



# Civil Resolution Tribunal

Date Issued: April 20, 2021

File: SC-2020-009376

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Flores v. Vidovic*, 2021 BCCRT 406

BETWEEN:

EDUARDO ALBERTO MITJAVILA FLORES

**APPLICANT**

AND:

GORDANA VIDOVIC

**RESPONDENT**

AND:

EDUARDO ALBERTO MITJAVILA FLORES

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## **INTRODUCTION**

1. This dispute is about home renovations. The applicant, Eduardo Alberto Mitjavila Flores, says the respondent, Gordana Vidovic, did not pay him for the work he did in Mrs. Vidovic's house. Mr. Flores seeks \$2,532.83.
2. Mrs. Vidovic says Mr. Flores's work was substandard and incomplete. She says she had to hire other tradespeople to repair Mr. Flores's work and complete the renovations. She seeks \$3,870 for those additional expenses.
3. The parties are each self-represented.

## **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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Whether Mr. Flores is entitled to payment for the work he did and, if so, the amount, and
  - b. Whether the quality of Mr. Flores's work was below acceptable standards.

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Mr. Flores must prove his claim on a balance of probabilities. Mrs. Vidovic must prove her counterclaim to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
10. Mr. Flores lives next door to Mrs. Vidovic in a duplex. The parties agree that Mrs. Vidovic hired Mr. Flores to renovate her 2 bathrooms and kitchen. The parties discussed the cost of labour and materials and Mr. Flores prepared a handwritten estimate, which I discuss in further detail below.
11. The parties agree that in addition to the kitchen and bathrooms renovations, Mrs. Vidovic paid Mr. Flores \$1,200 cash to remove a mantle and install and prime drywall to cover the living room fireplace. This project was in addition to the kitchen and bathrooms renovations. Mrs. Vidovic has raised issues about the quality of the work done which are addressed in further detail below.
12. The parties agree Mr. Flores started working on the kitchen and bathrooms in August 2020. With the help of workers and tradespeople, Mr. Flores gutted the bathrooms and the kitchen, repaired the kitchen wall and ceiling drywall, installed a backsplash,

installed subfloors in both bathrooms, and installed a portion of the drywall in the main bathroom. Mrs. Vidovic separately purchased and installed new kitchen cabinets and a countertop. In addition, Mrs. Vidovic paid TL, an apprentice plumber, \$450 cash for repairing a pipe.

13. Mr. Flores says the relationship between the parties began to sour after Mrs. Vidovic became argumentative with one of his tradespeople, KR, on September 6, 2020. Mrs. Vidovic denies there was any argument.
14. In addition to the alleged incident with KR, Mr. Flores says Mrs. Vidovic and her husband yelled at him on September 16, 2020 when he was preparing to leave at the end of the day. Mr. Flores says he felt unsafe and uncomfortable working in Mrs. Vidovic's home after that and so did not finish the renovations. Although the parties disagree on whether Mr. Flores stopped on September 16 or September 17, I find the difference in the date is irrelevant since nothing turns on it.
15. Aside from the \$1,200 for the fireplace work, the parties did not state whether Mr. Flores received any payment from Mrs. Vidovic. Mr. Flores sent Mrs. Vidovic a December 3, 2020 invoice for \$2,532.83 for both labour and materials for the work described above, which is what he claims in this dispute.
16. Mrs. Vidovic denies she or her husband acted inappropriately. Mrs. Vidovic says the bathrooms were non-functional when Mr. Flores quit. She says she had to urgently hire another contractor to complete the work and this increased the cost. Mrs. Vidovic also says the quality of Mr. Flores's work was poor and additional work had to be done to correct it. Mrs. Vidovic counterclaims for \$3,870 based on third party invoices and estimates.
17. The parties did not have a written agreement but submitted 2 estimates, one handwritten and the other typed. They agree Mr. Flores's handwritten estimate listed the stages for the kitchen and bathrooms renovations. The estimated costs for both were \$6,450 for labour and \$12,950 for materials. Mr. Flores denies this was a quote and says it was intended to provide a general idea about the costs involved. Mr.

Flores also says he heavily discounted his labour costs as a courtesy since Mrs. Vidovic was his neighbour and they had known each other for several years. Mr. Flores did not state how much the labour costs would have been without the discount.

