



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ramunno v. GM Marble & Granite Works Ltd.*, 2019 BCCRT 937

B E T W E E N :

Shannon Ramunno

APPLICANT

A N D :

GM Marble & Granite Works Ltd.

RESPONDENT

A N D :

Shannon Ramunno

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Shannon Ramunno had an agreement with the respondent GM Marble & Granite Works Ltd. (GM) to install custom cut granite countertops. Ms. Ramunno says GM installed a slab that was not the colour she ordered, had areas that were broken or chipped, and the job was left incomplete. Ms. Ramunno says GM refused to fix these problems. Ms. Ramunno paid another company to remove the counters and install new ones.
2. The respondent's name is shown as Marbe & Granite Works Ltd. on the Dispute Notice. However, I find that this was a typographical error and that the correct reference is to the word Marble. I have amended the style of cause accordingly.
3. Ms. Ramunno claims \$3,867.50, as a refund of her deposit plus the cost of removing and picking up the incorrect countertops.
4. GM says it installed the type of granite that Ms. Ramunno chose, but agrees that it was not the specific slab she originally selected from Hari Stores Ltd. (Hari Stones) in Kelowna. Instead, GM says Ms. Ramunno agreed that it could source two slabs from Hari Stones in Burnaby, which would be from "from the same batch" as the hand-picked slab. GM says Ms. Ramunno agreed to this change before the installation started.
5. In its counterclaim, GM says Ms. Ramunno had not paid its \$3,243.80 invoice for the work it completed. Ms. Ramunno says she should not have to pay the invoice because the slab was not the agreed colour and the work was done incorrectly.
6. Ms. Ramunno is self-represented. The respondent is represented by owner Maxwell Kirton.

JURISDICTION AND PROCEDURE

7. 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.

8. 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 amounts to a "he said, she said" scenario with 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.
9. 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 decided to hear this dispute through written submissions.
10. 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.
11. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders where permitted by section 118 of the Act:
 - 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.

ISSUES

12. The issues in this dispute are:

- a. Did GM satisfactorily complete the granite countertops job and in the agreed colour under its agreement with Ms. Ramunno?
- b. If so, to what extent is Ms. Ramunno entitled to the claimed \$3,867.50 for the cost of removing the countertops and return of her deposit?
- c. On the counterclaim, is GM entitled to payment of its invoice of \$3,243.80 for work it completed for Ms. Ramunno?

EVIDENCE AND ANALYSIS

13. In this civil claim, Ms. Ramunno bears the burden of proof on a balance of probabilities. This means Ms. Ramunno must prove that she is entitled to the claimed \$3,867.50 because the countertop installed was the wrong colour or was otherwise unsatisfactory.
14. GM bears that same burden in its counterclaim. This means that GM must prove it is entitled to payment of its invoice.
15. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
16. On October 24, 2017, GM invoiced Ms. Ramunno a total of \$7,418.25 for work including the installation of the countertops. Ms. Ramunno paid a \$3,500 deposit to GM the same day.
17. I find that Ms. Ramunno hand-picked a slab of granite Titanium MC from Hari Stones in Kelowna. Based on the photograph of the selected slab, I find that it was mainly black and grey, without any brown, gold or rust colour in it.

18. When Ms. Ramunno chose the specific slab, the Kelowna warehouse had only 1 slab remaining. I find that 2 slabs were needed for the job.
19. The Burnaby warehouse of Hari Stones had more slabs of granite Titanium MC.
20. Based on the parties' emails, I find that GM informed Ms. Ramunno it would source 2 slabs from the same "batch" of Titanium MC, called batch 2, from Hari Stones in Burnaby.
21. On November 20, 2017, Ms. Ramunno emailed Mr. Kirton asking "Did you find the same titanium?" I find that this was an inquiry about whether there were slabs at Hari Stones in Burnaby of a similar colour and quality to the hand-picked slab from Kelowna. From this communication, I infer that the parties agreed that the 2 new slabs should match the one that was hand-picked, in terms of colour and quality, aside from minor natural variations in the stone. As discussed below, the issue in this dispute is whether GM was required to provide granite that was mainly black with a bit of grey, rather than with gold and beige with green veins.
22. Mr. Kirton did not answer the question right away. He exchanged other emails with Ms. Ramunno about the renovations, up until November 22, 2017 at 9:13 a.m when she wrote "Please call me from haristones today so we can discuss the titanium and you can send me pictures." At midday, she emailed again saying "As soon as you get to hari please call me". I find that these were further instructions to allow her to confirm that the Titanium MC slabs were the colour and quality she had selected, using photographs. Mr. Kirton replied "Will do!". (quotes reproduced as written)
23. Later that afternoon, Mr. Kirton sent photographs of the Titanium at Hari Stones Burnaby. Ms. Ramunno replied about one hour later saying "Max these still have too much gold and white in them. Why is the batch 2 at the kelowna store mainly black? Mainly black and grey is what i want call me back. Heres the pics again of kelowna". (quote reproduced as written)

