



# Civil Resolution Tribunal

Date Issued: July 7, 2020

File: SC-2019-009070

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Edgewater Custom Finishing Ltd. v. Bakshi*, 2020 BCCRT 755

B E T W E E N :

EDGEWATER CUSTOM FINISHING LTD.

**APPLICANT**

A N D :

MANOJ BAKSHI (Doing Business As MERIT HOMES), ANDREI PIPA  
and EVGENY CHZHOU

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about payment for construction work.
2. The respondents Andrei Pipa and Evgeny Chzou (homeowners) hired the respondent Manoj Bakshi (doing business as Merit Homes) (Merit), to act as general contractor and builder for their home.

3. The applicant, Edgewater Custom Finishing Ltd. (Edgewater), says Merit hired it to do finishing work. Edgewater says its invoices have not been paid in full and claims \$2,500 for the outstanding balance.
4. Merit says that the homeowners are responsible for paying Edgewater's invoices.
5. The homeowners deny they have a contract with Edgewater. They also say Edgewater's work was deficient and they had to pay a third contractor to remedy the deficiencies. The homeowners deny owing money to Edgewater.
6. Edgewater and Merit are each represented by an owner or employee. Andrei Pipa represents the homeowners.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.
9. 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.

10. 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**

11. The issues in this dispute are:
  - a. Is Edgewater owed \$2,500 for work done and, if so, who must pay?
  - b. Was Edgewater's work deficient and, if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim, such as this one, Edgewater must prove its claim on a balance of probabilities. Although I have reviewed all the parties' submissions and evidence, I refer only to that which explains and gives context to my decision. It is undisputed that the homeowners hired Merit to act as builder and contractor to build their home. Based on the terms of their June 24, 2016 contract, I find Merit was responsible for hiring all sub-trades and overseeing the quality of their work. Under Merit's contract with the homeowners, the homeowners were responsible for paying all sub-trades and agreed to reimburse Merit for any material or service costs he incurred.
13. There is no dispute that Edgewater did interior finishing work at the home. The question is, who does Edgewater have an agreement with, Merit or the homeowners?
14. Edgewater says Merit hired it to do the work. The homeowners also say that Merit hired Edgewater and that they were not consulted on Merit's choice. Merit says it "introduced" Edgewater to the homeowners and that the homeowners are responsible for paying Edgewater. I note that Merit does not specifically deny hiring Edgewater.

15. I find Merit directed Edgewater's work at the home, based on April 2019 text messages between Edgewater and Merit. Although Edgewater says Mr. Pipa gave it a list of tasks to be completed, there is no evidence supporting this. The text messages between Edgewater and Merit also show that Edgewater asked Merit for payment of the outstanding balance of \$2,500 on March 28, 2019 and Merit asked for a copy of the invoice.
16. On balance, I find it more likely that Edgewater had an agreement with Merit, rather than the homeowners, as I find Merit hired Edgewater, directed the work, and followed up on payment for Edgewater. Although there is no formal written contract, I find it a term of the agreement that Merit will ensure Edgewater is paid for its work.
17. Merit and Edgewater both say the homeowners should pay Edgewater's outstanding invoice, based on the June 24, 2016 agreement between Merit and the homeowners. The common law principle of privity means that a contract cannot give rights or impose obligations on persons (or companies) that are not parties to the contract. Edgewater is not a party to the agreement and therefore cannot enforce the contract against the homeowners. In other words, the homeowners are not obliged to pay Edgewater's invoice, just because of their agreement with Merit. I cannot make any findings on whether the homeowners must reimburse Merit for any amount he must pay Edgewater, as Merit has not filed a claim against the homeowners.
18. Edgewater submitted as evidence its January 4, 2019 invoice for \$2,500, which was addressed to the homeowners. It is undisputed that the homeowners paid Edgewater's first invoice. Despite this, I find the homeowners have no obligation to pay Edgewater directly, for the reasons explained above. As Edgewater's agreement was with Merit, I find Merit must pay Edgewater's outstanding balance.
19. I now turn to the amount owed to Edgewater.
20. The homeowners submitted in evidence a list of sub-contractors and their estimates which, they say, was created by Merit. Edgewater's estimate for carpentry finishing

is listed at \$9,500. Neither Edgewater nor Merit dispute the estimate, so I accept it as true. I further find Merit agreed to Edgewater's \$9,500 estimate as Merit submitted that estimate to the homeowners.

