Civil Resolution Tribunal

Date of Original Decision: March 27, 2020

Date of Amended Decision: May 14, 2020

File: SC-2019-009728

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Victoria Hardwood Floors Inc. v. Lomas*, 2020 BCCRT 345

B E T W E E N :

VICTORIA HARDWOOD FLOORS INC.

APPLICANT

A N D :

JILLIAN LOMAS

RESPONDENT

AMENDED[i] REASONS FOR DECISION

Tribunal Member: Julie K. Gibson

INTRODUCTION

1. This dispute arises from a contract for hardwood flooring work.

2. The applicant Victoria Hardwood Floors Inc. says it did some flooring work for the respondent Jill Lomas. At some point the business relationship deteriorated. The applicant says the respondent then placed a false or inaccurate chargeback complaint to her credit card company, causing the applicant to incur non-sufficient

funds (NSF) charges, “stress and emotional distress” and to be put into collections. The applicant claims $5,000 in damages. I interpret the applicant’s claim, in part, as a request for payment for that part of the chargeback relating to the work the applicant says it completed satisfactorily.

3. The respondent says it did not make any false chargeback report. The respondent agrees that she contacted RBC Visa for a refund for services she says were left incomplete by the applicant. The respondent denies putting the applicant into collections. The respondent says she is not responsible for any NSF charges. The respondent asks that I dismiss the dispute.

4. The applicant is represented by business contact CD. The respondent 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. 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.

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. 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.

Injunctive Relief

9. The applicant also seeks an order to have the respondent contact QuickBooks and ask it to stop the chargeback request. An order requiring someone to do something, or to stop doing something, is known as "injunctive relief". Injunctive relief is outside the tribunal's small claims jurisdiction, except where expressly permitted by section 118 of the CRTA. There is no relevant CRTA provision here that would have permitted me to grant the injunctive relief sought by the applicant.

ISSUES

10. The issues in this dispute are:

    a. whether the applicant has proven that the chargeback credit was inaccurate such that it is entitled to payment from the respondent for flooring work, and

    b. whether the applicant is entitled to the other claimed damages for emotional distress, NSF charges, or being "put into collections"?

EVIDENCE AND ANALYSIS

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

12. When defective work is alleged, the burden of proof is on the party asserting the defects. Here the respondent, to the extent she alleges defects, must prove on a balance of probabilities that the applicant failed to properly complete the flooring work: *Lund* v*. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at para 124. Having said that, the respondent's submissions mainly pertain to unfinished work.

13. Based on the documents and photographs filed in evidence, I find the following facts:

    a. On June 15, 2019, the applicant quoted the respondent $4,016.25 to refinish and repair her hardwood floors. The quoted price includes refinishing the fir floors and repairing damaged areas, sanding and sealing the floors and adding 2 coats of finish. The quote expressly stated that staining would cost $1.00 extra per square foot. That is, I find that staining was not included in the quoted price.

    b. The quote provided that payment was to be received in full before the applicant would start the work.

    c. On about June 18, 2019, the parties entered a contract for flooring services. I find that the terms of the contract were those contained in the June 15, 2019 quote. The respondent paid the applicant $4,016.25 for the flooring work, through QuickBooks.

    d. On about June 22, 2019, the applicant started the flooring work.

    e. The applicant completed some of the job. The relationship between the parties then ended due to disagreement about the scope of work included in the pre-paid contract. The disagreement was at least in part about whether staining was included in the agreed prepaid price. As noted, I have found that it was not. When the contract broke down, communications grew hostile and the police were involved.

    f. The applicant did not return to complete the work.

    g. On July 14, 2019, another flooring contractor, TDI Hardwood Floors (TDI), quoted the remaining work at $2,289 for sanding, refinishing and 3 coats of water-based finishes. TDI added that if the floor was stained, there would be an additional $480 charge.

h. On July 25, 2019, TDI invoiced the respondent $3,402 for refinishing the floor ($2,260) and gluing and upgraded “high traffic finish” ($580). I find that the refinishing and gluing was required to address items the applicant did not complete, whereas the “high traffic finish” was an extra the applicant did not agree to provide.

i. On July 26, 2019, the respondent emailed VISA to request a chargeback $3,400 of her initial $4,106.25 payment to the applicant.

j. In October 2019, the applicant received an email from QuickBooks demanding payment of $3,452. By this point, I find that the respondent received a VISA credit of $3,452.00 against her $4,106.25 payment to the applicant.

