



Civil Resolution Tribunal

Date Issued: March 26, 2021

File: SC-2020-008160

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Powell River Building Supply Inc. v. Medhurst*, 2021 BCCRT 334

B E T W E E N :

POWELL RIVER BUILDING SUPPLY INC.

APPLICANT

A N D :

PAUL MEDHURST and LORRI MEDHURST

RESPONDENTS

A N D :

POWELL RIVER BUILDING SUPPLY INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment for cabinets.
2. The applicant and respondent by counterclaim, Powell River Building Supply Ltd. (PRBS), sold custom cabinetry, including installation, to the respondent Lorri Medhurst, and the respondent and applicant by counterclaim, Paul Medhurst. PRBS says it supplied the cabinets ordered and completed the installation, but the Medhursts refuse to pay for the installation. PRBS claims \$2,021.25, which it says is the balance owing on its invoice.
3. The Medhursts say they should not have to pay PRBS' installation costs because PRBS incorrectly designed and installed the cabinets and allegedly refuses to fix the errors.
4. Mr. Medhurst counterclaims \$5,000 for PRBS' alleged mistakes in designing and installing the cabinets. PRBS says it designed and installed the cabinets as requested by the Medhursts. PRBS also says its work meets industry standards. It asks that the counterclaim be dismissed.
5. PRBS is represented by an owner or employee. Lorri Medhurst and Paul Medhurst each represent themselves.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. Must the Medhursts pay the \$2,012.25 outstanding balance on PRBS' invoice?
 - b. Are the Medhursts entitled to compensation for design or installation errors?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this one, PRBS as the applicant must prove its claim on a balance of probabilities. Mr. Medhurst must also prove his counterclaim on the same balance. I have read and considered all evidence and submissions provided but only refer to that needed to explain my decision.
12. The Medhursts provided late evidence in the way of photographs, emails, and copies of some documents already in evidence. PRBS was provided with the opportunity to review and respond to the late evidence, so I find PRBS is not prejudiced by the late

evidence. I find most of the evidence relevant to the dispute. Consistent with the CRT's mandate that includes flexibility, I have allowed and considered the late evidence in this decision.

13. The Medhursts hired PRBS to build and install cabinets in their home. The cabinets consisted of a bar unit and a bench seat unit. The 2 units were installed on different sides of the same wall. In September 2019 the Medhursts met with PRBS' designer and installer at their home for a site visit. None of this is disputed.

Outstanding Invoice

14. Mr. Medhurst signed an October 3, 2019 "Assignment of Contract" with PRBS. PRBS' designer signed the contract on behalf of PRBS. The agreement says the cabinetry cost is \$7,625.00, plus \$179.70 for the bar countertop and an additional \$1,925.00 plus tax for installation, for an overall total of \$10,216.18. The agreement includes drawings of the specifications and measurements for each of the 2 cabinet units.
15. Based on the drawings and the Medhursts' photos, I find the bench seat unit included a bench seat above a drawer, wood panels above the seat and cabinets above that and along the right side of the seat. The bar unit included a lower cabinet and bar fridge opening under a countertop, plus 2 upper cabinets.
16. It is undisputed that PRBS built the cabinets off site and installed them in the Medhurst home in April 2020. Mr. Medhurst says one of the drawers needed to be rebuilt to fit, which delayed the completion date. PRBS says COVID-19 restrictions delayed the completion. In any event, the parties agree that installation was completed on June 15, 2020 and I find nothing turns on the delivery date. It is undisputed that the Medhursts have not paid the cabinet installation cost.
17. Based on PRBS' October 3, 2019 agreement I find Mr. Medhurst owes PRBS \$2,012.25 for the cabinet installation labour, because the cabinets were in fact installed. I now turn to consider whether Mr. Medhurst is entitled to any set off against the amount owing or damages for alleged design and installation mistakes or deficiencies.

