



Civil Resolution Tribunal

Date Issued: June 3, 2021

File: SC-2020-003455

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Favre v. Inner-City Flooring Sales & Installation Inc.*, 2021 BCCRT 607

B E T W E E N :

TRISHA FAVRE and SEBASTIEN FAVRE

APPLICANTS

A N D :

INNER-CITY FLOORING SALES & INSTALLATION INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about an allegedly defective flooring installation. The respondent, Inner-City Flooring Sales & Installation Inc. (ICF), installed new floors in the home of the applicants, Trisha Favre and Sebastien Favre. The Favres say the installation was deficient and that the installers damaged the new floors. They claim \$2,500.00

for flooring repairs. ICF denies that the installation was faulty or that ICF damaged the floors, and says it owes nothing.

2. Mrs. Favre represents the applicants in this dispute. ICF is represented by an authorized employee or principal.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. Whether ICF is responsible for floor damage and allegedly defective installation work, and if so, does it owe the Favres \$2,500 or another amount?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, as the applicants the Favres must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.
9. The Favres hired ICF to install vinyl plank floors. Much of the work was completed by late 2018, when the Favres paid for it. The Favres say some aspects of the work were not completed until April 2019, while ICF says it fixed some shortcomings in its work April 2019. I find the flooring work was substantially completed by April 2019. In June 2019, the Favres alerted ICF that some problems with the flooring had arisen, including scratches, cracks, and visible nail heads, although the Favres said not to do anything about one alleged screw in a plank near an entertainment unit. ICF contacted the vinyl plank supplier, Taiga Building Products (Taiga), about the scratches. Taiga said their product warranty did not apply because there was no manufacturing defect, but they provided some replacement planks as a goodwill gesture. None of this is disputed.
10. The Favres submitted photos showing a cracked transition board, a lifted flooring plank corner, some visible nail heads, and scratches on flooring, among others. They say that these are deficiencies resulting from improper installation by ICF, or in the case of the scratches, because ICF workers dragged appliances over the floor. The Favres do not claim that the materials used were deficient, only the installation. They say that 60% of the ICF-installed floors need replacing because of these defects, although I find the submitted photos and other evidence fail to show what percentage of the floor was affected by the claimed problems.

11. The parties agree that ICF provided a 1-year warranty on its installation work, as mentioned in ICF's December 3, 2018 invoice to Mrs. Favre. The parties do not dispute the warranty terms submitted by ICF, which appear to be from a screen shot of its website. The warranty said there was a 1-year warranty on all approved material, and I find that the ICF installation used approved material. The warranty said it covered "any installation deficiencies caused by the installer" but did not cover scratches, impact damage caused by dropping excessively heavy items, or damage due to improper cleaning and maintenance. Failing to address warranty issues, not being available during work hours, or not agreeing to a repair date could void the warranty. The warranty did not directly specify a remedy for ICF installation deficiencies.
12. In the circumstances, I find the contract contained an implied term that ICF's installation work would be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124). So, I find that if ICF's installation work resulted in flooring problems that ICF failed to repair despite having an opportunity to do so, ICF is obligated to compensate the Favres for them. However, the Favres must prove that deficient ICF work contributed to the flooring issues.
13. ICF denies that its installation was deficient, or that its workers scratched the floors. It says that most of the issues identified by the Favres likely arose from mistreatment, such as dragging or dropping heavy objects on the floating plank floor, or because of deficient work by a third party such as a railing incorrectly installed on the floors. ICF says there were no issues when it completed the installation, and that the necessary nails it used in critical areas may become visible if the filler covering them wears off, which is a homeowner maintenance issue. ICF says its work did not contribute to the flooring problems and so those problems are not covered under its warranty.
14. First, the flooring scratches. The Favres say the scratches were caused by ICF's workers dragging appliances along the floor, but I find the evidence does not show that anyone witnessed the floor scratches occur. I find the actual cause of the

scratches is unclear on the evidence before me. On balance, I find the Favres have not met their burden of proving that ICF caused the scratches. So, I find ICF is not responsible for the cost of their repair.

