



# Civil Resolution Tribunal

Date Issued: May 2, 2019

File: SC-2018-007573

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *GRAND FORKS RENOVATION CENTRE v. Gaulco Ltd. Dba Kennedy Floorings, 2019 BCCRT 523*

**B E T W E E N :**

GRAND FORKS RENOVATION CENTRE

**APPLICANT**

**A N D :**

Gaulco Ltd. Dba Kennedy Floorings

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about vinyl plank flooring the respondent, Gaulco Ltd. Dba Kennedy Floorings, sold to the applicant, GRAND FORKS RENOVATION CENTRE. The applicant, which is a home improvement centre operating as Castle Flooring Centre,

says the flooring was received in good condition, but that about 2 months after it was installed planks began to lift and the applicant determined the “click system” was defective. The applicant seeks \$5,000, as a refund of product and labour costs.

2. The respondent, a flooring distributor, admits some of the flooring it sold the applicant was defective. However, the respondent denies liability and says the applicant installed product it knew was defective, thus voiding the only available warranty, which was from the manufacturer.
3. The applicant is represented by Baun Mark, its co-owner. The respondent is represented by George Martin, who I infer is a principal or employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (Act). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue is whether the respondent is responsible for the defective flooring installed by the applicant, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. Based on the limited evidence before me, the parties' July 2017 agreement was for the sale of the vinyl flooring only. It did not include installation. The applicant says it bought 30 boxes of flooring, resold it to their end customer, and installed it on September 20, 2017. The applicant says the defects were first noticed by its customer around 2 months later, in November 2017.
11. It is undisputed that some of the flooring sold by the respondent was defective, and in particular the "end joint" click-lock system did not function properly. Photos in evidence show the end of a flooring plank that is bent downwards, compared to a "good" locking system photo that shows it straight. However, I have no photos of the flooring when it was freshly installed.

12. The flooring in question was made by “EarthWerks”. As discussed below, the respondent has from the outset of this proceeding stated it was only a distributor for the flooring, and that the respondent does not provide any warranty itself.
13. The respondent provided a copy of EarthWerks’ 2-page warranty that says under the heading “pre-installation limited warranty”: “EarthWerks will not be responsible for any claim for product installed with visual defects”. EarthWerks is not a party to this dispute.
14. The respondent says it was obvious the flooring was defective, based on the photos, and that it should never have been installed. The respondent says having installed the flooring, this voided the manufacturer’s warranty, which again the respondent says is the only available warranty.
15. The applicant says its losses total \$5,392.50, but it has abandoned the excess over the tribunal’s \$5,000 small claims monetary limit. The applicant claims \$2,570 for replacement flooring, \$200 for freight, \$425 for removal of the existing floor, \$75 in dumping fees, \$325 to “re & re” baseboards and touch-ups, \$200 to “re & re” appliances, and \$1,597 for installation of new planks.
16. The first obstacle for the applicant is that it failed to provide the parties’ contract in evidence, or any quote or estimate. I have no evidence before me to confirm what the applicant paid the respondent for the flooring. I have no relevant correspondence between the parties.
17. The second difficulty for the applicant is that it has not proved the respondent is responsible for a warranty on the flooring, in these circumstances. Section 18 of the *Sale of Goods Act* (SGA) sets out implied warranties that goods sold are of saleable quality, fit for their purpose, and reasonably durable in all the surrounding circumstances. However, sections 69 and 20(1)(a) of the SGA provide that where goods are sold for resale purposes (as in this dispute), the seller is permitted to negate the implied warranties set out in section 18 of the SGA. The respondent says it did so: that the only available warranty was that provided by the

manufacturer, as the respondent is only a distributor. Indeed, the applicant's arguments appear to refer to the manufacturer's warranty, although the applicant suggests the respondent is nonetheless responsible. Again, the applicant bears the burden of proof. So, I find the applicant has not proved the respondent is responsible for a warranty on the flooring.

18. The further difficulty for the applicant is that it has provided no evidence to support the compensation or damages claimed. There are no quotes, no invoices, or estimates. Parties are told during the tribunal's facilitation stage to provide all relevant evidence and are referred to a list of typical types of evidence, such as invoices in breach of contract or negligence claims. There is no explanation for the absence of evidence that I would expect the applicant should have been able to provide.
19. Given my conclusions above, I find it unnecessary to discuss in detail the applicant's written statements from its installer, the end customer, or from Mr. Mark. I find I do not need to decide whether the flooring was obviously defective at the time it was installed, which is a disputed issue between the parties. Although, I note the applicant has not explained how the end joints could have been "normal" at the time of installation but then become defective 2 months after installation. In any event, I find the applicant has failed to prove its claim that the respondent is responsible for the defective product and has also failed to prove its claimed damages.
20. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules I find it is not entitled to reimbursement of tribunal fees.

## **ORDER**

21. I order the applicant's claims and this dispute dismissed.

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Shelley Lopez, Vice Chair