Mistakes or Deficiencies

18. To begin with, Mr. Medhurst says the bench seat is higher than agreed upon. He provided photos showing the bench is 20 9/16 inches high, without any cushion on top. The October 3, 2019 drawings show an 18 5/16-inch bench seat height. I find the bench seat was built 2¼ inches higher than agreed upon.
19. PRBS says it built the seat higher at the Medhursts' request, to accommodate shoes under the bench. Both PRBS' designer and installer swore statements on January 5, 2021. They both say the Medhursts asked for space for shoes and boots under the bench seat. While the installer mentions no measurements, the designer says the Medhursts specifically asked for a bench seat 2 inches higher than standard. The designer also says a standard bench seat is 17 inches from the ground. So, if the designer's recollection were correct, the bench seat should be 19" high, which I find it is not.
20. The Medhursts deny asking for the bench height to be raised. They say the designer measured the needed seat height for Mr. Medhurst's comfort while he was sitting in the designer's office. He submitted a September 8, 2019 email from the designer confirming that the bench seat height would be changed to accommodate the Medhursts' request, without stating what the requested height was. The email could reflect either PRBS' or the Medhursts' version of events, as it does not mention height. So, I find it does not help me.
21. Both the September 8 email, and the site visit, happened before the parties agreed to the October 3, 2019 drawings. So, I find any requested changes would likely be in the approved drawings. The agreed upon bench seat height is a very specific measurement which is not standard bench seat height and so I find it more likely supports the Medhursts' version of events than PRBS. Further, the Medhursts' photos show a storage drawer built under the bench seat, not a floating seat with room for boots and shoes underneath. I find the photos also support the Medhurst' version of events over PRBS'. I find it more likely than not that the Medhursts dasked for an 18 5/6 inch bench seat to allow Mr. Medhurst to comfortably use the seat.

22. On balance, I find PRBS breached its agreement by failing to provide the agreed upon 18 5/6 inch high bench seat. I will address the appropriate remedy later in this decision.
23. I turn now to the Medhursts' concerns with the bar unit.
24. Mr. Medhurst says PRBS failed to supply a bar fridge shelf to raise the fridge off the floor. I find no lower shelf included in the drawings, which were part of the October 3, 2019 agreement. Further, Mr. Medhurst did not provide any evidence supporting that he asked PRBS to include such a shelf. So, I find the parties' written agreement did not include a shelf for the bar fridge. Despite this, the parties agree that the cabinet installer created a raw shelf for the bar fridge out of boards, at the Medhursts' request. The installer says the raw wood was not visible once the fridge was installed and the Medhursts' photos do not show anything contrary. So, I find PRBS reasonably supplied a bar fridge shelf even though it was not in the parties' agreement.
25. Mr. Medhurst says the bar fridge opening is too small, so now his bar fridge does not have adequate ventilation room and cannot be removed from the opening for proper cleaning.
26. The parties agree that PRBS had to install the lower bar cabinet further to the right than planned, to accommodate the Medhursts' bar fridge. They also agree that Mr. Medhurst provided the fridge measurements to PRBS, although neither party submitted those measurements in evidence. There is no indication that the October 3, 2019 drawings did not accurately reflect the measurements Mr. Medhurst provided. PRBS says the fridge was wider than expected, which I infer means Mr. Medhurst's measurements were incorrect. Mr. Medhurst does not deny this but says PRBS should not have relied on him to measure the fridge himself. I disagree and find PRBS is entitled to rely on measurements provided by their own client.
27. I disagree with Mr. Medhurst that PRBS should have included 5 inches of room for ventilation around the fridge. This is because the 5 inches of space was not included

in the parties' agreement and Mr. Medhurst has provided no supporting evidence that he asked PRBS to include ventilation space.

28. Based on his submissions, I infer Mr. Medhurst argues that PRBS' work was deficient because it should have known that the fridge required ventilation space and included that space in its design and installation. The burden on proving deficiencies is on Mr. Medhurst as he is the person alleging them (see *Lund v. Appleford*, 2017 BCPC 91). Whether PRBS' work was deficient or not requires expert evidence, unless I find the assessment of it was within ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283).
29. Mr. Medhurst submitted a January 1, 2021 email which he says is from another store's kitchen designer. The email says that it is important to follow the manufacturer's air space requirements. First, I find the email does not qualify as expert evidence under the CRT's rules because the email does not include the author's job title, experience or qualifications, or set out the facts the author relied on in stating their opinion. Second, I find the email does not say that PRBS should have known that the fridge required extra room for ventilation or that it failed to meet any industry standard in not including ventilation room. On balance, I find the evidence does not prove PRBS should have known of, and designed around, the fridge's ventilation requirements.
30. I also find PRBS was not obliged to ensure the fridge could easily slide in and out of the cabinetry as this is not in the October 3, 2019 written agreement and there is no evidence, such as emails, that the Medhursts asked for this feature to be included in the design. In addition, as some of the Medhursts' photos show the fridge opening, absent the fridge, I find the fridge can be removed from the cabinetry.
31. On balance, I find Mr. Medhurst has failed to prove that PRBS erred by making the fridge opening too small.
32. Mr. Medhurst also says that the upper bar cabinets are not centered properly on the wall above the lower cabinets. PRBS acknowledges that the upper cabinets are

approximately ¼ inch out of alignment with the lower cabinets, but says that is an acceptable difference, given that the Medhursts' walls are not plumb, or level. The Medhursts do not deny that their walls are not plumb. Further, Mr. Medhurst did not provide any evidence, such as photographs, which might show a noticeable difference in the cabinet alignment. On balance, I find Mr. Medhurst has failed to show that PRBS erred in how it aligned or centered the upper bar cabinets.