18. In addition, Mr. Flores submitted a 2 page typed estimate dated August 8, 2020 that described each step of the renovations, the cost of each step, and also a discounted cost for some of the steps. It did not include the materials' costs. According to the typed estimate, the total discounted labour cost for the renovations was \$4,935. Mr. Flores did not explain the purpose of the typed estimate or whether he gave it to Mrs. Vidovic. Mrs. Vidovic denies Mr. Flores gave her a copy of the typed estimate. Since there is no evidence that Mr. Flores gave the typed estimate to Mrs. Vidovic, or that Mrs. Vidovic agreed to pay the amount of the typed estimate, I give it no weight.
19. I find the parties intended the handwritten estimate to capture most of the labour and material costs. Since it also included the labour and material costs for new cabinets, I find it was not limited to just the work Mr. Flores was supposed to do. I find the handwritten estimate is best characterized as a budget. I find the work was not defined with enough detail to be considered a fixed-price contract: *Savings v. Mark Swallow Thompson Allard & Co.*, 1996 (CanLII) 1152 (BC SC).
20. Based on the evidence before me, I find Mr. Flores agreed to renovate Mrs. Vidovic's kitchen and bathrooms and Mrs. Vidovic would pay Mr. Flores for labour and reimburse for materials. However, I also find that the parties did not agree Mr. Flores was responsible for the entire renovation since other tradespeople were brought in and paid separately. I also find the parties did not agree on an hourly rate or on the amount Mr. Flores would be paid for each step that was completed.
21. Both parties provided witness statements about whether Mrs. Vidovic created a hostile environment. I find Mr. Flores's reason for not completing the renovations is irrelevant and so I do not need to address this evidence. I say this because, as mentioned above, Mr. Flores was not responsible for completing the entire renovation himself.

### ***How much is Mr. Flores entitled to for the work he did?***

22. The court in *Johnson v. North Shore Yacht Works Corp.*, 2014 BCSC 2057 stated in paragraph 100 that when there is no *consensus ad idem* (or meeting of the minds) as to an agreement's terms, a party is entitled to an award on a *quantum meruit* basis, a Latin phrase that means value for the work done.
23. I have reviewed the invoice and find the work listed is consistent with the parties' submissions, witness statements, and the photographic evidence submitted by the parties. Although she disputes the quality of the work Mr. Flores did, Mrs. Vidovic does not dispute the amount charged for the work or materials listed in Mr. Flores's December 3, 2020 invoice. So, I award Mr. Flores \$2,532.83 subject to Mrs. Vidovic's claim that Mr. Flores's work was deficient. I will now address Mrs. Vidovic's counterclaim.

### ***Mrs. Vidovic's counterclaim***

24. Mrs. Vidovic says Mr. Flores misrepresented his experience. She says when she initially interviewed Mr. Flores, he presented himself as an honest, knowledgeable, and experienced contractor. However, when a plumbing issue arose during the renovations, Mrs. Vidovic says Mr. Flores stated that he was a painter by trade and that a plumber would have to be hired.
25. Mr. Flores says he was upfront about his skills with Mrs. Vidovic and that she knew he had 7 years of experience in the building industry which included demolition, framing, drywalling, painting, and general labour. Also, he says Mrs. Vidovic knew he had limited experience since he was only 23 years old.
26. I find the parties' photographs of the renovations are consistent with Mr. Flores's description of his contracting experience. I find there is insufficient evidence that Mr. Flores misrepresented his qualifications or experience to undertake the renovations.
27. Mrs. Vidovic also says she did not have functioning bathrooms after Mr. Flores left abruptly. She says she had to hire tradespeople at a higher rate than Mr. Flores to

complete the renovations. She also says Mr. Flores's work was substandard and had to be repaired.

28. Mr. Flores says Mrs. Vidovic had a full bathroom in her unrented basement suite and so things were not as dire as she says they were. He also says Mrs. Vidovic did not complain about his work until after he started these proceedings.
29. I will now address the alleged deficiencies in Mr. Flores's work. In a "defective work" case such as this, the burden of proof is on the party asserting the defect: *Lund v. Appleford*, 2017 BCPC 91. This means that Mrs. Vidovic must prove that Mr. Flores's work was deficient.
30. Mrs. Vidovic says the kitchen ceiling is uneven and the ceiling-height cabinets were not flush with the ceiling. Mrs. Vidovic says the cabinet installers tried to fill the gaps with caulking, but holes keep appearing. She submitted close up photographs showing visible gaps between the ceiling and the side of a cabinet. One of her photographs also shows a recessed area that has a flat board between the top of the cabinet and the ceiling with gaps filled in with caulking.
31. Mr. Flores denies Mrs. Vidovic's photographs are of the work he did and submitted his own photographs of Mrs. Vidovic's entire kitchen. While I was able to locate the side of the cabinet in Mr. Flores's photographs, I could not locate the recessed area. However, Mr. Flores acknowledges that the ceiling was only 75% finished when he stopped work and needed to be sanded. He says Mrs. Vidovic agreed to wait until the bathroom ceilings were installed so all of them could be sanded together to minimize the mess.
32. Based on the photographs, I find the ceiling was uneven. Also, Mr. Flores's invoice shows he charged \$500 to demolish the kitchen and repair the ceiling and wall drywall. Mr. Flores did not state that he partially finished the kitchen ceiling. An invoice from AV shows Mrs. Vidovic was charged \$300 to re-mud and sand the kitchen ceiling above the stove and sink. I find Mrs. Vidovic is entitled to \$300.

