



Civil Resolution Tribunal

Date Issued: September 20, 2019

File: SC-2019-003312

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CTC Milestone Enterprises Ltd. et al v. Nguyen et al*, 2019 BCCRT 1113

B E T W E E N :

CTC MILESTONE ENTERPRISES LTD. and CHAOMIN XIE

APPLICANTS

A N D :

LISA NGUYEN, CELLINA TRAN by her litigation guardian LISA NGUYEN, and KASSANDRA TRAN

RESPONDENTS

A N D :

CTC MILESTONE ENTERPRISES LTD. and CHAOMIN XIE

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the manufacture and installation of kitchen countertops in December 2018.
2. The applicants, CTC Milestone Enterprises Ltd. (CTC) and Chaomin Xie, say the respondent Lisa Nguyen failed to pay for the countertops as agreed. Mr. Xie was CTC's salesperson. The applicants claim \$2,672 as its outstanding invoice balance. Ms. Nguyen says she should not have to pay, because the applicants damaged her kitchen cabinet.
3. The respondents, Cellina Tran by her litigation guardian Lisa Nguyen and Cassandra Tran, appear to be Ms. Nguyen's children. It is not clear why they are named as respondents, and I will address their liability below. In her counterclaim, Ms. Nguyen claims against CTC and Mr. Xie for \$4,800, for the return of her \$800 countertop deposit and compensation for damage to her kitchen cabinet. CTC and Mr. Xie deny responsibility for cabinetry damage and as noted above claim for the balance of their invoice.
4. CTC is represented by a principal or employee, and Mr. Xie is self-represented. Ms. Nguyen represents herself and Cellina Tran, and Cassandra Tran is self-represented.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.

6. 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 can fairly decide this dispute based on the written evidence and submissions before me.
7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: 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.

ISSUES

9. The issues in this dispute are:
 - a. Whether CTC and/or Mr. Xie are entitled to payment of \$2,672 for CTC's outstanding invoice balance for the countertops, and
 - b. Whether CTC damaged Ms. Nguyen's cabinetry, and if so whether she is entitled to the return of her \$800 countertop deposit plus \$4,000 in damages.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicants to prove their claims on a balance of probabilities. Ms. Nguyen bears this same burden on her counterclaim. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

11. The countertop agreement was between CTC and Ms. Nguyen, with Mr. Xie negotiating on behalf of CTC. This is reflected on CTC's "quotation" and invoice. There is no evidence that Mr. Xie was acting in his personal capacity in providing the countertops. There is also no evidence Cellina Tran or Kassandra Tran had any involvement whatsoever. I dismiss Mr. Xie's claims and also dismiss all claims against Cellina Tran and Kassandra Tran.
12. I will deal with Ms. Nguyen's counterclaim for cabinetry damage first. Ms. Nguyen provided a series of photos showing the interior base cabinet under the kitchen sink. It shows the top sides of the cabinet on either side cut out to accommodate the sink CTC bought. I accept CTC's explanation that it did so, so Ms. Nguyen could take advantage of their better pricing. Apart from Ms. Nguyen's disputed allegation, there is no evidence before me that CTC is in the business of selling or installing sinks.
13. Ms. Nguyen also provided an undated and unsigned letter from "Daniel D.", which is not on any letter head. The author wrote the cabinet's cut-outs were done because the size of the sink was bigger than the base cabinet. He wrote the kitchen sink was "very badly supported, as the 2x4 studs are floating", and that the sink should be supported by metal brackets and straps. The photos do show the sink supported by wooden blocks and foam. The author also wrote that the countertop was not properly installed because it is floating and only supported by loose foam and wood blocks. He wrote repair was not an option and the cabinet needed to be replaced. On a separate page, "Daniel" set out an estimate of \$3,760 for labour and materials to replace the cabinet. I note Ms. Nguyen does not explain why she claims \$4,800 when \$3,760 plus \$800 totals \$4,560.
14. In response, CTC and Mr. Xie say they did not install the sink and did not cut the cabinetry. Mr. Xie said the top part of the cabinet at the back, just under the sink, was "missing" and so "we inserted what they can find at scene for extra support" (quote reproduced as written). Mr. Xie added that he used silicone to glue the countertops and the cabinet surface, which he says is standard installation procedure. Based on the photos in evidence, the 'missing' piece does not appear to

be freshly cut as were the sides. As for the cabinet sides, again, Mr. Xie says it was cut off by the plumber to fit the oversized sink, which he says CTC did not install as they are not licensed plumbers.

