



Civil Resolution Tribunal

Date Issued: June 23, 2020

File: SC-2019-010684

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Livingwood Floors Inc. v. Hurst*, 2020 BCCRT 694

BETWEEN:

LIVINGWOOD FLOORS INC.

APPLICANT

AND:

GREG HURST

RESPONDENT

AND:

LIVINGWOOD FLOORS INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This decision is about a flooring contract. The applicant, Livingwood Floors Inc. (Livingwood), says that the respondent, Greg Hurst, owes it money for the outstanding balance on an agreement to provide flooring. Livingwood claims a total of \$456.81: \$262.56 is owing for the work done under the original contract and another \$194.25 is owing for extras under the contract. Livingwood is represented by an organizational contact.
2. Mr. Hurst says that Livingwood charged him \$326.08 Provincial Sales Tax (PST) for the supply and installation of plank flooring. Mr. Hurst says that after doing research he determined that Livingwood was not entitled to charge PST. He says that Livingwood admitted its error and then increased the cost of the materials to compensate for the difference it could not charge in PST. Mr. Hurst argues he should not have to pay this amount. Mr. Hurst also says that Livingwood was not entitled to charge for extras. Mr. Hurst represents himself.
3. In his counterclaim, Mr. Hurst submits that he is a tax advisor and he did research and provided professional advice to Livingwood. Mr. Hurst counterclaims for \$750 for his services. Livingwood says that it never hired Livingwood and so it does not owe him money.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.

5. The CRT 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.
6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT 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.

ISSUES

8. The issues in this dispute are:
 - a. Does Mr. Hurst owe Livingwood money under the flooring agreement?
 - b. Does Livingwood owe Mr. Hurst money for providing it with tax assistance and advice?

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove their claim on a balance of probabilities. Therefore, Mr. Hurst and Livingwood must each prove their individual claims on a balance of probabilities.
10. 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.

Does Mr. Hurst owe Livingwood \$262.56 under the flooring agreement?

11. On November 22, 2019, Mr. Hurst signed Livingwood's customer estimate for flooring, which included a plywood subfloor. The estimate total was \$9,920.86 and included \$362.08 PST.
12. Livingwood completed the work and sent Mr. Hurst an invoice on December 9, 2019. All the costs for materials and labour were the same as those shown on the November 22, 2019 estimate except there was an additional \$185.00 charge for extras. The extra cost was for cleaning wallpaper off the wall behind the baseboard and preparing the existing subfloor and fixing squeaky areas of the subfloor. This did not result in additional PST because it was a labour charge not subject to PST.
13. On December 10, 2019, Mr. Hurst sent Livingwood an email stating that he had professional knowledge about sales tax and provided Provincial Government Bulletins showing that Livingwood should not have charged PST.
14. The email thread indicates that the parties then had a telephone conversation. Mr. Hurst's email sent later in the day on December 10, 2019 told Livingwood that all tax paid by previous customers in error was refundable and that there was a possibility of a Ministry of Finance audit if the customers claimed refunds from the Ministry.
15. Mr. Hurst said in the email that he thought about Livingwood's suggestion that the PST amount be added to the costs of the materials since it could not be charged as PST. He acknowledged Livingwood's position that if it had known the PST it paid on the materials could not be passed on to the customer ordering the installation that it would have marked up the material costs. However, Mr. Hurst rejected the idea that he should pay more for the materials and also stated that he spent a lot of time and his professional expertise in advising Livingwood on the PST tax matter. Mr. Hurst suggested that Livingwood should recognize his time's value and it was unreasonable for Livingwood to expect him to cover the PST. The value of the tax

advice Mr. Hurst referred to in challenging his own bill is also the basis for Mr. Hurst's counterclaim.

16. Livingwood sent Mr. Hurst another invoice. I note that it is also dated December 9, 2019 but the above exchange indicates that it was completed after the December 10, 2019 communications. Further, a Livingwood email dated December 12, 2019 states that Livingwood spoke with the Consumer Tax Branch with the Ministry of Finance and so was revising the invoice. The second invoice showed no PST owing but increased the cost of materials by \$250.06. I note that Livingwood claims \$262.56 because by adding the PST to the cost of materials this increased the GST by \$12.50.
17. On December 13, 2019, Mr. Hurst emailed Livingwood saying it was not responsible for Livingwood's tax errors and it was unacceptable that Livingwood was not honouring the signed customer estimate. Mr. Hurst's next email on the same day indicated that Livingwood had left him a voicemail but that Mr. Hurst no longer wanted to discuss the matter.
18. In its submissions Livingwood stated that in the first invoice PST was calculated separately but it then found out it should not be charging the customer PST. Livingwood says that Mr. Hurst agreed to pay the PST originally, so it acknowledges it added it on to the cost of the materials. It argues that this was just an error in calculation, but that Mr. Hurst is still obligated to pay the amount originally invoiced as PST.
19. The British Columbia Government issued a Bulletin which explains that it is possible for a contractor to enter an agreement requiring the customer to pay the PST on goods purchased to fulfil a contract. However, there are very strict requirements to qualify for this exemption. The agreement must be in place at or before the time the contractor acquired the goods, and contain a statement that the customer:
 - a. Agrees to pay the PST on the goods under section 80 of the *Provincial Sales Tax Act* (PSTA), such as "the contractor and the customer agree that the

customer is responsible for paying the PST on the materials to be installed under this agreement, as provided for under section 80 of the *Provincial Sales Tax Act*, or

