



Civil Resolution Tribunal

Date Issued: February 27, 2020

File: SC-2019-007506

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kurji v. Accurite Renovation Ltd.*, 2020 BCCRT 230

BETWEEN:

RAHIM KURJI

APPLICANT

AND:

ACCURITE RENOVATION LTD.

RESPONDENT

AND:

RAHIM KURJI

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a home renovation.
2. The applicant Rahim Kurji says the respondent contractor Accurite Renovation Ltd. (Accurite) overcharged him for electrical and drywall work during a home renovation. Mr. Kurji claims he overpaid by \$3,122.11 for these alleged overcharges.
3. Accurite says Mr. Kurji asked for an upgrade to the electrical panel, and installation of 23 pot lights instead of 17, among other upgrades not in the contract. Accurite says these upgrades resulted in additional electrical charges. Accurite also says the drywall cost \$5,750, which was over the \$3,500 allowance originally set aside.
4. Mr. Kurji also says Accurite is responsible for incorrectly installed flooring in the renovation project. Mr. Kurji claims \$737.48 for flooring repairs.
5. Accurite denies responsibility for the flooring repairs. Accurite says it installed the flooring without any warranty due to the age of the house. Accurite also says the flooring problem arose more than 1 year after the installation.
6. Accurite counterclaims for \$3,439.39 it says Mr. Kurji still owes for work it completed on his renovation.
7. Mr. Kurji is self-represented. Accurite is represented by business contact HF.

JURISDICTION AND PROCEDURE

8. 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.

9. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
12. I find that Mr. Kurji's claim is a claim for a refund of alleged overcharges of \$3,122.11. If Mr. Kurji was seeking on a stand-alone order for a declaration that he did not owe money for the alleged overcharges, rather than a refund for payment made, I would be unable to decide the claim because declaratory relief is outside the tribunal's jurisdiction. However, because the claim is for a refund and there is a counterclaim for payment, I have determined the issue.

ISSUES

13. The issues in this dispute are whether:
 - a. Accurite overcharged for electrical and drywall work allegedly outside the parties' agreed scope of work, such that Mr. Kurji is entitled to a \$3,122.11 refund,
 - b. there were defects in the flooring installation by Accurite's subcontractor, such that Accurite must pay Mr. Kurji \$737.48 for flooring repairs, and

- c. in the counterclaim, whether the electrical, drywall and flooring work was completed as agreed and without deficiencies, such that Mr. Kurji must pay the \$3,439.49 Accurite says is owing.

EVIDENCE AND ANALYSIS

14. In this civil claim, Mr. Kurji as applicant bears the burden of proof on a balance of probabilities. Accurite bears that same burden in its counterclaim except that where he alleges defective work Mr. Kurji bears the burden of proving the defects: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.
15. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
16. On February 13, 2018, the parties signed a written project description that included:
 - a. flooring supply and installation in several areas of the home,
 - b. supply, installation and finishing drywall throughout basement including extra bedroom ceiling and resilient channel in ceiling,
 - c. electrical work to code for kitchen and bathroom rewiring including moving oven and microwave hood fan outlets, and
 - d. supply and installation of up to 17 pot lights, including bathroom.
17. I find that the written project description is the renovation contract between the parties.
18. The allowances on the project description were \$3,000 for electrical labour and \$3,500 for drywall labour. I find that these allowances line items for costs that are yet to be finally determined, not guaranteed amounts limiting what could be charged for each item. My finding that the allowances are not fixed price amounts is based on the flexibility in the contract to add or delete items, and for costs to be different based on site conditions, as I discuss further below.

19. I find that the parties agreed to \$65,580.00 plus GST as the total project cost for the scope of work outlined in the contract, before extras.
20. The contract specified that extras or deletions could be made by the owner, by written change order signed by both parties, with the price adjusted accordingly. The parties agreed that extras would be payable upon signing the change order and receipt of the invoice.
21. Under the contract, I find the parties also agreed that if additional materials or labour were required due to unforeseen site conditions, city-imposed materials or labour, these items would be billed in addition to the original cost at a rate of \$65 per hour for labour, not including electrician or plumbing work which would presumably attract higher hourly rates.
22. I find that, after changes which included some credits in other parts of the project and the increased costs for electrical, plumbing and drywall, the total project cost was revised to \$65,005.49. The accounting to arrive at this figure was provided by Accurite in a January 14, 2019 cost summary. I prefer Accurite's figure because I find it consistent with the costs charged to it by the electrical and drywall subcontractor.
23. Of the total project cost of \$65,005.49, I find that Mr. Kurji paid \$61,416 and was credited for \$150 thermostat he supplied. This leaves the amount of Accurite's counterclaim, \$3,439.49 inclusive of GST, owing by Mr. Kurji, subject to my findings discussed below.