15. On balance, I find the weight of the evidence does not prove CTC or Mr. Xie damaged Ms. Nguyen's cabinet. Contrary to Ms. Nguyen's allegation, CTC and Mr. Xie deny cutting the cabinetry or installing the sink. She says she was in her basement when the upstairs installation work occurred. Also, even if I were to accept the evidence from "Daniel D.", whose qualifications are unknown, he does not say he knows CTC or Mr. Xie cut the cabinet. Rather, "Daniel D." just criticized the sink's placement, which CTC says was the plumber's responsibility. As for the criticism of the countertop placement, the photos do not show it is only floating and CTC has provided an explanation. There is no alternative explanation from a qualified countertop installer.
16. While Ms. Nguyen argues CTC or Mr. Xie selected the sink and failed to measure properly, I find this is not proved. I say this because there is no explanation for why she would rely on a countertop manufacturer to choose and install a sink, rather than a plumber. While Ms. Nguyen says her plumber only connected the piping to the water supply lines, she provided no evidence from her plumber, and in particular no statement that he did not install the sink or cut the cabinetry. Given my findings above, I dismiss Ms. Nguyen's counterclaim.
17. So, I turn then to whether CTC has proved its claim for \$2,672.
18. CTC's November 27, 2018 quotation set out a November 29 installation date. The total price was \$1,600: \$1,500 for the countertop and \$100 for a sink. According to the quotation, Ms. Nguyen paid an \$800 deposit, which left an \$800 balance owing.
19. However, CTC's December 3, 2018 invoice shows a \$3,000 charge for the countertop, plus \$100 for the sink. With taxes, and after deducting the \$800 deposit paid, the invoice balance was \$2,672 – the amount claimed in this dispute.

20. CTC and Mr. Xie say the additional cost related to Ms. Nguyen's request "in December 2018" for an "additional piece", and that Mr. Xie told her at the time that piece would cost \$1,500. Mr. Xie also says he told Ms. Nguyen on November 27, 2018 that \$2,300 was due. This does not make sense, if the additional piece that cost the extra \$1,500 was not requested until December.
21. Ms. Nguyen denies she agreed to the pricing as alleged by CTC and Mr. Xie. There is no signed contract for the higher amount, but the quotation is initialed. There is no evidence of the additional piece, apart from CTC's submission. While verbal contracts are enforceable, they are harder to prove than written ones. On balance, I find CTC is only entitled to \$800, based on the signed quotation.
22. The applicant is entitled to pre-judgment interest on the \$800 award, under the *Court Order Interest Act* (COIA), from December 3, 2018. This equals \$12.16.
23. Under the CRTA and the tribunal's rules, as CTC was partially successful I find it is entitled to reimbursement of \$62.50, half its \$125 paid in tribunal fees. I find CTC is entitled to full reimbursement of its claimed \$11.97 for dispute-related expenses, for serving the Dispute Notice. As Ms. Nguyen was unsuccessful, I dismiss her claim for reimbursement of tribunal fees.

ORDERS

24. Within 14 days of this decision, I order Ms. Nguyen to pay CTC a total of \$886.63, broken down as follows:
 - a. \$800 in debt,
 - b. \$12.16 in pre-judgment interest under the COIA, and
 - c. \$74.47, for \$62.50 in tribunal fees and \$11.97 in dispute-related expenses.
25. CTC is entitled to post-judgment interest, as applicable.

26. CTC's remaining claims, including all claims against Cellina Tran and Kassandra Tran, are dismissed. Mr. Xie's claims are dismissed. Ms. Nguyen's counterclaim is dismissed.
27. Under section 48 of the CRTA, 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.
28. Under section 58.1 of the CRTA, 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.

Shelley Lopez, Vice Chair