and maintenance on August 26, 2021.
4. On October 29, 2021 the respondent completed some roof repair work and the total bill came to \$4593.75, which the applicant paid. One month later the applicant discovered her roof was leaking, so she contacted the respondent to assess it.

ASSESSMENT OF THE ROOF

5. The applicant claims that the respondent should have known the entire roof system needed to be replaced from their first inspection visit on August 26, 2021. The respondent's report recommended extensive repairs, but not total roof replacement. The applicant says this was negligent, because the roof did require total replacement, and if the respondent had gone into the attic, they would have discovered that.

6. The applicant submitted photos that were taken by a home inspector, that show buckets in the attic and ship lap to support her arguments that the roof needed to be replaced as opposed to repaired and maintained. She claims the respondent failed to go into the attic when she asked them to, and failed to consider the pictures that were in the home inspection report she provided.
7. The applicant argues that the respondent was negligent because they did not go into the attic or fully consider the pictures during their initial assessment of the work before it was done. The applicant says that this was a crucial error by the respondent that led to the work completed by it being unnecessary because she was later told the whole roof system needed to be replaced
8. The respondent says the problem was a latent defect which could not be discovered on reasonable inspection without demolishing the whole roof.
9. As the party alleging the deficiencies, the applicant has the burden of proving them. See *Absolute Industries v Harris*, 2014 BCSC 287, at paragraph 61. Where a disputes subject matter is technical or beyond common understanding, and is not obvious to a non-expert, it is necessary to produce expert evidence to prove the alleged deficiency. See *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131. I find the nature and cause of the alleged deficiencies in this case are not obvious to a non-expert.
10. Although in her submissions the applicant labeled the home inspection report as a written statement from an expert, I find that it is not expert evidence. CRT rule 8.3(2) says that for the CRT to accept a statement as expert evidence, the witness must state their qualifications. The author of the home inspection report did not provide their qualifications. They included a BC licensing number but even so, I find this does not establish their expertise. Specifically, I have no evidence about their training, qualifications, or professional experience. So, I find I cannot accept the report as expert evidence. As explained above, expert evidence is necessary to prove the applicant's claim.

11. I find the applicant has not proven her claims against the respondent because she has not submitted any expert evidence that supports her claims that the respondent should have recommended a full roof replacement during its first inspection.

ALLEGED DEFICIENCIES IN WORK

12. The party asserting that work is deficient or not in proper compliance with the contract bears the burden of proof to show the contract has been breached: *Lund v. Appleford Building Company Ltd. et al.* 2017 BCPC 91 at paragraph 124. In contracts for professional services, it is an implied term that the work will be carried out in a reasonably professional and competent manner.

13. The applicant has not submitted any evidence in support of her claim that a full roofing system replacement was required in 2021 or after the respondent's completed repairs. The applicant included email correspondence between the parties that says she hired two other companies who recommended a full roof system replacement despite the work done by the respondent. She also mentions videos and pictures of the November leak, which I would have found helpful in assessing the work done and if a new roofing system was required but these were not submitted by her as evidence. I have only considered the evidence that the parties have submitted.

14. The respondent submitted as evidence 3 reports for the work it completed. I find these documents along with the invoices submitted by the applicant and the home inspection report to be the best indicators of the scope and extent of the work done.

15. The August 26, 2021 report identifies the respondent as a roofing contractor and not a building science engineer or consultant. It shows the respondent attended the house to inspect the roof for "required repairs and maintenance." And includes a note to the applicant that "The existing roof system was not installed to industry standards, with multiple areas that require repairs."

16. The October 18, 2021 report says the respondent attended and created an approved scope of work based on a roof inspection report provided by others.
17. The February 4, 2022 report says the respondent inspected the roof for reported water ingress. It notes the existing roof material consists of asphalt shingles and reports that existing fasteners were not installed to industry standards and due to poor workmanship. It also notes the existing roof system was installed on shiplap which is not to industry standard or manufacturer recommendations.
18. It is not disputed that neither party could initially determine the cause of the leak until a worker attended in person to assess it. Based on the respondent workers' notes and pictures I find that the leak discovered by the applicant in November was not an area the respondent repaired. The photos show old shingles as the worker described them to be and did not show any indication of any recent work being done.
19. I find the evidence supports the respondent's position, that the applicant hired it to inspect the areas of the roof identified as areas of concern by her and as shown in the home inspection report. I find the respondent completed the work that the applicant approved, and the November leak was not caused by any deficiency in the respondent's repair work.
20. As mentioned above, the burden is on the applicant to prove the respondent's work was deficient. I find the applicant has not met this burden because she has not submitted any evidence that shows the repairs were not completed properly and professionally. I dismiss the applicant's claim against the respondent for negligent repair work.

CONCLUSION

21. The applicant did not submit any expert evidence that proves that the respondent's inspection or work done by it was insufficient, faulty or substandard. For those

reasons, I find she has not met the burden of showing that it is more likely than not, the respondent failed to properly inspect or repair her roof.

22. I dismiss the applicants claims and find the respondent is not liable for the claimed \$4,902.75 for reimbursement of ineffective roof inspections and repairs.

CRT FEES AND DISPUTE RELATED EXPENSES

23. 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. I dismiss the applicant's fee claim. The respondent did not claim any fees or expenses.

ORDER

24. I dismiss the applicant's claims and this dispute.

Debra Febril, Tribunal Member