21. On March 28, 2019 Edgewater texted Merit that the homeowners had only paid \$8,000, leaving a balance of \$2,500. Based on the text message, and the second invoice, Edgewater is billing a total of \$10,500, which is \$1,000 more than the estimate. Edgewater has provided no explanation why it charged \$1,000 more than the estimate. There are no details on the January 4, 2019 invoice. Without this information, I find Edgewater has failed to prove it is entitled to more than its \$9,500 estimate for all the finishing work.
22. The homeowners say they previously paid Edgewater \$8,400. They provided no proof of payment, such as cheques or banking records, or a copy of the first invoice. Given this, I prefer and accept Edgewater's March 28, 2019 text message to Merit that the homeowners only paid \$8,000 as it was created closer in time to the actual events than the homeowners' submissions in the dispute. In summary, I find Edgewater is owed \$1,500.
23. The homeowners say Edgewater's work was deficient and that they had to hire a third contractor to reverse the master bedroom closet door, install the garage baseboards, install the front door handle, install missing hinges on some doors and other things. Merit says there is still some work outstanding for Edgewater to do before they are paid. The burden of proving deficiencies is on the party alleging them (*see Lund v. Appleford Building Company Ltd et al*, 2017 BCPC 91).
24. Merit says there is still some work for Edgewater to finish but has not provided any details or supporting evidence. I find Merit has not proven any deficiencies by Edgewater.
25. Mr. Pipa submitted a February 8, 2019 text message to Merit with a photograph of an internal door with the hinges incorrectly attached to the outside of the doorframe, rather than the inside. Mr. Pipa wrote "they" had fixed the door by reversing it.

26. The homeowners say they hired a third contractor to fix Edgewater's deficiencies and submitted a February 18, 2019 invoice from a contractor for \$11,574.57 for labour between February 1 and 15, 2019 plus supplies. The invoice contains no description of the work completed. Given the timing, I find it likely that the third contractor fixed the door referred to in the paragraph above. However, I am not persuaded that the rest of the work carried out by the contractors was to fix any other alleged deficiencies.
27. Further, I find Edgewater returned to the home in April 2019 to complete, or fix, a number of items, such as baseboard installation, door adjustments, and wine rack installation. This is set out in the April 2019 text messages between Merit and Edgewater. I find it unlikely that the February 2019 contractor fixed Edgewater's alleged deficiencies when Edgewater had not yet completed its work. Apart from the reversed internal door noted above, I find the homeowners have failed to prove any further deficiencies.
28. I do not accept the homeowners' argument that they suffered "massive losses" resulting from Edgewater not showing up on time. Mr. Pipa submitted as evidence a series of text messages with Merit in August 2018 about "the finishing guys", which I infer to be Edgewater employees. The texts show Mr. Pipa asking when Edgewater will arrive and noting that the finishing work needs to be completed before other work, which was scheduled for the following day. There is, however, no indication that any other sub-trades needed to be rescheduled, or that the homeowners lost any money due to Edgewater's schedule. The texts also do not suggest significant delays, as they were all sent within a matter of days.
29. In summary, I find the respondents have failed to prove Edgewater caused significant delay or financial loss to the homeowners. I find Edgewater's work was deficient in reversing one internal door and that the respondents failed to prove any other alleged deficiency. On a judgment basis, I deduct \$50 from Edgewater's outstanding balance to account for the deficient door installation. I find Merit owes Edgewater \$1,450 in final payment for Edgewater's finishing work.

30. As I find there was no agreement between Edgewater and the homeowners, I dismiss Edgewater's claim against Mr. Pipa and Ms. Chzou. I make no findings about any claim Merit may have against the homeowners.
31. The *Court Order Interest Act* applies to the CRT. I find Edgewater is entitled to pre-judgment interest on the \$1,450 outstanding balance from January 4, 2019, the date of the invoice, to the date of this decision. This equals \$42.50.
32. Under section 49 of the CRTA and tribunal rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As Edgewater was only partially successful in this dispute, I find it is entitled to reimbursement of \$62.50, which is half its CRT fees. None of the parties requested reimbursement of any dispute-related expenses.

## **ORDERS**

33. Within 14 days of the date of this order, I order Merit to pay Edgewater a total of \$1,555, broken down as follows:
  - a. \$1,450 as payment for finishing services provided,
  - b. \$42.50 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
34. Edgewater is entitled to post-judgment interest, as applicable.
35. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of

emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

36. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Sherelle Goodwin, Tribunal Member