



# Civil Resolution Tribunal

Date Issued: October 25, 2019

File: SC-2019-002148

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Colonial Countertops Ltd. v. Rogers*, 2019 BCCRT 1217

BETWEEN:

COLONIAL COUNTERTOPS LTD.

**APPLICANT**

AND:

RUTH ROGERS

**RESPONDENT**

AND:

COLONIAL COUNTERTOPS LTD.

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This a dispute about payment for the supply and installation of stone countertops.
2. The applicant and respondent by counterclaim, Colonial Countertops Ltd. (Colonial), says the respondent and applicant by counterclaim, Ruth Rogers, failed to pay for the countertops as agreed. Colonial claims \$3,722.50, the outstanding invoice balance.
3. Ms. Rogers says she should not have to pay for the countertops because they were replacements of countertops Colonial originally mis-cut. Ms. Rogers says when Colonial replaced the countertops it also discarded her original counters contrary to their agreement to keep them. In her counterclaim, Ms. Rogers claims for the value of the discarded countertops, which she limits to \$5,000, the Civil Resolution Tribunal's (tribunal) monetary limit.
4. Colonial is represented by its employee, Denise Swithin. Ms. Rogers is self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the tribunal's formal written reasons. 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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is

in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly to hear this dispute through written submissions.

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 make one or more of the following orders, where permitted under section 118 of the CRTA:
  - 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**

9. The issues in this dispute are:
  - a. To what extent, if any, Colonial is entitled to payment of \$3,722.50 for the replacement countertops.
  - b. To what extent, if any, Ms. Rogers is entitled to payment of \$5,000 for the value of the original countertops.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Colonial bears the burden of proving its claims on a balance of probabilities. Ms. Rogers bears the same burden on the counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. As background, Ms. Rogers says she bought a new-build condominium by a developer. Ms. Rogers says the developer agreed to upgrade certain features, including a wider double sink in the kitchen. Ms. Rogers says that after she moved in, she noticed the countertops were cut too narrow to accommodate the wider sink.
12. It is undisputed that Colonial mis-cut and installed the original countertops. It is also undisputed that Ms. Rogers had no contract directly with Colonial for the original countertops. The original countertop contract was between Colonial and the developer who is not a party to this dispute.
13. In February 2018, Ms. Rogers placed an order directly with Colonial to replace the original countertops and paid a deposit of \$3,722.00. I find the terms and conditions of the parties' agreement are set out in the February 26, 2018 client proposal and signed "The Go-Ahead" document. The client proposal states that Ms. Rogers ordered kitchen countertops in a stone named "Statuario Maxiumus #5031" for \$6,270.00 plus tax, subject to final size determination and that she also ordered a vanity for \$820.00 plus tax. The "Go-Ahead" document provides 6-pages of instructions and policies about the order including the material, install, warranty, cancellation policy. It shows Ms. Rogers's signed off on the order for the new countertops.
14. As for price, Colonial's March 29, 2018 invoice states that the total order with tax was \$11,347.35. The October 23, 2018 statement shows that after applying her deposit and credit, Ms. Rogers's outstanding balance was \$3,722.50. There is no dispute that \$3,722.50 remains outstanding on the order.
15. Ms. Rogers argues that prior to placing her order she came to an agreement with one of Colonial's employees not to pay for the new kitchen countertops if Colonial had mis-cut the originals. Colonial denies that its employee discussed waiving payment. Colonial says the mis-cut was a contractual issue between itself and the developer and not Ms. Rogers. Colonial says it would have redone the original order had Ms. Rogers's not placed her own order directly with Colonial for a different

product. The job specifications show the originals were the stone product “Statuario Nuvu” and the new ones are “Statuario Maximus”.

