



# Civil Resolution Tribunal

Date Issued: April 27, 2021

File: SC-2020-008546

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sarpalius dba Cozy Homes Fireplaces v. Ortega*, 2021 BCCRT 437

**B E T W E E N :**

JIM SARPALIUS (Doing Business As COZY HOMES FIREPLACES)

**APPLICANT**

**A N D :**

LESA IBARRA ORTEGA

**RESPONDENT**

**A N D :**

JIM SARPALIUS (Doing Business As COZY HOMES FIREPLACES)

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about the installation of a gas fireplace and related works. The respondent (and applicant by counterclaim), Lesa Ibarra Ortega, hired the applicant (and respondent by counterclaim), Jim Sarpalius (doing business as Cozy Homes Fireplaces), to install a new gas fireplace, vents, and gas lines for other appliances. Mr. Sarpalius claims Mrs. Ortega still owes him \$4,672.82 under their agreement.
2. Mrs. Ortega says that Mr. Sarpalius' work was faulty and caused an outdoor gas leak among other deficiencies, so he does not deserve to be paid the outstanding balance. Mrs. Ortega also counterclaims for \$5,000 for mental stress and anxiety caused by the gas leak. Mr. Sarpalius says he adequately performed the installation, and that Mrs. Ortega denied him an opportunity to repair any deficiencies and diagnose the leak's cause. He says he owes nothing for mental stress or anxiety.
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. 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.
8. Mr. Sarpalius submitted email messages between the parties marked “without prejudice.” I find those emails were for the purpose of settlement negotiations only, so I place no weight on them. Regardless, I find nothing turns on their content.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Mr. Sarpalius complete the work without any significant deficiencies, so that Mrs. Ortega owes an additional \$4,672.82?
  - b. Is Mr. Sarpalius responsible for Mrs. Ortega’s claimed mental stress and anxiety damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Sarpalius must prove his claims on a balance of probabilities, and Mrs. Ortega must prove her counterclaims to the same standard. I have read and weighed all the submitted evidence, but I refer only to the relevant evidence as needed to provide context for my decision.

### ***Did Mr. Sarpalius complete the work without significant deficiencies?***

11. Mrs. Ortega hired Mr. Sarpalius to install a gas fireplace and related venting and gas lines, plus gas lines for a future gas furnace and water heater. Mr. Sarpalius’

undisputed September 10, 2020 invoice (titled “Quote”) showed that Mrs. Ortega had paid a \$3,876.32 “deposit”, and that she owed a further \$4,672.82 for the agreed work. Mrs. Ortega does not deny that she agreed to pay Mr. Sarpalius an additional \$4,672.82 for completing the agreed work to a reasonable quality standard.

12. The parties agree that Mr. Sarpalius completed the job on September 9, 2020, although some alleged deficiencies remained, which I consider below. Mrs. Ortega says she should not have to pay the outstanding balance because of these deficiencies. However, there is no suggestion the cost of remedying the alleged deficiencies was at least as much as the \$4,672.82 owing. So, I find that she claims Mr. Sarpalius’ work was so deficient that she was entitled to terminate their contract without paying anything further. Mrs. Ortega bears the burden of proving any deficient work and related damages.
13. In *Macdonald v. Sorenson*, 2021 BCPC 36 at paragraph 139, the BC Provincial Court noted that liability to pay a contractor an agreed price for a substantially completed project cannot normally be avoided, although a homeowner may counterclaim or set off the cost of repairing faulty work. However, a homeowner may terminate a contract and be relieved of further payment obligations where there is a “fundamental” breach so serious that it would be unreasonable to expect the homeowner to continue with the contract, or where there are protracted or repeated breaches (see *Macdonald* at paragraphs 139 and 157(11)). I find Mr. Sarpalius’ work was substantially completed by September 9, 2020. I find the evidence shows no protracted or repeated breaches here, but Mrs. Ortega alleges a serious, fundamental breach, namely a gas leak.
14. Mrs. Ortega says that on September 11, 2020, she noticed a gas smell outside, and called Fortis, the gas company. She says a Fortis employee repaired a gas leak near the outdoor gas meter for free. A photo in evidence showed large soap bubbles on an outdoor pipe elbow joint. Mrs. Ortega calls this a “significant” and “major” gas leak, and says that the Fortis employee told her it was “the worst outside gas leak he had seen.” However, there is no direct Fortis evidence before me, and Mrs. Ortega does

not claim to have any expertise in gas leaks. So, I place little weight on this Fortis hearsay evidence and Mrs. Ortega's opinions about the magnitude of the gas leak.

