



# Civil Resolution Tribunal

Date Issued: March 30, 2021

File: SC-2020-007654

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stratulat v. Avul*, 2021 BCCRT 344

BETWEEN:

GABRIEL STRATULAT

**APPLICANT**

AND:

GYNA AVUL

**RESPONDENT**

AND:

GABRIEL STRATULAT

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## **INTRODUCTION**

1. This dispute is about payment for renovations and allegedly related flood damage. The applicant (and respondent by counterclaim), Gabriel Stratulat, renovated the home of the respondent (and applicant by counterclaim), Gyna Avul. Mr. Stratulat claims \$1,441 for unpaid renovation work, \$722 for replacing flood-damaged living room floors, \$500 in punitive damages for stress and emotional distress, and a reimbursement of \$200 paid to Ms. Avul's boyfriend, EK, for allegedly unnecessary work assistance. This totals \$2,863.
2. Ms. Avul denies owing anything, and says that Mr. Stratulat caused a flood in her strata lot. She counterclaims for \$5,000, the maximum Civil Resolution Tribunal (CRT) small claim amount. This claim includes \$2,363 for repairing her flood-damaged flooring, \$2,358.65 for drying her building's common property hallways, and a \$278 refund for work that she says was not agreed to or performed improperly. I find that by filing her counterclaim, Ms. Avul abandoned her claim to any amounts over \$5,000. Mr. Stratulat says he owes nothing.
3. The parties are each self-represented in this dispute.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons, which 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. Although the parties' submissions each call into question the credibility of

the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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.

## **ISSUES**

8. The issues in this dispute are as follows:
  - a. Whether Mr. Stratulat completed the originally agreed renovation work to a reasonable quality standard, and does either party owe anything for it.
  - b. Whether either party is responsible for repairing flood-damaged flooring and drying common area floors, and what is the appropriate remedy.
  - c. Whether Mr. Stratulat is entitled to \$500 in punitive damages.
  - d. Whether Ms. Avul should repay Mr. Stratulat for the \$200 he paid to EK for work assistance.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Mr. Stratulat must prove his claims on a balance of probabilities. Ms. Avul must prove her counterclaims to the same

standard. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

10. I note that there were no formal, written contracts for any of the work at issue in this dispute, which the parties agreed to via text message and, they say, verbally.

***Did Mr. Stratulat complete the original renovation work to an adequate quality standard?***

11. I find the best evidence of the parties' original renovation contract is an August 1, 2020 text message containing Mr. Stratulat's \$3,280 estimate for that work (renovation agreement). He provided a breakdown, including replacing the kitchen floors, replacing the bathroom and kitchen countertops and sinks, and installing a tile kitchen backsplash. The parties later agreed Mr. Stratulat would not install the tile backsplash, valued at \$500 in the estimate, and instead would provide a small stone "backsplash" and paint the remaining area. No labour rates or time estimates were discussed, although the estimate shows Mr. Stratulat considered the likely amount of labour and materials required in arriving at the total estimated price. Having weighed the evidence, I find that the renovation agreement work was not provided on a time and materials basis. I find the parties agreed, partly by implication, that the work would be done for a total estimated price of approximately \$3,280.
12. Mr. Stratulat's undated invoice in evidence is for \$3,278 plus tax, which equals \$3,441.90. It is undisputed that Ms. Avul paid Mr. Stratulat \$2,000 toward this work before Mr. Stratulat began it. I find the invoice generally matches the breakdown of work and prices from the August 1, 2020 estimate, without the tile work but adding the stone backsplash and other amounts. Ms. Avul's submitted handwritten notes and submissions about the invoice are difficult to understand. They appear to question what the invoice's line items were, note that some amounts do not exactly match Mr. Stratulat's material receipts, and add unexplained discounts to the line items. The invoice's line items do not perfectly reflect actual time or materials costs, but on balance I find they reasonably match the August 1, 2020 estimate.

