



Civil Resolution Tribunal

Date Issued: November 18, 2020

File: SC-2020-004192

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hourigan's Carpets & Linos Ltd. dba Hourigan's Flooring v. Bulmer*,
2020 BCCRT 1299

B E T W E E N :

HOURIGAN'S CARPETS & LINOS LTD. doing business as
HOURIGAN'S FLOORING

APPLICANT

A N D :

PAUL BULMER and LORI FITZGERALD-BULMER

RESPONDENTS

A N D :

HOURIGAN'S CARPETS & LINOS LTD. doing business as
HOURIGAN'S FLOORING

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for an allegedly deficient flooring installation. The respondents, Paul Bulmer and Lori Fitzgerald-Bulmer, hired the applicant and respondent by counterclaim, Hourigan's Carpets & Linos Ltd. dba Hourigan's Flooring (Hourigan's), to install new floors in their home. Hourigan's claims \$1,924, the amount it says the applicants unfairly deducted from the total owed for Hourigan's flooring work. Hourigan's says the \$1,924 should be repaid when it repairs deficiencies in its stairway work.
2. The respondents say that the \$1,924 deduction from their payment is for their time and other expenses resulting from Hourigan's deficient work, so they are entitled to keep it, regardless of any stair repairs. In their submissions, the respondents say they should have deducted a total of \$2,818 for their time and expenses, so Hourigan's still owes them \$894 plus taxes. However, neither respondent specifically counterclaimed for additional expenses beyond the \$1,924 withheld.
3. Paul Bulmer counterclaims for \$4,000, which he says is the cost of re-doing the deficient stairs, although he also seeks to have Hourigan's repair the stairs. Hourigan's says it is willing to repair the stairs at its expense, but denies owing any amount for stair deficiencies. The respondents say they chose not to claim other alleged deficiencies because their claims would then exceed the \$5,000 Civil Resolution Tribunal (CRT) maximum small claim amount. I find the respondents have abandoned their claims to any amount exceeding \$5,000.
4. Paul Bulmer represents the respondents in this dispute. Hourigan's is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says 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.
9. In their submissions, the respondents request an order for Hourigan's to provide a detailed breakdown of flooring materials costs, including Hourigan's profit, if any. I find the respondents seek an order that Hourigan's create new evidence, as there is no evidence that an existing document shows such a breakdown. I find this is a request for injunctive relief, which is outside the CRT's small claims jurisdiction as set out in CRTA section 118. So, I decline to grant this request. I find that Hourigan's has had an opportunity to address the respondents' allegations about materials costs, and the respondents do not allege that Hourigan's has withheld existing evidence. I address whether Hourigan's has proved its claim below.

ISSUES

10. The issues in this dispute are:

- a. What is the appropriate remedy for the deficient stairway work?
- b. Were the respondents entitled to withhold \$1,924, or another amount, for deficiency-related expenses?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Hourigan's, as the applicant, must prove its claims on a balance of probabilities. Paul Bulmer must prove his counterclaims to the same standard. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

12. It is undisputed that the respondents hired Hourigan's to replace flooring in their home, including on stairs. The extent of the parties' agreement is unclear, as there is no contract, estimate, or similar document in evidence. Neither party submitted any statements or invoices despite referring to such documents in correspondence and in their arguments.

13. Paul Bulmer alleges that Hourigan's stairway flooring work was deficient, and that the stairs squeak when walking on them. Hourigan's agrees that the stairs appear to be deficient, based on the respondents' evidence. Paul Bulmer provided evidence from 3 other contractors, Alan Dealey, Ivan Lapshinoff, and Steve Carila, who all indicated that the stairs were defective. On the evidence before me, I find that Hourigan's stairway work was defective, and that Paul Bulmer is entitled to a remedy.

What is the appropriate remedy for the deficient stairway work?