Electrical

24. The allowance for electrical labour in the contract was \$3,000. The actual cost that Accurite initially passed on to Mr. Kurji for electrical work, including supplies, was \$9,224.99, which is less than the \$9,896.24 invoiced to Accurite by its electrical subcontractor. There was no explanation for this discrepancy. I use the \$9,224.99 in reviewing the issue of electrical extras because it is what Accurite charged Mr. Kurji.

25. In submissions, Mr. Kurji agrees that the original electrical allowance did not include a new electrical panel. I find that the new electrical panel was an agreed extra charged by Accurite in addition to the contract cost.
26. Mr. Kurji argued that Accurite should have known an upgraded electrical panel would be needed, at the time of preparing the initial costing of the project. I disagree. I find that Mr. Kurji's requested electrical extras impacted the need for an upgraded panel. For this reason, I do not accept Mr. Kurji's submission that there was an agreement that Accurite would pay in part for this electrical extra.
27. Based on the whole of the evidence, I find that the increased electrical cost was due to the installation of a new electrical panel and breakers, 23 pot lights rather than 17, additional tv boxes, hardwired smoke alarms, outside light writing, LED motion fixtures, kitchen puck lights, a doorbell rough in and a fan force heater that Mr. Kurji requested as extras added to the contract.
28. Mr. Kurji contends that the extra pot lights should have cost \$100 each, whereas the electrician billed them at \$150 each. Based on this difference, Mr. Kurji says the electrical bill should have been \$8,688.74.
29. I find that although the pot lights may have cost \$150, in an email dated December 13, 2018 Accurite agreed to adjust the per unit cost down to \$100, by applying a \$1,150.00 credit. This reduction was not reflected in Accurite's final accounting for electrical extras. Having promised to write down this cost, I find that Accurite may not charge Mr. Kurji \$150 per pot light. I therefore reduce the allowable electrical extras charge by \$1,150.
30. Mr. Kurji says there were electrical deficiencies. I find that most of these were addressed after a walk-through. Mr. Kurji explained that a door bell was wired into the upstairs bathroom plugs by mistake. As this is uncontested by Accurite, I deduct \$65, which is one hour of general labour, to address the doorbell deficiency.

31. I find that Mr. Kurji paid \$7,799.99 (\$3,000 plus \$4,799.99) of the total \$9,224.99 electrical bill. This left a difference of \$1,425 to pay. From this, I subtract the \$65 for the doorbell deficiency and \$1,150.00 for the pot light credit.

32. So, I allow Accurite's counterclaim for electrical work in the amount of \$210.00.

Drywall

33. Accurite's drywall subcontractor completed the drywall part of the project in spring 2018.

34. The allowance for drywall labour in the contract was \$3,500. The actual cost for drywall labour and materials was \$5,750.00 plus GST.

35. I find that some of this difference is because the allowance in the contract was only for drywall labour, whereas the drywall component of the project included material costs.

36. The invoice for the drywall work charges Accurite \$5,050 plus "\$700 for resilient channel in ceiling."

37. Accurite says that because the house was old, blending the new material with the existing wall finish was more involved than anticipated on visual inspection, leading to higher than forecast drywall costs. As well, thicker drywall was used for its sound dampening properties.

38. The parties disagree about whether the house was 38 years old or 50 years old. I find that the house was at least 38 years old, but I find that the home's precise age is not material to the issues in dispute.

39. Mr. Kurji says the drywall costs should have been kept to the \$3,500 allowance amount, unless a change order was signed. Mr. Kurji says he did not request changes to the original drywall plan. Mr. Kurji filed a document referencing a Change Order for "additional drywall" in the amount of \$1,050.00. This suggests

that a Change Order was discussed, although no one filed a signed Change Order in evidence.