33. Lastly, Mr. Medhurst says that there are numerous nicks and scratches on the upper bar side cabinets, that the cabinets' side trims are incomplete with exposed saw cuts, and that the cabinet doors are not properly adjusted. From the photos I see one nick, or chip, in the bench seat frame, with no other visible defects in the other cabinets shown. While it is unclear when Mr. Medhurst took the photos, I accept the nicked cabinet was there upon installation, given Mr. Medhurst's submissions. I find a visibly nicked cabinet does not meet the expected standard of work and so is a deficiency. I will address the appropriate remedy below.

34. Overall, I find Mr. Medhurst has shown that PRBS erred in building the bench seat higher than agreed upon. I also find one piece of framing is nicked. I find Mr. Medhurst has failed to prove that PRBS erred in making the fridge opening too small or failing to properly center the upper bar cabinets.

Remedy

35. Mr. Medhurst says that he is unable to use the bench seat at its current height to put on his shoes, as planned, due to a hip concern he has. I agree with Mr. Medhurst that new materials will be needed to lower the bench seat height as the bench is built into the whole unit as the top of the drawer. Based on his photos, I find it reasonable that the drawer under the bench seat, and panels behind the seat will have to be redesigned and rebuilt to lower the height of the seat.

36. Mr. Medhurst claims \$1,200 for this repair but does not explain how he calculated this amount. He provided no estimates or other evidence of the anticipated repair costs. Although Mr. Medhurst did provide an estimate to replace the lower bar unit cabinet,

I find that unhelpful for estimating the bench seat repair costs. The October 3, 2019 invoice does not include a breakdown for the cost of each section of the 2 cabinetry units.

37. On a judgment basis, I find Mr. Medhurst is entitled to \$1,000 to fix the bench seat height and repair the nicked frame. I have considered the number of cabinet pieces designed, built and installed for a total of \$10,216.18 on the October 3, 2019 agreement in comparison to the number of pieces needed to be rebuilt and reinstalled to fix the bench seat height.
38. As noted above, I find the Medhursts must pay PRBS \$2,012.25 for installation costs. I find it appropriate to deduct from that the \$1,000 Mr. Medhurst is entitled to for repair costs. So, in total, I find the Medhursts must pay PRBS \$1,012.25 in full satisfaction of PRBS' labour invoice.
39. Although PRBS refers to contractual invoice, it does not make a claim for it. However, the *Court Order Interest Act* applies to the CRT. I find PRBS is entitled to pre-judgment interest on the \$1,012.25 labour costs from June 15, 2020, the date the job was completed, to the date of this decision. This equals \$4.22.
40. 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 find both PRBS and Mr. Medhurst were partially successful in their own claims. In such a case I find it appropriate that neither party be reimbursed their CRT fees and so I make no order for fee reimbursement.
41. PRBS did not claim any dispute-related expenses. I do not allow Mr. Medhurst's claim for reimbursement of \$45.84 for faxes because he does not explain how that expense is related to this dispute, particularly considering the CRT is an online tribunal. I also disallow Mr. Medhurst's claim for payment for the 40 hours of time he says he has spent on this dispute. First, Mr. Medhurst did not claim any specific amount of money so there is no way to value his claim. Second, CRT rule 9.5(5) says that the CRT will only order compensation for time spent dealing with a dispute in extraordinary

circumstances which, I find, are not present here. Overall, I order no reimbursement of any dispute-related expenses.

ORDERS

42. Within 30 days of the date of this order, I order the Medhursts to pay PRBS a total of \$1,016.47, broken down as follows:
 - a. \$1,012.25 in debt for labour costs, and
 - b. \$4.22 in pre-judgment interest under the *Court Order Interest Act*.
43. PRBS is entitled to post-judgment interest, as applicable. The parties' remaining claims are dismissed.
44. 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.

45. 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.

Sherelle Goodwin, Tribunal Member