24. I find that Ms. Ramunno clearly rejected the slabs with white and gold in them. She confirmed her instructions for black and grey granite matching the colour of the hand-picked slab.
25. On November 25, 2017, Ms. Ramunno emailed Mr. Kirton again asking for photographs. From this, I infer that she had yet to receive and approve photographs of a further set of slabs of Titanium from Mr. Kirton. Based on all the evidence, I find that Ms. Ramunno never gave this approval.
26. On December 22, 2017, Hari Stones Limited invoiced GM for 2 slabs of “Granite Titanium MC Leather”. The slabs cost \$3,413.62 total. The invoice records that a partial payment of \$1,915.70 was made by GM and that the balance of \$1,668.60 was due December 22, 2017.
27. Based on the photographs filed in evidence, I find that GM then proceeded to install granite containing a large proportion of orange, brown and white in it, contrary to Ms. Ramunno’s advance written instructions. I find the extent of the visual difference between the colour Ms. Ramunno chose and the slabs installed is stark. I find that the difference goes well beyond natural imperfections and minor variations that are an accepted aspect of natural stone countertops.
28. GM argued that Ms. Ramunno installed a different colour of countertops when she replaced the ones it provided. GM suggested that this supported its argument that Ms. Ramunno agreed to the colour of countertops it installed but did not like the look of them once they were in place. I disagree. Ms. Ramunno was free to choose any colour of stone as a replacement. This does not alter my finding that GM installed the wrong colour of countertops.
29. GM’s position is that the work it did up until Ms. Ramunno asked it to stop was satisfactory. I find GM has not proven it reasonably completed the job so as to entitle it to payment, because the colour of the countertops was wrong and for the additional reasons that follow.

30. The parties agree that the countertops were cut and placed, but not fixed, before GM stopped work.
31. I find that there were other deficiencies or unfinished aspects to the work including unfinished waterfall edging and problems with a seam in the main island.
32. Ms. Ramunno also claims that the sinks GM installed in her home were damaged. GM concedes this but pointed out that the sinks were not charged to Ms. Ramunno. I find that Ms. Ramunno had yet to pay for the portion of the invoice relating to sinks and that this dispute deals with her deposit and the cost of removing the countertops only.
33. I find that because the countertops were the wrong colour, the installation was unsatisfactory. Ms. Ramunno should not be charged for them or for the labour involved in the job to that point.
34. I dismiss GM's counterclaim for payment of its invoice of \$3,243.80. Given my conclusions above, I find that Ms. Ramunno is not required to pay this invoice.
35. Returning to Ms. Ramunno's claim for damages, she says GM should pay her \$3,867.50 for the refund of her deposit, and the cost of removing and picking up the wrong colour countertops. I have found that Ms. Ramunno paid a \$3,500 deposit to GM. I order that GM refund her this \$3,500 for the deposit.
36. Ms. Ramunno did not prove the specific price she paid to have the wrong countertops removed and picked up, such as through an itemized invoice.
37. However, I accept that the countertops were removed, because GM concedes that Ms. Ramunno had different countertops installed later, by another company. I find that Ms. Ramunno is entitled to the further claimed \$367.50 for this removal, which I find to be a reasonable, if somewhat low, estimate of a charge for countertop removal.
38. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175 in tribunal fees and \$18 in dispute-related expenses for registered mail delivery of the Dispute Notice, which I find reasonable.

39. Because GM was not successful, I dismiss its claim for tribunal fees.

ORDERS

40. Within 30 days of the date of this order, I order GM to pay Ms. Ramunno a total of \$4,151.56, broken down as follows:

- a. \$3,500 to refund the deposit Ms. Ramunno paid to GM,
- b. \$367.50 for removal and pick up of the wrong countertops,
- c. \$91.06 in pre-judgment interest under the *Court Order Interest Act*, calculated from the date the deposit was paid, October 24, 2017, to the date of this decision, and
- d. \$193 for \$175 in tribunal fees and \$18 for dispute-related expenses.

41. I dismiss GM's counterclaim for payment of its invoice.

42. Ms. Ramunno is entitled to post-judgment interest, as applicable.

43. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

44. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has

been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member