



Civil Resolution Tribunal

Date Issued: January 2, 2020

File: SC-2019-005651

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vekic v. Ames Tile & Stone Ltd.*, 2020 BCCRT 3

B E T W E E N :

SINISA VEKIC

APPLICANT

A N D :

AMES TILE & STONE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about the sale of floor tiles. The applicant, Sinisa Vekic, says that the respondent, Ames Tile & Stone Ltd., misrepresented the tiles and sold him defective tiles. The applicant wants \$373.18 reimbursement for the tile's cost plus the \$2,992.50 installation cost, which totals \$3,365.68. The applicant represents himself.

2. The respondent says that it sold the tiles to the applicant's installer. It notes that the invoice states it is the customer's responsibility to inspect the tiles before installation and that variations in shade, colour, and size are not grounds for claims against the company. The respondent is represented by an organizational contact.

JURISDICTION AND PROCEDURE

3. 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.
4. 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, it said" scenario with both sides calling into question the credibility of the other. 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.
5. 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.
6. I note that the respondent suggests that the applicant does not have standing to bring this claim against it because they sold the tile to the applicant's installer. The

evidence is clear that the applicant personally went to the showroom and picked out the tiles and that the tiles were for him. The invoice was in his installer's name, but the applicant is the one who received the tiles and signed the invoice. The invoice also identifies the applicant as the customer. Further, the applicant hired the installer and therefore the installer was acting as the applicant's agent. Therefore, I find that the applicant does have standing to bring this dispute against the respondent.

ISSUE

7. The issue in this dispute is whether the respondent misrepresented the tiles or sold defective tiles and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. It is undisputed that the applicant went to the respondent's showroom on October 6, 2018 and picked out the tiles based on a display sample in the showroom as well as a sample he took with him. On October 9, 2018, the applicant picked up the tiles which were in sealed boxes. The applicant agrees he did not open the boxes or inspect the tiles. He gave the boxes to his installer and only realized he was not satisfied with the look of the tiles after they were installed. There is no suggestion that the installer thought the tiles were defective in any way.
11. The applicant argues that the respondent breached the *Sales of Goods Act* because the goods did not match the description or the sample. The applicant says that the tiles were significantly different as they had shades, dirt, stains, and

discolorations on them. He also states that the respondent fraudulently misrepresented the tiles. He says that the respondent made a representation of fact by displaying the tiles in the showroom. He says the samples were white and not discoloured and streaked like the ones he received. He argues that the respondent knew that there was the possibility of significant variation in colour and shade because of the manufacturing process but still displayed and gave out samples of tiles that looked whiter and cleaner.

12. The applicant also says that the respondent intended that he would act on the sample's representation and that he was induced to enter into the contract for the tiles relying on the false representation. He says he bought and installed the tiles and then found out they were discoloured and stained so he suffered damages both in the value of the tile and the cost of installation.
13. The applicant provided pictures of the tile he saw in the showroom and the sample the respondent gave him. The applicant states that he was expecting a pristine white tile like the samples, but this is not what he received.
14. I acknowledge that the tiles installed seem to have more grey in them than the sample and they are not a uniform white colour. However, I accept the respondent's submission that it is impossible to tell the actual colour difference from the pictures because the lighting, the camera's flash, and the closeness of the focus can explain some of the difference in colour. I am unable to tell from the pictures how different the overall colour scheme is between the samples and the installed tile.
15. Further, even if the colour was more grey than white it does not mean that the tile was defective. There is no evidence that there was anything structurally wrong with the tile. The pictures do not show what the applicant calls staining and dirt. Also, it is unclear why, if the tiles were as described by the applicant, his installer would not have alerted him the tiles were defective before installing them.
16. The applicant says that the customer service agent agreed with him that there was a significant difference in the colour of the tiles. There is no evidence that the sales

representative or the respondent ever admitted that there was a problem with the colour of the tile beyond the normal variations that occur during the manufacturing process. The respondent says that as a good faith gesture it offered the applicant a discount on additional replacement tiles, but it argues that the tiles sold were not significantly different and that the applicant should have inspected the tiles before installing them.

17. The applicant argues that the respondent's employees should have verbally warned him that there might be a difference in colour and that he should inspect the tiles. The respondent says that its employees routinely do this.
18. I find it unnecessary to determine whether the respondent's employees told the applicant to inspect the tiles before installation because I find the evidence shows that the applicant was adequately warned to inspect the tiles when he paid for them. At the bottom of the invoice, just below where the applicant signed his name, is a notice that begins in bold lettering stating that "No claims for material or labour will be considered after material is installed." The paragraph continues, but not in bold print, that "installation constitutes acceptance. It is the customer's responsibility to inspect material and/or secure proper installation instructions. Variation in shade, colour, and size are not grounds for claim."
19. The applicant says that the small print disclaimer at the bottom of the invoice was not sufficient and did not alert him to the fact that the tile could be as dramatically different as they turned out to be. He also says that the disclaimer was in small print. Although the warning is in a smaller font, I find it is easily readable and because it begins in bold right below the signature line, I find that the applicant would have seen it.
20. The applicant also relies on this tribunal's decision *Vytasek v. Cressey (Vidal) Development LLP et al.*, 2019 BCCRT 382, as support for his position that he should be reimbursed for the cost of the tile and the installation cost. In *Vytasek* the tribunal member found that a marble countertop had streaks of gold that that did not match the colour scheme of the applicant's bathroom. The difference in colour was

dramatic and clearly not in keeping with the rest of the room. I find that is not the same as the facts here. The pictures do not show that the installed tiles do not match their surroundings. The applicant may not like the colour of the tiles, but he has not shown that they are defective because they do not match the rest of the room.

21. Further, in *Vytasek* there was no statement on the invoice that installation of the countertop meant it was accepted as satisfactory. I find that the *Vytasek* decision, which is not binding on me in any event, is based on facts that are substantially different from the facts in this dispute and therefore its reasoning does not apply here.
22. Based on the evidence, I find that the applicant has not proved that the tiles were defective. He has not established that the colour was so significantly different from the sample that there was a fraudulent misrepresentation. Also, according to the contract terms set out in the invoice the applicant signed, it was his obligation to make sure the tiles were acceptable before they were installed. The applicant should have inspected the tiles before installation and he did not do so.
23. Therefore, I dismiss the applicant's claim.
24. 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. As the applicant was unsuccessful in his claim he is not entitled to have his tribunal fees reimbursed.

ORDER

25. I dismiss the applicant's claim and this dispute.

Kathleen Mell, Tribunal Member