13. I find Ms. Avul has failed to show that the invoice, which charged almost exactly the same amount as the August 1, 2020 estimate but with some additions and deletions, was incorrect or unreasonable. This includes the “additional material purchase” items listed in the invoice, such as \$109 for baseboards.
14. Ms. Avul alleges that some of the renovation agreement work was deficient. I find that whether Mr. Stratulat failed to meet professional renovation work standards is a subject outside of ordinary knowledge that requires expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283). I find none of the evidence before me qualifies as expert evidence under the CRT’s rules, although I find expert evidence is not needed to identify obviously and notably bad work. I find the evidence, including Ms. Avul’s submitted photos, fails to show that Mr. Stratulat’s work was obviously or notably substandard. In particular, I cannot determine if “dirty” caulking was soiled before or after Mr. Stratulat performed his work. Photos show mismatched baseboard work before Mr. Stratulat’s renovations, but it is unclear whether newer photos show Mr. Stratulat’s work or previously installed baseboards. Allegedly incomplete baseboards appear to be located where a large appliance normally obscures them from view. The evidence also fails to show that the kitchen sink faucet was left loose by Mr. Stratulat, or that it cost anything to tighten it.
15. Overall, I find Ms. Avul has not met her burden of proving that Mr. Stratulat’s work was incomplete or deficient, or that he charged more than was agreed or was reasonable for the work provided. I dismiss her \$278 claim for deficient or incomplete renovation work valued at \$400 in her submissions, including additional material charges. I find the net amount owing was \$1,441.90, but Mr. Stratulat claims only \$1,441. I allow his claim for \$1,441.

***Is either party responsible for repairing flood damaged flooring and drying common area floors?***

16. It is undisputed that to replace the kitchen countertop, Mr. Stratulat removed the kitchen sink on August 9, 2020. This included detaching the hot and cold water lines to the sink. Mr. Stratulat activated the under-sink water shut-off valves before

detaching the water lines, and says that there were no leaks from those lines. There is no evidence of any reported water leak on August 9, 2020 or for the next few days.

17. Ms. Avul says that while she and EK were away on August 12, 2020, her 9-year-old daughter reported that water began spraying from a kitchen sink hose. The daughter got help from a neighbour, and the building caretaker shut down the main water supply to her unit. It is undisputed that water leaked onto the floors of multiple rooms in Ms. Avul's unit, as well as into a common area hallway and another unit below.
18. Ms. Avul says she discovered that both the hot and cold water under-sink shut-off valves were not completely closed, and that the hot water line "gave up", causing the leak. She says a company she hired told her the hot water line or mechanism was faulty because the incident happened 3 days after Mr. Stratulat shut off the hot water valve. However, I do not accept that alleged hearsay evidence, because there is no company statement about this in evidence. Ms. Avul also says that Mr. Stratulat did not fully close the hot water valve, and "failed to secure" the kitchen sink hot water line, which caused the flood.
19. Ms. Avul also says Mr. Stratulat admitted responsibility for the flood, which Mr. Stratulat denies. He says it makes no sense that there would be no noticeable leaks for three days if a valve was partially open, or that there could suddenly be a major water release without the valve being opened more or some other damage occurring.
20. I find Mr. Stratulat's argument persuasive. I find the evidence does not identify any specific damage or plumbing failure that led to the water release. Ms. Avul does not explain how a large, spontaneous water leak could be caused by a shut-off valve that was left partially open days before, without there being a similar leak during those days. Further, I find that the cause of plumbing damage or failures, and the quality of Mr. Stratulat's work, are subjects outside of ordinary knowledge that require expert evidence to prove, and as noted, none of the evidence before me qualifies as expert evidence under the CRT's rules.

21. Ms. Avul provided photos of the detached kitchen sink hoses from around August 12, 2020, which do not appear to be leaking. She says the photos show that Mr. Stratulat left the hoses in an improper state. I find the photos capture different pieces of plumbing, but I find neither the photos nor any other evidence shows that Mr. Stratulat's work was incorrect or how it could have caused the water release. Ms. Avul also submitted strata council meeting minutes from her building that say the cause of the flood was from "the water not being completely shut off", although they do not say how the strata council arrived at that conclusion, or who failed to completely shut off the water. I find this evidence unhelpful.
22. I find the evidence before me fails to show that Ms. Avul intentionally caused the flood in order to obtain new floors from Mr. Stratulat, as he alleges. I also find the evidence fails to prove that Mr. Stratulat caused the water release. So, I dismiss Ms. Avul's \$2,358.65 claim for drying common area hallways. I also find Mr. Stratulat is not responsible for the claimed flood damage to Ms. Avul's floors and Persian rug that forms her \$2,363 claim (although her submissions valued floor damage at \$3,402.85).
23. However, I find that after the flood, Ms. Avul hired Mr. Stratulat to replace flood-damaged flooring in her home under a new contract. The parties disagree about exactly what was agreed, including allegedly free work by Mr. Stratulat. I find the best evidence of the parties' agreement is in August 18, 2020 text messages. I find that in them, the parties agreed Mr. Stratulat would remove and replace 390 square feet of flooring for a fixed price of \$729 (flood agreement). I find this was a different agreement from the parties' original renovation agreement discussed above. I note that Ms. Avul says Mr. Stratulat agreed to do kitchen wall tiling and to put his labour fees for it toward the common area carpet drying costs. On balance, I find the evidence does not support such an agreement, and it is undisputed that Mr. Stratulat did not perform that work.
24. Has Ms. Avul proven that Mr. Stratulat failed to complete the flood agreement work to an acceptable quality standard, and owes \$2,363 or another amount for inadequate repairs (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at

