



# Civil Resolution Tribunal

Date Issued: January 8, 2021

File: SC-2020-005598

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wescor Contracting Ltd. v. Berndt*, 2021 BCCRT 27

B E T W E E N :

WESCOR CONTRACTING LTD.

**APPLICANT**

A N D :

HELMUT BERNDT

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about the installation of acoustic ceiling tiles. The applicant, Wescor Contracting Ltd. (Wescor), installed acoustic ceiling tiles in the respondent Helmut Berndt's basement. Wescor says Mr. Berndt did not pay the entire contract amount and owes \$700.

2. Mr. Berndt denies the claim. Mr. Berndt does not dispute that he paid \$700 less than Wescor's invoice. However, Mr. Berndt says he is entitled to a price reduction because there were 7 boxes of unused acoustic ceiling tiles worth \$700 leftover after the project was finished.
3. Mr. Berndt is self-represented. Wescor's president represents it.

## **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). 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.
5. 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.
6. 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.
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, Mr. Berndt still owes Wescor for the acoustic ceiling tile installation.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant, Wescor, must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The following facts are not disputed. On November 1, 2019, Wescor quoted \$3,550 plus tax, for the installation of a T-bar ceiling system with 2 foot by 4 foot Armstrong Prelude acoustic ceiling tiles in Mr. Berndt's basement. Mr. Berndt later requested a different ceiling tile model. On February 14, 2020, Wescor quoted \$4,290 plus tax, for the installation of the same T-bar ceiling system with Armstrong Dune ceiling tiles (quote). The quote did not say how many acoustic ceiling tiles were included or itemize separate costs for material, supplies or labour. Mr. Berndt agreed to the quote.
11. Neither party provided a written contract. I note that a contract does not need to be written, but when a contract is written, it creates certainty about its terms and the parties' intentions. I find that Wescor's quote was an offer to enter a contract and Mr. Berndt accepted that offer when he agreed to proceed with the project. So, I find that the parties had a binding contract based upon the terms in the quote. Specifically, I find Mr. Berndt agreed to pay a fixed price of \$4,290 plus tax, for the installation of the acoustic ceiling tiles in his basement.
12. It is undisputed that Wescor performed the project in February 2020 and Mr. Berndt was satisfied with the result. Wescor sent a February 21, 2020 invoice for \$4,504. The invoice equals the amount quoted on February 14, 2020, plus tax. It is undisputed that Mr. Berndt paid Wescor \$3,804.50 on May 13, 2020, leaving \$700 unpaid from the invoice.

13. Mr. Berndt argues that he is entitled to a reduction from the contract price because Wescor did not use all of the materials. It is undisputed that there were 8 unopened boxes of acoustic ceiling tiles leftover after the project was completed. The parties agreed that Mr. Berndt could keep one box of acoustic ceiling tiles as spares and Wescor retrieved the remaining 7 boxes.
14. Mr. Berndt argues that the cost of the 7 boxes of unused acoustic ceiling tiles was included in the quote. So, he says he is entitled to a price reduction since all of the acoustic ceiling tile materials were not needed. Mr. Berndt estimates that each box of acoustic ceiling tiles are worth \$100 so he says he is entitled to a \$700 price reduction. Mr. Berndt provided an internet advertisement showing boxes of Armstrong Dune acoustic ceiling tiles priced at \$171.35. Based on the advertisement, I am satisfied that \$100 is a reasonable, conservative estimate of the acoustic ceiling boxes' value.
15. Wescor says it did not intend to use all of the acoustic ceiling tiles in Mr. Berndt's project and those material costs were not factored into Mr. Berndt's quote. Rather, Wescor says it planned to use some of the acoustic ceiling tiles for another, unrelated project. Wescor said it delivered acoustic ceiling tiles for both projects to Mr. Berndt's property to reduce delivery charges and to ensure that there would be spare tiles for Mr. Berndt's project, if needed. I find that this is a reasonable explanation for Wescor's delivery of additional acoustic ceiling tile boxes to Mr. Berndt's basement.
16. Although Mr. Berndt argues the price should be reduced because 7 boxes of acoustic ceiling tiles were not used, there is no evidence before me that the parties intended to calculate the contract price based on the material costs. As stated above, the quote stated a fixed price of \$4,504, after tax, which included all materials and labour. The quote does not refer to material costs or the number of acoustic tiles to be installed. Rather, I find that Wescor agreed to provide the amount of materials and labour needed to complete the project and Mr. Berndt agreed to pay a fixed price of \$4,504, after tax, regardless of the amount of materials used. Since the contract is for an agreed fixed price, I find the amount of materials and supplies that Wescor ordered and used is irrelevant.

17. I find that Wescor fully performed the contract by installing the acoustic ceiling tiles to Mr. Berndt's satisfaction. Further, I find that Mr. Berndt breached the contract by failing to pay the full amount owed under the contract. So, I find that Mr. Berndt owes Wescor the outstanding balance of \$700.
18. The *Court Order Interest Act* applies to the CRT. Wescor is entitled to pre-judgment interest on the debt from February 21, 2020, the date of the invoice, to the date of this decision. This equals \$6.54.
19. 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 Wescor is entitled to reimbursement of \$125 in CRT fees.

## **ORDERS**

20. Within 30 days of the date of this order, I order Mr. Berndt to pay Wescor a total of \$831.54, broken down as follows:
  - a. \$700 as debt for the acoustic ceiling tile installation,
  - b. \$6.54 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 for CRT fees.
21. Wescor is entitled to post-judgment interest, as applicable.
22. 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.

23. 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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Richard McAndrew, Tribunal Member