



# Civil Resolution Tribunal

Date Issued: September 21, 2020

File: SC-2020-003616

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Spectrum Stone Ltd. v. Senator Tailoring and Personal Shopping Corporation*, 2020 BCCRT 1067

B E T W E E N :

SPECTRUM STONE LTD.

**APPLICANT**

A N D :

SENATOR TAILORING AND PERSONAL SHOPPING  
CORPORATION

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This dispute is about payment for a marble countertop.
2. The applicant Spectrum Stone Ltd. (Spectrum) says that it used the marble slab selected by the respondent Senator Tailoring and Personal Shopping Corporation

(Senator) to fabricate a countertop. Afterward, Senator complained of defects in the countertop and refused to pay. Spectrum claims \$2,650.00 for fabricating and installing the marble countertop, and \$525 for what it describes as unnecessary work by a third-party stone-care specialist to fix the alleged defects.

3. Senator says Spectrum's work in fabricating and installing the countertop was deficient because the marble was damaged, and the job was completed late. Senator asks me to dismiss the dispute.
4. Spectrum is represented by its director AM. Senator is represented by its director ES.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Spectrum satisfactorily complete the marble countertop installation under its agreement with Senator?
  - b. If so, to what extent is Spectrum entitled to the claimed \$2,650 for the countertop and the \$525 it spent having the countertops refinished by a third-party company?

## **EVIDENCE AND ANALYSIS**

10. In this civil claim, Spectrum, as the applicant, bears 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.
11. In late January or early February 2020, Senator contracted with Spectrum to fabricate a marble countertop for an island in its shop premises. It is uncontested that Senator chose and reserved a marble slab for this purpose, which was then used by Spectrum.
12. On February 7, 2020, Spectrum installed the countertop. Spectrum also invoiced Senator \$2,625.00 for the material, fabrication, delivery and installation of the marble island countertop that same day.
13. On February 9, 2020, Senator wrote Spectrum a cheque for \$2,650, which I find was a \$25 overpayment, either as an intended tip or otherwise. Spectrum's bank returned the cheque unpaid on April 22, 2020.

14. Once the countertop was installed, Senator raised concerns that the countertop had some scratches, watermarks and cracks that were not part of marble's natural characteristics. I find that Spectrum agreed to try to address Senator's concerns, and to wait to put the cheque through until the deficiencies were resolved.
15. Based on the photographs of the countertop provided by both parties and the expert opinion of BN, which I discuss below, I find that the countertop delivered by Spectrum bore some cracks, scratches and watermarks independent of the marble slab's natural features.
16. Senator refused to return the countertop to Spectrum to have them address these deficiencies in Spectrum's own shop. Based on the emails between them, I find that the parties then agreed that Spectrum would engage Quality Stone Care to repair the defects on site at Senator, at Spectrum's cost. I also find that the repairs were necessary, contrary to Spectrum's submission.
17. On April 3, 2020, Quality Stone Care invoiced Spectrum \$525 to "repair" the slab for rotary scratches around all edges, watermarks, scratches and little holes on the top surface, a crack on the northeast corner and refinishing the whole top surface and sealing.
18. The parties' central disagreement is about whether Quality Stone Care's work repaired the countertop satisfactorily, such that Senator should have to pay the agreed \$2,625 to Spectrum.
19. Where a dispute's subject matter is technical or beyond common understanding, expert evidence is needed to help the decision-maker determine the issue: see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131. I find that expert evidence is needed, from someone qualified in stone restoration, to determine whether the defects in the countertop were addressed by the repairs.
20. The CRT's rules explain that written expert evidence must include a statement of the expert's qualifications, which must show that the person is qualified by education, training or experience to give the opinion.

21. BN, a stone restoration and refinisher of 12 years' experience at Quality Stone Care, provided a statement about the repair work he completed. Although BN is an interested party, given that Quality Stone Care was paid by Spectrum to complete the repairs, Senator did not provide a contrary statement from any similarly qualified individual. In the circumstances, I accept BN's statement as expert evidence about the extent of the repairs, based on his experience. I also accept BN's evidence, supported by 'after' photographs of the countertop, that the repairs succeeded in fixing the crack, edge scratches and surface stains on the countertop.
22. Having reviewed BN's statement alongside the before and after photographs, I find that the defects identified in the countertop were fully repaired. After the repairs by Quality Stone Care, I find that the countertop was in satisfactory condition.
23. Senator also submits that the job was to be completed in a week but took 3 months. However, I find that Senator had the use of the countertop starting in February 2020 and did not submit or prove that the aesthetic defects impaired its ability to use the countertop before the April 2020 repairs. I find that Senator had the use of the countertop during this period without paying for it.
24. I find that Senator must pay Spectrum the \$2,625 invoiced for the material, fabrication, delivery and installation of the countertop. I also find Spectrum is entitled to be paid \$5.00 for the returned cheque charge.
25. I dismiss Spectrum's claim for \$525 for the cost of having Quality Stone Care repair the countertop. I find that Quality Stone Care's work was required for Spectrum to meet its obligation to provide a countertop of reasonable quality under the purchase agreement with Senator. I therefore find that those expenses properly remain with Spectrum.
26. The *Court Order Interest Act* applies to the CRT. Spectrum is entitled to pre-judgment interest on the \$2,625.00 from April 3, 2020, the date when the countertop repairs were completed, to the date of this decision. This equals \$24.17.

27. 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. I find the applicant is entitled to reimbursement of \$175 in CRT fees.
28. I dismiss Spectrum's claim for \$20 in dispute-related expenses for a Land Title search that identified a different corporate entity, which Spectrum says was necessary to determine the appropriate respondent. Spectrum did not prove it needed that search, given that the underlying invoice was made out to Senator.

## **ORDERS**

29. Within 30 days of the date of this order, I order Senator to pay Spectrum a total of \$2,829.17, broken down as follows:
- a. \$2,625.00 in debt for the countertop,
  - b. \$5 for the returned cheque fee,
  - c. \$24.17 in pre-judgment interest under the *Court Order Interest Act*, and
  - d. \$175 CRT fees.
30. Spectrum is entitled to post-judgment interest, as applicable.
31. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

32. 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.

---

Julie K. Gibson, Tribunal Member