



Civil Resolution Tribunal

Date Issued: June 4, 2021

File: SC-2021-000012

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Correia v. Ashif*, 2021 BCCRT 613

B E T W E E N :

SAMSON CORREIA and MAUREEN CORREIA

APPLICANTS

A N D :

ALI ASHIF and 0968136 B.C. LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about vinyl flooring installation.
2. The applicants, Samson Correia and Maureen Correia, hired the respondent, 0968136 B.C. Ltd. (096), to perform flooring and other renovation work in their home. The respondent, Ali Ashif, is 096's director and installed the vinyl flooring.

3. The Correias allege the respondents failed to adequately prepare and level the concrete sub-floor in the basement and say the vinyl flooring is not level. They seek \$3,000 to level and replace the basement flooring.
4. The respondents deny the applicants' claim. They say Mr. Ashif leveled the subfloor prior to installing the vinyl floors.
5. The Correias are represented by Mr. Correia. The respondents are represented by Mr. Ashif.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
8. 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.

9. 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

10. The issues in this dispute are:
 - a. Is Mr. Ashif personally liable under the contract?
 - b. Did 096 breach the contract by not competently preparing the basement subfloor?
 - c. If so, what are the appropriate damages?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means I must find the Correias' position is more likely than not the correct one. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

Is Mr. Ashif personally liable under the contract?

12. In February 2020, the Correias signed a written contract with 096 for a set price of \$20,000 to perform flooring, kitchen and bathroom renovation work in their home. The written contract identified Mr. Ashif as the project manager.
13. As 096's director and project manager, I find Mr. Ashif was not a party to the contract in his personal capacity. This is because a corporation is a separate legal person from its directors and employees. The Correias did not explain why Mr. Ashif should be personally liable under the contract. I find the fact that Mr. Ashif was 096's director, project manager and performed the work is not enough to establish personal liability and so, I dismiss the Correias' claim against Mr. Ashif personally.

Did 096 breach the contract by not competently preparing the subfloor?

14. There is no dispute that Mr. Ashif, for 096, installed vinyl flooring in the Correias' basement, finished the work by May 2020, and the Correias paid in full for the job.
15. The Correias allege Mr. Ashif did not properly prepare and level the subfloor and then glued the vinyl planks to an uneven concrete subfloor. As a result, they say the glued vinyl did not adhere to the floor's low spots and the work has to be redone.
16. 096 says the "floor was leveled in accordance with the appropriate level prior to installing the vinyl plank" and the work was performed satisfactorily. 096 provided "before and after photos" of the flooring but they do not show any flooring preparation work or whether the basement flooring was level. So, I find they are not helpful. 096 submitted no additional detail or evidence about how it leveled the subfloor despite it being the main issue in the Correias' claim against it.
17. To support their claim, the Correias provided the emails and texts they sent Mr. Ashif in May 2020 soon after completion stating the floor "makes a lot of noise every step you take", "lifts up all the time" and is not sticking to the glue. The Correias say Mr. Ashif told them to apply heat or pressure to attempt to resolve the issues. I accept Mr. Ashif made these suggestions as it is not disputed. The Correias say Mr. Ashif's suggested solutions did not work and he then never returned to resolve the issues. I come back to this below.
18. The Correias provided a photograph and video recording of the alleged flooring issues. I find the photograph shows 1 vinyl flooring plank lifted out of its glued position near a couch leg. I find the video captures a loud and unusual noise when a person walks on an area of the vinyl floor with socks that is more than the sound of footsteps. 096 did not specifically comment on this evidence.
19. Normally, an assessment of the quality of a professional's flooring work would require expert evidence, unless I find a breach of the standard is so obvious that it does not require expert evidence: see *Bergen v. Guliker*, 2015 BCCA 283. There is no expert opinion here. However, I find it obvious that a glued flooring plank should not lift out

of a glued position or alignment as it does here. I also find floors should not make the type of strange noises captured in the video when they are walked on with socks. I find it is within an ordinary person's knowledge that vinyl planks installed over an uneven subfloor could cause the floor to move and make noise. 096 does not argue an alternative explanation for the noise or alignment issues. On balance, I prefer the Correias documented evidence over 096's vague assertion that the floors were leveled. I find 096 likely failed to properly level the subfloor and as a result, the vinyl flooring does not adhere to the floor's low spots in 2 areas. I find the Correias' evidence does not prove the leveling issue extends throughout the installed flooring.

20. In the Dispute Response, Mr. Ashif stated that he had agreed to "resolve any matters which were not suitable" but asserted the Correias were verbally abusive and so he did not return. While I accept Mr. Ashif agreed to resolve the issues, I do not accept his assertion about the verbal abuse. I find it inconsistent with the tone and content of the parties' written correspondence at the time. Mr. Ashif also did not pursue this assertion any further in argument despite the Correias refuting it.
21. I find it more likely than not that Mr. Ashif, on behalf of 096, chose not to return to resolve the flooring issues despite agreeing to do so. I am persuaded by the lack of any substantive response to the Correias' several text and email attempts to contact Mr. Ashif. Also, the Correias's daughter texted Mr. Ashif on July 8, 2020 stating that they were waiting on him to see the flooring and asked where he was. Mr. Ashif texted "I'm sorry" and responded no further. It is undisputed that neither Mr. Ashif nor anyone else from 096 ever returned to resolve the flooring issues.
22. The parties' written contract has an express term that 096 would prepare the subfloor and install the flooring. I find it was also an implied term of this professional services contract that 096 would perform the work to a reasonably competent standard: see *Demosten v. E.M.J. Construction Ltd.*, 1995 CanLII 1142 (BCSC). On the evidence before me, I find 096 failed to meet this standard by not adequately leveling the subfloor prior to installing the vinyl planks and by not fixing the deficiencies after

having a reasonable opportunity to do so. For these reasons, I find 096 breached the contract and the Correias are entitled to a remedy.

What are the appropriate damages?

23. Damages for breach of contract are normally intended to put the innocent party in the position they would have been in if the contract had been performed as agreed: *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39.
24. As noted, the Correias seek \$3,000 in damages to level and replace the basement flooring. They submitted a \$4,158.69 quote from Fine West Flooring (Fine West) to remove and replace all the vinyl floors with higher quality laminate, plus a new sound and moisture barrier underlay. A portion of the quote is for the new materials. Fine West also quoted an additional \$100 per "unit" to prepare and level the subfloor. The Correias argue the claimed \$3,000 is appropriate because it is only a fraction of Fine West's quoted price.
25. I find the Correias' Fine West quote is insufficient on its own to establish the cost to fix the leveling issue. Fine West's quote provides no opinion on the extent of leveling required or what work is required to fix the 2 deficient areas. I find it is simply a quote for a full flooring replacement. Without more evidence, I find the Correias have not proven that a full replacement is required to fix the 2 deficient areas. I also find the Correias are not entitled to better quality flooring and underlay than they would have received under the contract and the Correias are not claiming that they are entitled to better materials.
26. On a judgment basis, and bearing in mind the CRT's mandate includes proportionality, I will allow \$1,500 as reasonable compensation for the deficiencies. I find 096 must pay the Correias \$1,500 in damages for breach of contract.
27. As the Correias have not yet paid to fix the floors, I find they are not entitled to prejudgment interest under the *Court Order Interest Act*.

28. 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. I find the Correias are entitled to reimbursement of \$125 in paid CRT fees. They did not claim any dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order 096 to pay the Correias a total of \$1,625, broken down as follows:

- a. \$1,500 in damages, and
- b. \$125 in CRT fees.

30. The Correias are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

31. 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.

32. 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.

Trisha Apland, Tribunal Member