40. In submissions, Mr. Kurji says contractor KI would provide evidence that the original budget for drywall was “more than enough.” However, Mr. Kurji did not file a statement from KI. For this reason, and because the documents do refer to change order for drywall, I prefer Accurite’s evidence and find that site conditions fairly dictated the extra drywall cost.
41. I find that the increased drywall costs were due to unforeseen site conditions, and therefore could be billed for additional labour and materials under the contract without a requirement for a signed Change Order.
42. It is undisputed, and I find, that Accurite wrote off \$300 of this bill due to Mr. Kurji’s concerns about the price. This left an outstanding balance of \$1,950 plus GST, for drywall work that was unpaid.
43. I dismiss Mr. Kurji’s claim that there was an improper overcharge for drywall work by Accurite. I allow Accurite’s counterclaim to the extent that I order that Mr. Kurji pay Accurite the \$1,950 plus GST, being \$2,047.50, for drywall work under the contract.
44. Adding the electrical and drywall extra allowable charges together, I find that Mr. Kurji must pay Accurite \$2,257.50.
45. Mr. Kurji also made submissions about several smaller line items, aside from electrical and drywall costs, that he says were improperly charged by Accurite. I considered these items but find that Mr. Kurji did not prove that these charges were improper. I dismiss his claim about these smaller line items.

Flooring

46. In May 2018, Tever Floors, as flooring subcontractor to Accurite, installed some of the flooring in Mr. Kurji’s home. Tever Floors invoiced Accurite \$3,210.37 for this work.

47. Mr. Kurji paid Accurite \$4,400, the agreed contract product allowance for flooring. Because there were other flooring components agreed in the contract which are not reflected in the Tever Floors invoice, I find that Accurite completed the flooring part of the project for the \$4,400.00. That is, I find the actual cost of flooring was not more than the allowance.
48. Based on the photographs and emails filed in evidence, I find that the flooring installation was deficient. Contrary to Accurite's submission that only one floorboard had lifted, I find that, by July 2019, several floor boards had buckled or lifted.
49. Accurite submits that the buckling was due to the poor quality of the flooring product supplied by Mr. Kurji. Mr. Kurji says he obtained the flooring from a list of stores provided by Accurite, and then confirmed the flooring was of appropriate thickness and type with Accurite's site manager. I accept this uncontested evidence. I find that Accurite should not have had their subcontractor install the product if they felt the product was inappropriate for the application.
50. Mr. Kurji says the buckling was due to incorrect installation. No independent expert evidence was offered on this issue.
51. Regardless of the cause of the obvious defect, as displayed in the photographs, I find that the flooring installation did not stay durable for a reasonable period. I discuss this breach of the implied warranty further below.
52. Accurite submits that the flooring work was done with "no warranty" because the house was old. I find that no such condition was placed on the flooring installation, because Accurite did not file any documentary evidence to prove it. On the other hand, the flooring subcontractor's website refers to a "satisfaction guaranteed" policy for all installations.
53. I find that the flooring installation was subject to a warranty that the flooring would be durable and free from defect for a reasonable period, consistent with the implied warranty applicable to the flooring product under section 18(c) of the *Sale of Goods*

Act. I find that the flooring installation was not durable or free from defect for a reasonable period, because buckling and lifting occurred just over one year after installation.

54. I find that Accurite must reimburse Mr. Kurji the \$737.48 he spent on flooring repairs, which were broken down on the flooring repair invoice as \$137.45 for flooring and supplies, \$577.50 for labour, and \$225.30 for tape and plastic.
55. Given my findings above, I set off the \$2,257.50 amount payable by Mr. Kurji to Accurite by the \$737.48 Accurite owes him for the flooring repairs. So, I order Mr. Kurji to pay Accurite a total of \$1,520.02.
56. The *Court Order Interest Act* applies to the tribunal. Accurite is entitled to pre-judgment interest on the \$1,520.02 from January 14, 2019 the date of the final cost summary, to the date of this decision. This equals \$33.29.
57. 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. Because there was divided success, I find it appropriate that each party bear their own tribunal fees and dispute-related expenses.

ORDERS

58. Within 30 days of the date of this order, I order Mr. Kurji to pay Accurite a total of \$1,553.31, broken down as follows:
 - a. \$1,520.02 for drywall and electrical services, and
 - b. \$33.29 in pre-judgment interest under the *Court Order Interest Act*.
59. Accurite is entitled to post-judgment interest as applicable.
60. I dismiss the remaining claims and counterclaims.

61. 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.
62. 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.

Julie K. Gibson, Tribunal Member