33. Mrs. Vidovic also submitted an electrician's invoice that stated they took extra time to install the vent hood because the ceiling was uneven. I find the electrician's comment is too vague since the electrician did not state how much extra they allegedly charged. So I give Mrs. Vidovic's allegation about the vent hood no weight.
34. Mrs. Vidovic says Mr. Flores did not properly install the drywall used to cover the fireplace. She submitted several photographs that show large air bubbles on the living room wall. Mrs. Vidovic also says that the chimney was not closed off properly and rodent infestation "is a likely possibility".
35. Mr. Flores denies Mrs. Vidovic's allegations. He says that he applied primer to the drywall after it was installed and it was ready to paint. He also says there were no visible air bubbles after he finished working in the living room and while he was renovating the kitchen. He says Mrs. Vidovic did not raise any issues until after he filed this dispute. Mr. Flores also says that he had informed Mrs. Vidovic he would repair the drywall if anything showed through the paint.
36. I find Mr. Flores was responsible for installing drywall that was paint ready. I find the large bubbles are unsightly and so Mr. Flores did a poor job. However, I find there is no evidence that Mr. Flores did not close off the chimney or that there is a legitimate concern of rodent infestation.
37. Mrs. Vidovic submitted a December 13, 2020 estimate from AV for \$500 - \$800 to "re-do the fireplace (fix the existing)". I find this description is too vague and does not state the cost of repairing only the drywall. On a judgement basis, I award Mrs. Vidovic \$100.
38. Mrs. Vidovic also says Mr. Flores did not properly install the dishwasher and submitted a photograph showing it was not attached to the surrounding cabinetry or countertop. Mr. Flores says the cabinet installer was responsible for installing the dishwasher. Based on the parties' submissions, I find TL connected the dishwasher's plumbing after the new cabinets were installed. However, I find Mrs. Vidovic has not



proved that Mr. Flores or his tradespeople were responsible for attaching the dishwasher to the cabinetry.

39. Mrs. Vidovic says Mr. Flores did not properly install the subfloors in the bathrooms and that AV charged \$1,250 to re-do and level the subflooring in both bathrooms. Mrs. Vidovic did not explain why the subfloors had to be redone and so I find Mrs. Vidovic has not proved Mr. Flores improperly installed them. I dismiss this aspect of her counterclaim.
40. Mrs. Vidovic says the baseboards Mr. Flores installed in the living room are not even and there is a significant gap between the floor and the baseboard. Mr. Flores says Mrs. Vidovic's floor was uneven after it was replaced the previous year. He says he pointed this out to Mrs. Vidovic at the time he installed the baseboards. Mrs. Vidovic submitted photographs showing small gaps between the floor and the baseboard. I find the gaps are minor and not significant. Also, I cannot determine if the baseboards are uneven. I find Mrs. Vidovic has not proved her allegation.
41. Mrs. Vidovic says that Mr. Flores left numerous holes in the drywall in both bathrooms that had to be repaired. According to their invoice, AV charged \$1,020 for "accsesive" (reproduced as written) bathroom drywall repairs done after Mr. Flores's demolition, installing new drywall in the main bathroom, and mudding and sanding. I find the drywall's condition was consistent with demolishing the bathrooms. I find there is no evidence that the drywall was excessively damaged.

## **SET-OFF, INTEREST, CRT FEES, AND DISPUTE\_RELATED EXPENSES**

42. After setting off the \$2,532.83 awarded to Mr. Flores against the \$400 awarded to Mrs. Vidovic, I find Mrs. Vidovic must pay Mr. Flores \$2,132.83.
43. The *Court Order Interest Act* applies to the CRT. Mr. Flores is entitled to pre-judgment interest on the \$2,132.83 from December 3, 2020, the date of Mr. Flores's invoice, to the date of this decision. This equals \$3.56.

44. 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. Since the parties were each partially successful, I find each must bear their own CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

45. Within 14 days of the date of this order, I order Mrs. Vidovic to pay Mr. Flores a total of \$2,136.39, broken down as follows:

a. \$2,132.83 in debt, and

b. \$3.56 in pre-judgment interest under the *Court Order Interest Act*.

46. Mr. Flores is entitled to post-judgment interest, as applicable.

47. The parties' remaining claims are dismissed.

48. 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.

49. 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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Rama Sood, Tribunal Member