



Civil Resolution Tribunal

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File: SC-2018-005723

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Amrinder Hans (dba Aman Tiles) v. Sran*, 2019 BCCRT 727

B E T W E E N :

Amrinder Hans (Doing Business As Aman Tiles)

APPLICANT

A N D :

Rajinder Singh Sran

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Rajinder Singh Sran, hired the applicant, Amrinder Hans (Doing Business As Aman Tiles), to install tiles in the respondent's new home. The applicant says that he installed the tiles but was never paid. He claims \$2,950.

2. The respondent says that the applicant installed the tiles poorly and did not follow instructions. The respondent says that he had to buy all new tiles and hire someone else to redo all of the applicant's work. The respondent therefore refuses to pay.
3. The parties are each self-represented. They both had helpers during facilitation to help them translate into English.

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*. 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 some respects, this dispute has both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondent is entitled to be paid for his tile installation work.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. In January 2017, as part of the construction of a new home, the respondent hired the applicant to do tiling work. The respondent had also hired a designer, EP, to help with the design of the home and to instruct the tradespeople involved in its construction.
11. The respondent does not dispute that the applicant installed tiles in his home. However, he says that the applicant did not follow EP's instructions and did such a poor job that everything needed to be redone.
12. EP provided a statement. She says that she gave the applicant written instructions for the work the applicant was supposed to complete in each room. EP's written instructions show that different parts of the project required different tile patterns.

EP says that she also explained the instructions verbally to the applicant before the applicant started working.

13. EP says that the applicant's work was deficient in 2 ways. First, she says that the applicant failed to follow her instructions about the pattern of some of the tiles. Second, she says that the work was generally substandard, such as corners and edges not lining up. She says that it was bad enough that all of the tiles were ripped out and a new tile installer installed all new tiles.
14. The applicant admits that the respondent asked him to remove all of the tiles and reinstall them. He says that this was because the respondent changed his mind about the design. He says that he did not reinstall the tiles because the respondent refused to pay him to do it. He also says that no one ever told him that there was a problem with the quality of his work and, if they had, he would have fixed it. The applicant denies that he ever spoke to EP about her instructions.
15. To resolve this dispute, I must decide whose evidence is more credible. Credibility is about whether a person is being fully truthful in their evidence. It is a well-established legal principle that as part of assessing credibility, a court or tribunal must assess a story based on whether it is in harmony with what a practical and informed person would consider to be reasonably likely.
16. I find that the respondent's version of events is more credible than the applicant's. First, the respondent's version of events is supported by EP's evidence. I rely on the fact that EP is not a party to this dispute. EP therefore does not have any reason to be untruthful. I note that the applicant had 2 employees who worked with him on the project who could have given evidence. The applicant did not explain why his employees did not provide statements, even though I gave him the opportunity to provide more evidence to support his claims before making my decision.
17. Furthermore, I find that the applicant's version of events about what happened does not have the ring of truth. I find that it is unlikely that EP and the respondent would

expect the applicant to tear out his own work and start over for free because the respondent had a change of heart about the design.

18. For these reasons, I accept the respondent's evidence that the applicant's work was so deficient that it had to be torn out and redone by another tile installer. In these circumstances, I find that it was reasonable for the respondent to find a new tile installer rather than give the applicant the opportunity to try again.
19. It is undisputed that the parties had a contract. I find that the applicant breached the contract by failing to follow EP's instructions and by failing to install the tiles in a good and workmanlike manner.
20. I also considered whether the applicant is entitled to partial payment under the principle of *quantum meruit* (which means "value for work performed"), which would allow me to award a reasonable sum for the applicant's work. However, because the respondent had to arrange for all of the applicant's work to be redone, I find that the applicant did not provide any value to the respondent. Therefore, I find that he is not entitled to be paid anything for his work.
21. For these reasons, I dismiss the applicant's claim for payment of his invoice.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant has not been successful so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not claim any dispute-related expenses.

ORDER

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

Eric Regehr, Tribunal Member