



Civil Resolution Tribunal

Date Issued: April 12, 2021

File: SC-2020-008034

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bertram v. Casey*, 2021 BCCRT 376

B E T W E E N :

MAXWELL BERTRAM

APPLICANT

A N D :

DAVID CASEY also known as DAVE CASEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for carpet and flooring work. The respondent, David Casey, also known as Dave Casey, hired the applicant, Maxwell Bertram, to install new vinyl floors and carpet in Mr. Casey's boat. Mr. Bertram says that Mr. Casey

ordered him to stop work before he was finished. He claims Mr. Casey still owes him \$1,500.

2. Mr. Casey says that Mr. Bertram took much longer than agreed to perform the work, and that he did a poor job and caused damage to the boat. Mr. Casey says he has already paid Mr. Bertram \$600, and that he owes nothing more.
3. The parties are each self-represented in this dispute.

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. 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.

ISSUE

8. Does Mr. Casey owe Mr. Bertram anything more for the flooring work, and if so, how much?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Bertram must prove his claims on a balance of probabilities. 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. It is undisputed that the parties verbally agreed Mr. Bertram would install carpet and vinyl flooring in Mr. Casey's boat. While contracts do not need to be written, it can be more difficult to prove what the parties agreed to when a contract is verbal. There is no written record of this agreement before me.
11. A Statement Of Facts document in evidence says the parties agreed that Mr. Bertram estimated the flooring work cost to be \$1,750 in a September 18, 2020 text message. That text message is not in evidence, but I find that neither party objects to this agreed, estimated flooring work cost, so I accept it as true. Similarly, I find that the parties did not agree to an hourly rate for the flooring work, which the parties also confirmed in the undisputed Statement Of Facts.
12. Mr. Bertram started working on September 22, 2020. The parties disagree about when the work should have been completed. Mr. Bertram says he told Mr. Casey he would only be working on the boat in his spare time and would sometimes need to bring his children along, because he also continued to work at his regular, full-time job. Mr. Bertram says he did not agree to a specific completion date. In contrast, Mr. Casey says Mr. Bertram assured him the work would be completed in 1 week, which

is consistent with the written statement of DF, Mr. Casey's fiancée. It is undisputed that Mr. Bertram did not complete the work in 1 week. DF said that after 1.5 weeks, Mr. Bertram asked for more time, which I infer Mr. Casey allowed.

13. I find that in a text message around October 11, 2020, Mr. Bertram committed to finishing the vinyl flooring before midnight that night, and said that he wanted to be done the carpet before 2:00 a.m. Mr. Bertram says that it rained that night, causing water to leak into the boat's cabin and preventing him from finishing the carpeting. Mr. Bertram says that he was almost finished the work at that point, but that he discontinued work on the boat because of Mr. Casey's dissatisfaction with the work progress and his instructions to leave. On balance, I find Mr. Bertram discontinued his work because Mr. Casey asked him to stop.
14. Mr. Casey says that the rain did not prevent Mr. Bertram from finishing the job, and that he failed to complete it on time. On balance, although I find that Mr. Bertram's work took longer than he predicted, I also find there is insufficient evidence before me showing whether there was an agreed deadline that Mr. Bertram unreasonably failed to meet. However, as explained below, I find Mr. Casey had reasonable concerns about boat damage and work deficiencies.
15. Mr. Casey submitted a written statement by MG, another witness. Together, one or more of Mr. Casey, MG, and DF said that in the days leading up to October 11, 2020, Mr. Bertram left the boat in a messy condition, damaged some cookware, put "cement" on trim, carpet, and other surfaces, cracked the main glass door of the boat, and damaged Mr. Casey's vacuum. Based on Mr. Bertram's text messages to Mr. Casey, I find that he admitted to causing the door crack and compromising the door frame, and creating "an outright mess on deck."
16. I note that apart from a single photo showing the door crack and cooking equipment on a boat deck, the evidence contains no photos of the boat or damaged items. There are also no receipts, timesheets, work logs, or other documents in evidence specifically indicating how much work the parties agreed to, how much work Mr. Bertram completed, or the value or repair cost of any damaged items.

17. Mr. Casey says he had to purchase additional carpet to complete Mr. Bertram's work, and that Mr. Bertram's work was of poor quality, in particular the alleged cement applications and uneven flooring cuts. Mr. Bertram says that the uneven cuts would be covered by edge trim, but does not address the alleged cement errors. Again, there are no photos of this work in evidence. On balance, I find Mr. Bertram made cement errors that damaged or dirtied the boat, which he does not directly deny.
18. I find the parties' agreement contained an implied term that Mr. Bertram's work would be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). Mr. Bertram does not explain whether he intended to, or did, repair any of the damage he admits he caused to Mr. Casey's boat. I find Mr. Bertram knew about the damage and cement errors at least several days before he was ordered to stop working. However, I find the evidence fails to show that Mr. Bertram made any repairs, or that he remained available for repairs or to finish the project after Mr. Casey told him to stop work. Rather, I find text messages show that when Mr. Bertram was told to stop working, he immediately demanded payment for the alleged value of the work he had completed. In the circumstances, I find that the boat damage and cement errors were breaches of the implied requirement of reasonable work quality. I find Mr. Casey was justified in ending the contract, and that he only owed Mr. Bertram for the value of the work Mr. Bertram actually performed.
19. The parties agree that Mr. Casey paid Mr. Bertram \$600 in September 2020. As noted, Mr. Bertram bears the burden of proving that he performed more than \$600 worth of work. Other than Mr. Bertram's own statement, which Mr. Casey and DF contradict, I find nothing else before me shows how much of the agreed work Mr. Bertram completed. Although Mr. Bertram says he nearly finished the agreed work, I find his explanations of the completed work are too vague to be useful. I find the evidence fails to show the percent complete, number of hours worked or estimated, price of completion, or any other measure of the work performed.
20. Further, Mr. Bertram told Mr. Casey in an October 17, 2020 text message that it was \$900 "for what I've done". It is not clear whether Mr. Bertram sought \$900 total for his

work, or an additional \$900 beyond the \$600 already paid. In either event, I find that on that date, Mr. Bertram valued his completed work at less than the additional \$1,500 claimed in this CRT dispute. Mr. Bertram also fails to explain why he claims this additional \$1,500, which would result in payments totalling \$2,100, when his original estimate was \$1,750 for the whole project.

21. On balance, I find Mr. Bertram has not met his burden of proving the amount of work the parties agreed to, how much of that work he completed, or that the completed work exceeded a \$600 value. In the circumstances, I find Mr. Bertram has failed to prove that he is owed any more than the \$600 Mr. Casey has already paid.
22. I dismiss Mr. Bertram's claim for \$1,500 for flooring work.

CRT FEES AND EXPENSES

23. 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. Mr. Casey was successful here, but paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

24. I dismiss Mr. Bertram's claim, and this dispute.

Chad McCarthy, Tribunal Member