14. The parties disagree about the validity of the $3,452 chargeback. I find that $50 of this charge is a service fee associated with QuickBooks, since the TDI invoice was for only $3,402. The applicant says that the flooring job was near completion, with only about $700 in value yet to be provided. The respondent disagrees, saying that the applicant is responsible for the full $3,402 it paid TDI to complete with work.

15. The applicant says it completed most of the project, including repairs to damaged flooring, sanding the floors and wood filling. The applicant says the only remaining steps were a final sand and coating the floors with a finish, not stain. As I noted above, stain was not included in the fixed price. The applicant estimates these steps would have taken less than 8 hours, which is why it says $700 would have been an appropriate chargeback.

16. The applicant provided one photograph of the flooring work. Based only on this photograph, I am unable to determine the status of the flooring work.

17. The respondent provided several photographs showing unrepaired holes in the flooring, a damaged floorboard near the front door, and another floorboard that needed to be feathered in, when the applicant stopped work. The photographs also

show that the applicant's initial sanding did not cover some corners nor the area around a post inside the home.

18. The respondent also filed in evidence a letter from SC of TDI Hardwood Floors (TDI), the company that completed the flooring work at the respondent's property after the applicant stopped work. TDI commented that, when it started work, the floors were "in initial stage of rough standing and incorrectly filled over 40 grit sanding." TDI offered its opinion that industry standards required 80 grit sanding prior to filling. As a result, TDI wrote that it had to re-sand the floor and refill it. TDI then stained the floor and applied 3 coasts of oil-based polyurethane. TDI's work took 5 days.

19. I accept that SC is an expert qualified to comment on the industry standards for hardwood flooring repair and installation. Based on his letter, I find that the applicant's work fell below a reasonable standard in that the sanding was completed with the incorrect grit, meaning the sanding work had to be re-done.

20. Based on the photographs, I accept the respondent's evidence that the flooring job was not close to completion when the applicant stopped work. Rather, I find TDI needed to do $2,460, plus GST, worth of work to sand and refinish the floors and apply two coats of finish. To arrive at this number, I have used the $2,660 TDI charged for unfinished work within the applicant's scope of work but deducted $200 for the third coat of finish TDI applied. I did this because a third coat of finish was not included in the applicant's scope of work. As there is no evidence about the precise cost of one coat of finish, I have made this adjustment on a judgement basis.

21. I allow the applicant's claim in part, to the following extent. Although the chargeback was not false, it was for $3,452. I have found that the work TDI did to complete the scope of work that was in the parties' contract was worth only $2,460 plus GST, being $2,583. I say this because staining was an extra charge, and there was no agreement between the parties to upgrade to a high traffic finish. As a result, I find that the respondent must pay the applicant $869.00 being the difference between

the chargeback amount she was credited and the value of the TDI work needed to achieve the parties' agreed scope of work.

22. Although the applicant submits that the respondent's short payment put it in a position where it was NSF to third parties, I find that any NSF charges are not the respondent's responsibility because they arise from a relationship between the applicant and one or more non-parties. The applicant also did not prove or particularize the amounts for the contested NSF charges, nor explain to whom they were owing except to suggest it was QuickBooks.

23. As discussed above, I have found the claimed remedy for an order that the respondent contact QuickBooks to be outside the tribunal's jurisdiction.

24. I dismiss the applicant's remaining claims. There is no evidence before me, including no medical evidence, to prove severe or extreme emotional distress of the degree required to consider an order for damages. The applicant is also a corporation, an entity that does not suffer emotional distress.

25. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on $869 from October 15, 2019, the date by which I find the respondent received her credit, to the date of this decision. This equals $10.16.

26. 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 the applicant only partly successful, I find the applicant is entitled to reimbursement of 50% of its tribunal fees, being $87.50.

ORDERS

27. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $966.66, broken down as follows:

    a. $869.00 as a refund for the excess credit for flooring work redone by TDI,

b. $10.16 in pre-judgment interest under the *Court Order Interest Act*, and

c. $87.50 tribunal fees.

28. The applicant is entitled to post-judgment interest, as applicable.

29. 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.

30. 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

[i] Under section 64 of the *Civil Resolution Tribunal Act*, I have amended the decision above to correct a calculation error so that the amount owing includes consideration of GST.