14. As noted, Paul Bulmer claims \$4,000 to repair the stairs, but estimates in his submissions that the repairs would cost \$5,000. Paul Bulmer also agrees that he would be satisfied if Hourigan's had another contractor perform repairs at no additional cost. Hourigan's suggests that it would be willing to arrange these repairs,

but only if it could first verify the deficiencies in person and agree on a work plan with Paul Bulmer and an agreed-on repair contractor.

15. Under CRTA section 118, the CRT may order the specific performance of an agreement relating to personal property or services. Specific performance means forcing a party to do something. I find that the parties' agreement did not include an obligation for Hourigan's to repair deficiencies after the flooring work was complete. So, I find that the CRT lacks jurisdiction to order Hourigan's to repair the stairs as specific performance of the parties' agreement. Even if the CRT did have jurisdiction to order specific performance of repairs here, I find that such a remedy is not appropriate. Given potential future disagreements about the extent and quality of repairs, such an order would lack finality. In addition, orders for specific performance are not appropriate when money will adequately compensate a party, and I find money is adequate compensation here. I find that damages for the estimated cost of repairs are the appropriate remedy.
16. Paul Bulmer does not explain, and provides no evidence to support, his estimates of \$4,000 or \$5,000 for the cost of repairing the stairs. The contractors Alan Dealey and Ivan Lapshinoff each provided repair estimates after viewing the defective stairs. The lower of these estimates was \$1,300, and it was not directly disputed. So, I find Paul Bulmer is entitled to \$1,300 in damages for stair repairs.

Were the respondents entitled to withhold \$1,924 for deficiency-related expenses?

17. The respondents say the \$1,924 they withheld from the amount owed to Hourigan's was for various expenses resulting from Hourigan's deficient work on the stairs and elsewhere, and not as a holdback for the deficient stair work. So, I find the question is whether the \$1,924 is a valid "set-off" to the amount the respondents owe Hourigan's. When considering an equitable set-off such as this, the burden of proof shifts to the respondents, who are alleging the set-off. Below, I consider each type of set-off expense sought by the respondents, and whether they meet the burden of proving each expense on a balance of probabilities.

18. Hourigan's says that the respondents' alleged out-of-pocket expenses would total about \$728.70, but that they did not provide receipts or other proof supporting those expenses. On the evidence before me, I find that Hourigan's has not admitted owing any amount for the respondents' alleged expenses.
19. A large portion of the respondents' alleged set-off is for time they say they spent on the project, which they tracked in a log. The respondents say they spent 14 hours at \$75 per hour communicating with Hourigan's and other contractors, totalling \$1,050. I find the parties did not agree that the respondents could be compensated for their time, and there is no evidence supporting the \$75 per hour rate charged by the respondents. I also find the respondents' time log does not distinguish between time the respondents would have spent handling the flooring project in any event, and additional time that they say resulted from Hourigan's substandard work. In particular, I find the communication activities noted in the time log and elsewhere are described vaguely and in very general terms, such as "dealing with contractors" and "emails/telephone calls to/from Hourigan's".
20. In addition, while the parties agree there were some disagreements over deficiencies, I find the respondents have not shown that Hourigan's unreasonably caused them to spend an excessive amount of additional time handling the flooring project. I find that whether the amount of time spent addressing deficiencies was reasonable in the circumstances is a subject outside of ordinary knowledge, and requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). I find that no documents in evidence qualify as expert evidence under CRT rule 8.3, and in any event no third party documents discuss whether the time spent by the respondents was reasonable. So, I find the respondents are not entitled to a set-off of \$1,050 for their time spent communicating with Hourigan's or other contractors.
21. The respondents seek a \$150 set-off for time spent replacing closet doors that they say were removed by Hourigan's. I find the evidence does not show that Hourigan's agreed to replace any closet doors as part of its flooring work, so I deny a set-off for this amount. The respondents also seek a set-off for 8.5 hours of work at \$75 per

hour, totalling \$637.50, for cleaning up sawdust they say Hourigan's created. I find the evidence does not show that the parties agreed sawdust cleanup would be part of Hourigan's flooring work. Further, I find the legible photographs submitted by the respondents show only small amounts of sawdust outdoors, which do not appear to be excessive or unexpected for a flooring project. I find there is no entitlement to a set-off for time spent cleaning.