16. Colonial provided a copy of the job specifications for the original countertops installed for the developer. I find these job specifications show a different style and cut for the sink and this might explain the mis-cut, but does not explain whose fault it was. I find the evidence does not establish that the mis-cut was Colonial’s fault. At any rate, a contract cannot generally give rights or impose obligations on persons who are not parties to the contract. This is a legal doctrine called “privity of contract”. Therefore, I find Colonial is not liable to Ms. Rogers for the mis-cut under the contract it had with the developer, who as noted is not a party to this dispute.
17. Based on the weight of the evidence before me, I am not satisfied that Colonial agreed to waive Ms. Roger’s payment obligations for the new countertops based on the mis-cut. This is primarily because I would have expected a key term, such as conditional payment, to be explicit in the parties’ written contract and it was not. There is no mention in the “Go-Ahead”, client proposal or elsewhere that Ms. Roger’s payment obligation was conditional on whether Colonial mis-cut the originals. I also find the fact that Ms. Rogers made partial payment towards the new countertops and claims no reimbursement in this proceeding, somewhat inconsistent with her position that she did not expect to pay anything at all.
18. Considering Ms. Rogers signed off on the order for the new stone product, I find it more likely than not that Ms. Rogers agreed to pay for the countertops. Bearing in mind Ms. Rogers does not allege any deficiencies with the new ‘Statuario Maximus’ countertops, I find Ms. Rogers is required to pay Colonial for them.
19. However, Ms. Rogers says that Colonial had agreed to save her old countertops so that she could repurpose them. Ms. Rogers says she met the Colonial workers at the door when they came to remove the original countertops. She says she told them if they could not re-cut the original countertops wider for her sink, she wanted them back to repurpose. She says she followed up with the same request by phone.

Ms. Rogers says after waiting 2 weeks to see if Colonial would re-cut the original countertops, she was told they could not be re-cut and the countertops were gone.

20. There is no dispute that the original countertops are gone. However, Colonial denies that it agreed to re-cut or return the countertops, which it says would be “a highly unusual occurrence”.
21. Considering the detail in the “Go-Ahead” document, I would have expected retention and repurpose to be mentioned if it was part of the parties’ agreement. The “Go-Ahead” document says nothing about returning, re-cutting or repurposing. It only makes a general reference to disposing of existing countertops. None of the parties’ written contractual documents say anything about re-cutting or returning the countertops or payment for their value.
22. Ms. Rogers has the burden of proof on the counterclaim. I find Ms. Rogers has not established, on a balance of probabilities, that Colonial agreed to return the original countertops or that she is entitled to compensation for their value. Therefore, I dismiss Ms. Rogers’s counterclaim.
23. In summary, I find Ms. Rogers entered into a contract with Colonial for the supply and installation of countertops. I find Colonial fulfilled its contractual obligations and Ms. Rogers is required to pay the agreed amount. There is no dispute that \$3,722.50, as shown on the October 23, 2018 statement, is the outstanding amount. Accordingly, I find Ms. Rogers must pay Colonial \$3,722.50 for the countertops.
24. In its Dispute Notice, Colonial claimed annual contractual interest of 26.62% and in its submissions, it says a late fee applies. The parties’ contractual documents do not specify a specific interest rate or late fee amount. Colonial had sent Ms. Rogers a demand letter, which says nothing about an additional late fee. Ms. Rogers says that interest and late fees were not discussed. Since it is not specified in the written contract, I find Colonial has not established that the parties agreed to a specific fee or interest rate. Therefore, I make no award for contractual interest and late-

payment fees. Instead, I find Colonial is entitled to pre-judgment interest on the debt under the *Court Order Interest Act* (COIA), from January 21, 2019, the 90-day due date on the October 23, 2018 statement, to the date of this decision. This equals \$69.62.

25. Under section 49 of the CRTA 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 Colonial is entitled to reimbursement of \$150.00 in tribunal fees as claimed and \$19.73 in dispute-related expenses for registered mail (\$10.73) and photocopies (\$9.00), which I find were reasonably incurred. As the unsuccessful party, I find Ms. Rogers is not entitled to reimbursement of any fees or dispute-related expenses.

## **ORDERS**

26. Within 30 days of the date of this order, I order Ms. Rogers to pay Colonial a total of \$3,961.85, broken down as follows:
  - a. \$3,722.50 as payment for the debt,
  - b. \$69.62 in pre-judgment interest under the COIA, and
  - c. \$169.73, for \$150.00 in tribunal fees and \$19.73 for dispute-related expenses.
27. Colonial is entitled to post-judgment interest under the COIA, as applicable.
28. Colonial's remaining claims are dismissed.
29. Ms. Rogers's counterclaims are dismissed.
30. 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.

31. 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.

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Trisha Apland, Tribunal Member