



# Civil Resolution Tribunal

Date Issued: July 22, 2020

File: SC-2020-002520

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Project X Slab Inc. v. Khera*, 2020 BCCRT 810

B E T W E E N :

PROJECT X SLAB INC.

**APPLICANT**

A N D :

MANJIT KHERA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, Project X Slab Inc. (Project X), installed tiles in the respondent Manjit Khera's home. Project X says that it completed the tile job as agreed and that Mr. Khera failed to pay its full invoice. Project X claims a total of \$4,755 for the tile work, which it says is the remaining invoice balance.

2. Mr. Khera says that Project X failed to complete the tile work as agreed and that he does not owe anything more for the incomplete job.
3. Project X is represented by an officer or employee and Mr. Khera is self-represented.

## **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, or a combination of these. While the parties made some conflicting statements, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary, even where credibility is at issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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 CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is to what extent, if any, does Mr. Khera owe Project X the claimed \$4,755 for the tile job?

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, Project X as the applicant must prove its claim on a balance of probabilities. I have reviewed all the parties' evidence and arguments. However, I refer only to what is relevant to my determination and to the extent necessary to give context to my reasons.
10. Project X undisputedly entered into a contract with Mr. Khera to install porcelain slab tiles around a fireplace and bathroom in Mr. Khera's new home. The total project cost was estimated at \$23,450.71, including tax. I find the parties' contractual terms are those set out in Project X's January 17, 2020 estimate.
11. Based on its February 19, 2020 invoice in evidence the job ended up costing \$19,755 after a \$5,000 discount. Project X does not explain the discount. Project X says Mr. Khera paid \$15,000 and it seeks the remaining \$4,755, the claimed amount here. Mr. Khera says he already paid \$20,000, leaving a balance of \$3,450.71.
12. Mr. Khera also says Project X did not finish the tile job and kept his remaining tiles. Mr. Khera says he had to hire another contractor, Superior Tile Contracting Inc. (Superior), to finish the bathroom in April 2020. He says he is still willing to pay Project X to finish the fireplace tiling, less the \$1,785 he paid Superior.
13. Project X says it "requested the last payment after the job was finished properly and the client had approved the installation." However, I find the correspondence in evidence does not show that Mr. Khera was satisfied the job was completed as agreed. I also find that Project X demanded payment prior to finishing the job. Project X's last invoice is dated February 19, 2020, and the parties' email correspondence shows that the job was ongoing in March 2020. Also, based on

Project X's somewhat conflicting evidence before me, I infer Project X agrees that it did not finish applying the grout or silicone around the tiles. Project X says this finishing work is usually done after site clean-up but Mr. Khera did not give its crew further job site access. It says it is ready to finish the job on Mr. Khera's request. Project X also takes "responsibility" for a bathroom pot light deficiency and says the remaining tile "offcuts" are at its shop and ready for pick up.

14. I find the evidence before me does not show that Mr. Khera denied Project X site access to finish the job. Instead, based on its March 10, 2020 email, I find that Project X treated the job as finished and demanded immediate payment on threat of filing a Certificate of Lien against Mr. Khera's property. It is not clear whether Project X knew about the pot light deficiency at the time it sent this demand. However, Project X said nothing about returning to apply the grout or silicone, tasks it should have known were outstanding.
15. I find the parties are bound by the payment terms in their contract. The parties' contract states that it required an advance 40% payment of the estimated price when the job was 90% complete. I find that the tile grout, silicone and deficiency repairs were required to finish the tiling job. I find that Project X has not proven on a balance of probabilities that it completed more than 90% of the job. Even if Mr. Khera paid only \$15,000 as Project X claims, then he has already paid 64% of the \$23,450.71 estimated price. I find this is more than required under the contract for an unfinished job. I also note this equals about 76% of the total job cost after the \$5,000 discount. I find that Project X has not proven that it is entitled to any further payment for the unfinished tiling job. I dismiss Project X's claim for \$4,755.
16. Under CRTA, section 118(1)(c), the CRT has jurisdiction to order specific performance of an agreement related to services. Based on the parties' respective arguments, I considered whether I ought to order Project X to complete the job and for Mr. Khera to pay the remaining balance, less the \$1,785 he paid to Superior. However, such an order might be difficult to enforce if issues over the quality of

Project X's finishing work arises. Also, this is not the order that Project X has requested. So, I have not made that order here.

17. I note that the parties made several arguments about whether Project X should warranty the fireplace tile work. Mr. Khera did not bring a counterclaim and I find that the warranty issue is outside the scope of this dispute. I have therefore not resolved the warranty issue or discussed it any further here.
18. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Project X was unsuccessful in this dispute and so, I dismiss its claim for tribunal fees and dispute-related expenses. Mr. Khera paid no CRT fees and claimed no dispute-related expenses.

## **ORDER**

19. I dismiss Project X's claims and this dispute.

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Trisha Apland, Tribunal Member