15. A September 14, 2020 Technical Safety BC (TSBC) Gas Certificate of Inspection (certificate) said that gas work had been undertaken without a permit, but quoted a new permit number for the work, which I find was issued that same day. The certificate identified some deficiencies in the gas work, including "Significant gas leak was reported by home owner and detected and repaired by Fortis gas on house piping." I find that the gas leak was repaired by the time of the TSBC inspection. So, I find that the certificate's gas leak comment was likely based on information from Mrs. Ortega, and not on TSBC staff observations. No other gas leak occurred.
16. Mr. Sarpalius says he pressure-tested the gas system before finishing his work and discovered no leaks. He says Mrs. Ortega did not permit him to remedy deficiencies or diagnose the leak's cause. He says that leaks may be caused by failures of fittings, threads, tape, or sealant, or inadequate tightening, but not being able to inspect the leak location, he cannot say why a leak occurred 2 days after he was last on site.
17. Mrs. Ortega does not explain whether she or anyone else noticed any gas smells between September 9, 2020 and the evening of September 11, 2020. I find the evidence fails to prove the leak's cause or the nature of the repair. Further, I find that the causes, size, and risks of the gas leak, and the standard of care for gas fitters' work, are subjects outside of ordinary knowledge and require expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283). There is no evidence before me from a properly qualified expert. Contrary to Mrs. Ortega's assertion, I find the evidence fails to show there was any explosion risk from the outdoor gas leak, or that the leak resulted from negligent work by Mr. Sarpalius.
18. So, I find the gas leak was not a breach of the parties' contract by Mr. Sarpalius, let alone one that was so serious and fundamental that it would be unreasonable to expect Mrs. Ortega to continue with the contract. Further, I find that Mr. Sarpalius had completed the agreed work on the project before the gas leak, albeit with 2 minor deficiencies discussed below, so there was no additional work to "continue" under the

contract. Following *Macdonald*, I find Mrs. Ortega is not entitled to terminate the contract and avoid liability for the \$4,672.82 that remains unpaid. However, I must now consider whether the cost of remedying alleged deficiencies in Mr. Sarpalius' work should be deducted from the amount Mrs. Ortega owes.

19. Even if I had found that the gas leak resulted from Mr. Sarpalius' negligence, I find the gas leak was repaired for free, and Mrs. Ortega sustained no losses from it. Mrs. Ortega also says she did not trust Mr. Sarpalius after the gas leak, so she did not allow him to repair any deficiencies and hired Halfmoon Heating & Contracting (Halfmoon) instead. According to *Macdonald* at paragraph 157, a homeowner may be justified in refusing to allow a contractor to remedy defects where they have lost confidence in the contractor, such as after seeing many examples of poor work. (See also *McCrea v. Fournier*, 2017 BCPC 30 at paragraph 98.)
20. Were there many examples of poor work? I find there is insufficient evidence before me, including no expert evidence, supporting Mrs. Ortega's allegation that Mr. Sarpalius incorrectly detached gas lines from propane tanks. I also find the evidence fails to show that Mr. Sarpalius' placement of vents on an outside wall was inappropriate or defective. I find that Halfmoon's relocation of those vents to the roof was a discretionary improvement that went beyond what the parties agreed. Further, I find that although the TSBC certificate recommended a different configuration for a furnace gas connector, TSBC accepted that work, and I find it was not deficient.
21. Mrs. Ortega says that Mr. Sarpalius made uneven cuts to her fireplace mantle when installing the fireplace, as shown in a close-up photo showing a small gap between a fireplace insert and some trim with cracked paint. Mrs. Ortega says Mr. Sarpalius failed to advise her that she would be responsible for any cosmetic repairs in that area, which he denies. I find the parties' agreement is silent about wall finishing, and that the evidence fails to show whether finishing or hiding such wall cuts would customarily be within the scope of Mr. Sarpalius' work. Further, it is unclear whether any cosmetic mantle defects were caused by Halfmoon's later removal and

reinstallation of the fireplace. On balance, I find Mrs. Ortega has not met her burden of showing that Mr. Sarpalius was responsible for fireplace mantle finishing work.