22. The respondents seek a set-off of \$130.50 for 4.5 hours of cleaning services at \$29 per hour, which is supported by invoices from a cleaning company. As noted, I find the evidence fails to show that Hourigan's agreed to perform any cleaning, and the evidence does not sufficiently show that an excessive or unexpected cleanup was needed. I find there is no set-off entitlement for this cleaning amount.
23. The respondents seek a set-off of \$250 for painting "repair work", which they say included fixing missing baseboard trim that Hourigan's failed to repair or replace, and more time spent by the painters because of Hourigan's project delays. I find the evidence does not support project delays caused by Hourigan's, or additional time spent by the painters. The painters' invoice is for "interior painting of downstairs" for \$3,900, without further detail, which I find does not support any baseboard trim repairs or time delays. Further, while the respondents say that the painters found some small missing or broken baseboards after the flooring work was finished, as shown in submitted photos, there are no painter statements in evidence, or other direct evidence showing why the baseboards were missing or broken. I find the respondents have not shown that Hourigan's was responsible for these alleged deficiencies or any paint repairs, and in any event have failed to prove the cost of repairing these alleged deficiencies. I find there is no entitlement to a set-off for \$250 in painting costs.
24. The respondents say they are entitled to a set-off of \$600 for the cost of unused flooring materials returned to Hourigan's. The respondents say a flooring dealer quoted them the materials' cost, but I find they did not submit any evidence from a dealer or anyone else showing a flooring price. Hourigan's says it previously credited the respondents \$504 for those materials. The respondents say that Hourigan's failed

to provide a requested invoice line item showing the flooring materials credit, or any supporting receipts. I find both parties refer to Hourigan's invoices, but as noted, neither submitted any invoices, including any invoices omitting a flooring materials credit line item. Other than the parties' own statements, I find there is no evidence before me showing that Hourigan's failed to provide the \$504 credit, or showing that the credit should have been \$600. I find the respondents have not met their burden of showing that they are entitled to a set-off for unused flooring materials.

25. Overall, I find the respondents are not entitled to any set-off of the amount owed to Hourigan's. This means that Paul Bulmer and Lori Fitzgerald-Bulmer jointly and severally owe Hourigan's \$1,924 for the withheld payment. I subtract from this amount the \$1,300 in damages that Hourigan's owes Paul Bulmer for defective work on the respondents' stairs. This equals \$624, which I find is the net amount the respondents owe to Hourigan's. The respondents may account among themselves for any differences in the amounts each pays toward this debt.

CRT FEES, EXPENSES, AND INTEREST

26. 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. Hourigan's and Paul Bulmer each paid \$125 in CRT fees. I find the parties' relative success in their claims and counterclaims offsets the CRT fees paid, so I make no order for fee reimbursement. Hourigan's claimed no CRT dispute-related expenses. The respondents suggest that they should be compensated for their time spent on this CRT dispute as a dispute-related expense. Under CRT rule 9.5(5), the CRT does not compensate parties for time spent dealing with CRT proceedings except in extraordinary circumstances. I find there are no extraordinary circumstances here. So, I make no order for expense reimbursement.
27. The *Court Order Interest Act* applies to the CRT. Hourigan's is entitled to pre-judgement interest on the \$624 in debt owing from May 16, 2020, the day after the

May 15, 2020 due date shown in Hourigan's May 12, 2020 email, until the date of this decision. This equals \$2.62.

ORDERS

28. Within 30 days of the date of this order, I order the respondents, Paul Bulmer and Lori Fitzgerald-Bulmer, to pay Hourigan's a total of \$626.62, broken down as follows:
 - a. \$624 in debt for unpaid flooring work, and
 - b. \$2.62 in pre-judgment interest under the *Court Order Interest Act*.
29. Hourigan's is entitled to post-judgment interest, as applicable. The parties' remaining claims are dismissed.
30. 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.

31. 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.

Chad McCarthy, Tribunal Member