paragraph 124)? Mr. Stratulat says he finished the work and Ms. Avul was satisfied with it, which she denies and says she hired other contractors to finish it. He provided photos of the floors after removing the flood damaged material, and some of the waste generated. I see no obvious, significant defects in the photos Ms. Avul submitted of the flooring installation work, and there is no expert evidence before me outlining any defects. The photos and other evidence do not show incomplete flooring work. Further, I find the additional flooring work receipts in evidence lack detail, and do not indicate if they were for finishing or repairing Mr. Stratulat's work, or for other work.

25. I find the evidence shows it is more likely than not Mr. Stratulat completed the flood agreement work to an acceptable standard. So, I find Ms. Avul is not entitled to any part of the claimed \$2,363 for deficient flood damage repair work. I dismiss Ms. Avul's claim for \$2,363. Mr. Stratulat does not deny receiving the agreed \$729 flood agreement payment via an August 19, 2020 cheque made out to NGS Services Ltd. I note that NGS Services Ltd. is the name on Mr. Stratulat's renovation agreement invoice to Ms. Avul, but on balance I find he contracted with Ms. Avul in his personal capacity, which he does not deny. I find Mr. Stratulat was paid the correct amount, so I dismiss his claim for an additional \$722 for the flood agreement work.

***Is Mr. Stratulat is entitled to punitive damages, and must Ms. Avul reimburse the \$200 paid for EK's help?***

26. In his Dispute Notice, Mr. Stratulat claimed \$500 for punitive damages and emotional distress. In his submissions, he said he increased this claim to \$1,000 for similar damages plus defamation, and \$300 for additional painting labour. Mr. Stratulat did not amend his Dispute Notice to include these additional amounts. So, I decline to consider them, because I find it would be procedurally unfair to Ms. Avul to do so. Further, CRTA section 119(a) says the CRT cannot decide defamation claims.
27. Punitive damages are awarded for harsh, vindictive, reprehensible, and malicious behaviour worthy of condemnation (see *Vorvis v. ICBC*, [1989] 1 SCR 1085). While Ms. Avul clearly expressed dissatisfaction with Mr. Stratulat's work, I find the evidence



fails to show that she behaved maliciously or reprehensibly, or that her behaviour deserves condemnation. I also find that Mr. Stratulat has failed to prove emotional distress deserving of compensation, through medical documentation, receipts, or other evidence. I dismiss his \$500 claim for punitive and emotional distress damages.

28. Mr. Stratulat also claims the return of \$200 he paid to EK for work assistance, saying that he did not want EK's help or expect to pay for it. I find that issue is only between Mr. Stratulat and EK, who is not a named party to this dispute. I cannot make orders against non-parties. I dismiss the \$200 claim against Ms. Avul.

## **CRT FEES, EXPENSES, AND INTEREST**

29. Under the *Court Order Interest Act*, Mr. Stratulat is entitled to pre-judgment interest on the \$1,441 owing. I interest is calculated from the date of Ms. Avul's August 27, 2020 email acknowledging the \$1,441.90 owed, to the date of this decision. This equals \$3.84.

30. 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 Mr. Stratulat was largely successful in his claims, so I find he is entitled to reimbursement of the \$125 he paid in CRT fees. He claimed no dispute-related expenses. I find Ms. Avul was unsuccessful in her counterclaims, so I find she is not entitled to any reimbursements.

## **ORDERS**

31. Within 30 days of the date of this order, I order Ms. Avul to pay Mr. Stratulat a total of \$1,569.84, broken down as follows:

- a. \$1,441 in debt for unpaid renovation work,
- b. \$3.84 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

32. I dismiss the remaining claims against Ms. Avul. I dismiss all of Ms. Avul's counterclaims. Mr. Stratulat is entitled to post-judgment interest, as applicable.
33. 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.
34. 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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Chad McCarthy, Tribunal Member