22. The TSBC certificate said that a fireplace regulator had not been oriented correctly, which Mr. Sarpalius says would have been a “10-minute fix”. I find this was a deficiency in the contracted work. Mrs. Ortega also says that Mr. Sarpalius did not fill the gap between a hole in the side of her house and a gas line running into the hole. Mr. Sarpalius does not directly deny that someone else later filled that gap. I find this was also a deficiency under the parties’ agreement.
23. I find there were only 2 proven deficiencies, which were not “many” examples of poor work that would reasonably cause Mrs. Ortega to lose confidence in Mr. Sarpalius’ abilities. Given my finding that Mr. Sarpalius’ negligence did not cause the gas leak, I also find that the gas leak did not reasonably result in a loss of confidence. So, in the circumstances, I find Mr. Sarpalius should have been given an opportunity to repair the 2 deficiencies. As he was denied that opportunity, I find Mrs. Ortega cannot set off the value of those repairs against the amount she owes.
24. Even if I found that Mrs. Ortega rightly denied Mr. Sarpalius the chance to repair deficiencies, I would have found that she did not meet her burden of proving the value of those repairs. I find the only evidence of the repairs’ value is a \$1,615.54 invoice from Halfmoon for work performed from September 2020 to November 2020. Although Halfmoon undisputedly did other gas fitting work for Mrs. Ortega, I find the evidence fails to show that it charged anything to repair the 2 proven deficiencies.
25. For the above reasons, I find Mrs. Ortega is not entitled to deduct any deficiency repair costs from the amount she owes under the parties’ agreement. I find she owes Mr. Sarpalius the claimed \$4,672.82.

***Is Mr. Sarpalius responsible for mental stress and anxiety damages?***

26. Mrs. Ortega claims \$5,000 for “stress and anxiety” she says resulted from the gas leak, and that she now gets nervous turning on the gas furnace and fireplace. She

says she could have been killed and her house and neighbours blown to pieces, although as noted, I find the evidence before me does not support that allegation.

27. Given my finding that the evidence fails to prove Mr. Sarpalius was responsible for the gas leak, and that Mrs. Ortega's claim arises from alleged risks presented by the gas leak, I dismiss the stress and anxiety claim as unproven. Even if I had found that Mr. Sarpalius was responsible for the gas leak, Mrs. Ortega would have to prove that her alleged stress and anxiety were not minor and transient, and that she suffered a serious and prolonged mental disturbance that rose above the level of ordinary annoyances, anxieties, and fears (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 and *Saadati v. Moorhead*, 2017 SCC 28). I find the evidence fails to show that Mrs. Ortega's alleged anxiety and stress were more than minor and transient.
28. I dismiss Mrs. Ortega's claim for \$5,000 in damages for anxiety and stress.

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

29. Under the *Court Order Interest Act*, Mr. Sarpalius is entitled to pre-judgment interest on the \$4,672.82 owing. I find pre-judgment interest is calculated from the September 10, 2020 invoice date until the date of this decision. This equals \$13.25.
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. Mr. Sarpalius was successful in his claim, so I order reimbursement of the \$175 he paid in CRT fees. Mr. Sarpalius claimed no CRT dispute-related expenses. Mrs. Ortega was unsuccessful in her counterclaims, for which Mr. Sarpalius paid no fees or expenses, so I order no further reimbursements.

## **ORDERS**

31. Within 30 days of the date of this order, I order Mrs. Ortega to pay Mr. Sarpalius a total of \$4,861.07, broken down as follows:



- a. \$4,672.82 in debt for unpaid gas fitting work,
  - b. \$13.25 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
32. Mr. Sarpalius is entitled to post-judgment interest, as applicable. I dismiss Mrs. Ortega's counterclaim.
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