15. Turning to the other flooring problems, the Favres say that improper installation techniques, including poor floor levelling, subfloor softness, and others, caused the cracks, unevenness, and visible nail heads in the floor, which ICF denies. I find that after April 2019 the evidence fails to show that the floors or subfloors were not level or that there were areas of improper subfloor softness. Further, it is not clear to what degree, if any, ICF was responsible for floor levelling or subfloor repairs under the parties' agreement. I find that applicable floor levelness and subfloor softness standards, the causes of the broken and raised boards and visible nail heads, the expected durability of a flooring installation, and the effects of dropping or dragging heavy objects on a floating vinyl plank floor, are subjects outside of ordinary knowledge and experience and require expert evidence to prove (see *Bergen v. Guliker*, 2015 BCA 283).
16. The Favres rely on a March 15, 2020 quotation from another flooring installer, Absolutely Floored (AF), for the cost of installing new vinyl plank flooring throughout the Favre's main floor. The quotation said that the presently installed flooring did not meet "NWFA" levelling requirements, and "in my opinion would fail an inspection". It also noted that a railing was inappropriately screwed into the floor and subfloor, which I find was the third-party deficiency alleged by ICF. However, the author of the quotation is not identified, and nothing in the evidence before me reveals the author's qualifications, experience, or training in flooring installation. I find the quotation does not qualify as expert evidence under the CRT's rules. I also find that the article excerpts ICF submitted about the potential causes of flooring problems do not qualify as expert evidence. I find there is no expert evidence before me in this dispute. So, I find the evidence fails to prove ICF's installation work was a contributing cause of the broken and raised boards and visible nail heads.

17. The Favres say ICF acknowledged that the flooring issues were its responsibility and agreed to repair them at ICF's cost. Text messages in evidence show that the Favres complained about flooring deficiencies in June 2019, which ICF then evaluated in person. On June 25, 2019, ICF texted Mrs. Favre that it apologized about the flooring, and said it would "get it all fixed up". ICF said that it would remove hallway flooring and reinstall it. ICF also said it would remove other flooring to check for levelling and reinstall it, and would cover all levelling, material, and labour costs. The Favres wanted to wait until September 2019 before beginning any further work, and ICF agreed.
18. I find that ICF's June 25, 2019 message supports that, at that time, it thought some of the floor problems were due to its installation work, and it offered to make repairs on that basis. However, when ICF followed up with the Favres in September 2019, it said that it would send them an estimate for flooring materials and a breakdown of the costs associated with it. The parties had difficulties communicating and scheduling work over the next several months. ICF now says it only performs free repairs on deficiencies due to its own installation work. On balance, I find that during the work delay or after, ICF changed its mind and said that it did not cause the deficiencies.
19. I have weighed the evidence, including ICF's June 2019 text messages showing it intended to address floor problems. On balance, I find the evidence fails to show that any of the flooring problems, including cracks, raised boards, and visible nail heads, were likely caused by deficient ICF installation work. I find the evidence fails to prove that any of ICF's installation work was incorrect or of unreasonably poor quality, and whether that work contributed to the floor problems at issue here.
20. Further, in the circumstances, I find that ICF was not required to perform repairs simply because it said earlier that it would. I find that the parties did not agree to a new contract about the repairs. Rather, ICF indicated it would repair allegedly faulty installation work under their original flooring agreement and its warranty. ICF now says there was no faulty installation work, and while it could assist with repairs, they

would not be free. I find ICF's earlier statement about performing warranty repairs at no cost is outweighed by the lack of evidence showing ICF's work was deficient or contributed to any of the claimed floor problems.

21. Overall, I find that the Favres have not met their burden of proving that ICF's work was deficient or was a contributing cause of the flooring problems. So, I find ICF is not responsible for paying for floor repairs. I note that even if ICF had been responsible for the flooring deficiencies, it is not clear how the Favres arrived at the \$2,500 claim amount. The only objective estimate of repairs is the AF quotation of \$11,584.79 for replacing all of the main floor vinyl plank, and I find the evidence fails to prove what portion of this cost is for the claimed flooring problems. I dismiss the Favres' claim.

CRT FEES AND EXPENSES

22. 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. The Favres were unsuccessful here, so are not entitled to any reimbursements. ICF was successful and claims the \$50 CRT fee it paid to cancel an earlier default decision in this dispute. Given that the cancellation was granted, and that ICF only had to pay it because of the Favres' unsuccessful claims, I find that ICF is entitled to reimbursement of that \$50 fee. ICF claimed no dispute-related expenses.

ORDERS

23. I dismiss the Favres' claims.
24. Within 30 days of the date of this order, I order the Favres to pay ICF a total of \$50 in CRT fees.
25. ICF is entitled to post-judgment interest, as applicable.

26. 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.
27. 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.

Chad McCarthy, Tribunal Member