- b. Agrees to assume your responsibility for paying the PST on the goods, such as “the contractor and the customer agree that the contractor is transferring the PST liability on the goods listed in this contract to the customer.”
 - c. The agreement must also state the purchase price of the goods, and either be a written agreement signed by the customer, or a signed written statement verifying a verbal agreement. An electronic signature is acceptable if the agreement or written statement is in an electronic format.
20. The Bulletin goes on to say that if there is no written evidence of an agreement that meets all of the above conditions for the exemption, the customer is not required to pay PST and the contractor is not exempt from PST, (see: <https://www2.gov.bc.ca/assets/gov/taxes/sales-taxes/publications/pst-501-real-property-contractors.pdf>)
21. Livingwood says that Mr. Hurst agreed to pay the PST by signing the estimate, so it was entitled to recover the tax by adding it to the cost of the materials. However, I find that Livingwood has not provided proof that it met the conditions set out above. Mr. Hurst signed the estimate that included PST, but he did not expressly state that he was aware he was assuming Livingwood’s responsibility for paying the PST. Further, Livingwood has not provided information on when it purchased the goods. Therefore, it has not proved that the agreement was in place when or before Livingwood purchased the goods.
22. Based on the evidence, I find that Livingwood has not proved a valid agreement under the PSTA that would make Mr. Hurst responsible for paying PST. Therefore, I find that Livingwood was not entitled to add \$250.06 to the cost of the materials to cover the cost of the PST or the additional \$12.50 in GST when the amount was transferred to materials. So, I dismiss Livingwood’s claim for \$262.56.

Extras – Livingwood’s \$194.25 claim

The Wallpaper

23. Livingwood’s estimate indicated that it was based on the assumption that subfloors met minimum “manufacture requirements.” It did not list any other possible extras that might increase the cost of the flooring. In the December 13, 2019 email referenced above, Mr. Hurst stated that he was concerned about the \$185 charge for extras. Mr. Hurst indicated that there was no reason to scrape the wallpaper as this was not an issue involving flooring and was not visible when the baseboards were put back on.
24. Livingwood argues that the estimate was not a complete contract but just what it was called, an estimate. However, it also calls the estimate the “original contract” in its submissions. Livingwood argues that the wallpaper was not something that the estimator could have foreseen until the baseboards were removed from the wall.
25. I agree with Mr. Hurst on this point. The original estimate which formed the basis for the agreement stated that issues with the subfloor might affect the estimate. There was no mention of other extras. There is also no evidence that Livingwood consulted Mr. Hurst before it spent time removing the wallpaper. I find that Livingwood has not established that the parties had an agreement that included removal of wallpaper and so I find it was not entitled to charge Mr. Hurst for this work.

The Squeaky Floor

26. Mr. Hurst also stated that he discussed the squeaks in the original flooring with the estimator who paid close attention to them when providing the estimate. Mr. Hurst submits that correcting the squeaky floor was included in the cost of the original estimate.
27. Livingwood says that the subfloor did not meet manufacturer requirements and needed repair to bring it up to standard. Mr. Hurst says that the estimator had

already determined that the existing sub-floor did not meet the minimum manufacturer requirements for the installation for the glue down vinyl planking flooring. Therefore, the estimator recommended installing a plywood overlay on top of the existing sub-floor. Mr. Hurst notes that this was done and described in the invoice as select plywood subfloor fasteners and prep which included labour costs of \$910. I have reviewed the invoices and find that a plywood overlay was installed. Livingwood did not respond to Mr. Hurst's claim that the issue of the substandard subfloor was dealt with and that he already paid for it so it should not be listed as an extra charge.

28. I find that Livingwood has not explained what extra work had to be done considering the invoice shows that it already charged \$776.10 for the plywood subfloor plus \$910 in labour to address issues with the subfloor. Therefore, Livingwood has not proved that it was entitled to charge Mr. Hurst extra money to repair a squeaky floor caused by the subfloor.

29. Therefore, I dismiss Livingwood's claims.

The Counterclaim

30. Mr. Hurst claims that he should be compensated for the professional advice he provided Livingwood on tax matters in the course of their email exchange outlined above. Livingwood says that it never hired Mr. Hurst and therefore should not be obligated to pay him for his services. Mr. Hurst has not provided any evidence indicating that Livingwood ever requested he provide it with tax advice. I find Mr. Hurst carried out the research and provided it to Livingwood for his own benefit because he did not want to have to pay PST. There is no evidence that Livingwood entered a contract with Mr. Hurst for tax advice.

31. Therefore, I deny Mr. Hurst's counterclaim.

32. Under section 49 of the CRTA and CRT rules, the CRT 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. As neither party was successful in their claim, I find they are not entitled to reimbursement of their tribunal fees. Neither party requested expenses.

ORDER

33. I dismiss Livingwood's claim, Mr. Hurst's counterclaim, and this dispute.

Kathleen Mell, Tribunal Member