



# Civil Resolution Tribunal

Date Issued: June 22, 2021

File: SC-2020-009548

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Orbit Carpet Ltd. v. Bains*, 2021 BCCRT 690

B E T W E E N :

ORBIT CARPET LTD.

**APPLICANT**

A N D :

SUKHDEV BAINS and HARBANS BAINS

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Roy Ho

## INTRODUCTION

1. This is a dispute about a residential flooring contract.
2. The applicant Orbit Carpet Ltd. (Orbit) says the respondents, Sukhdev Bains and Harbans Bains, owe it money for materials and services provided.

3. Orbit seeks an order for \$1,200 for a material restocking fee and partial contractual performance.
4. The respondents deny contracting with Orbit, and further say they can “cancel the job”. The respondents also say that Orbit named the wrong parties in this dispute.
5. The applicant is represented by a business contact. The respondents are self-represented.

## **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. 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.
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. Did Orbit name the wrong party?
- b. Did the respondents contract with Orbit?
- c. If the respondents contracted with Orbit, can they cancel the contract?
- d. To what extent, if any, is Orbit entitled to the claimed \$1,200?

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Orbit must prove its claims on a balance of probabilities. 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.

### ***Issue 1: Did Orbit name the wrong party?***

12. The respondents allege that Orbit named the wrong parties in this dispute. I agree in part.

13. In the respondents' Dispute Responses, they say that a company BPML was the customer in this dispute. However, it is unclear from the evidence how BPML was involved. The respondent Ms. Harbans Bains says that BPML is her husband's company. The respondent Mr. Sukhdev Bains does not say whether he is Ms. Bains husband or BPML's representative or agent. In any event, the respondents did not provide any evidence or make any submissions that BPML was the customer in this dispute. Conversely, Orbit submitted into evidence a bank record showing Mr. Bains' name on a deposit transaction made to Orbit. There is no indication from this record that BPML transacted with Orbit. The only evidence before me is that Mr. Bains transacted with Orbit. So, I am satisfied that BPML was not Orbit's customer.

14. However, I also find that Ms. Bains is not a proper party in this dispute. I find this because there is no evidence before me to support a claim against her. I find that Orbit's submissions and its evidence do not establish that Ms. Bains contracted with it. For this reason, I dismiss Orbit's claim against Ms. Bains. I turn next to the remaining respondent Mr. Bains.

***Issue 2: Did Mr. Bains contract with Orbit?***

15. For the reasons to follow, I find Mr. Bains did contract with Orbit.

16. It is undisputed:

- a. In November 2020, Mr. Bains entered into discussions with Orbit about supplying and installing vinyl floors and carpeting for a home,
- b. In December 3, 2020, Mr. Bains paid Orbit a 50% deposit by cheque, totalling \$3,115.87,
- c. On December 4, 2020, Orbit ordered flooring materials for Mr. Bains,
- d. On December 4, 2020, Orbit's contractor cement levelled some of the home's floor. On the same day, Mr. Bains stopped the contractor from further work,
- e. On December 8, 2020, Orbit was unable to cash Mr. Bains' deposit cheque because a "stop payment" was placed on the cheque,
- f. The parties did not have a written contract, and
- g. Mr. Bains has not paid anything to Orbit.

17. Orbit says that Mr. Bains contracted with it. Conversely, Mr. Bains says that Orbit has failed to prove that a contract existed because there is no written documentation. While Orbit says that it provided a written quote to Mr. Bains setting out the carpet and vinyl cost per square foot, the labour costs, and a "transition" cost, Orbit did not produce a copy of the written quote into evidence. In such a circumstance, an adverse inference may be drawn against a party where, without sufficient explanation, it fails

to produce evidence expected to support its arguments (see *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd.*, 2018 BCSC 2146). I find that is the situation here. I draw an adverse inference against Orbit for failing to provide a copy of the written quote and so, I give its submission no weight. So, I further find that there was no written documentation that existed between the parties.

18. However, the fact that there was no written documentation between the parties does not end the matter. While harder to prove, oral contracts are enforceable.
19. For an oral contract, I must consider what the parties said and did and assess this evidence objectively to determine whether in the circumstances their words and actions established an intention to be contractually bound: see *Soleil Hotel & Suites Ltd. v. Soleil Management Inc.*, 2009 BCSC 1303 (B.C.S.C.) at paragraph 328. From the evidence, I am satisfied that an oral contract existed between the parties for 2 main reasons. My reasons follow.
20. First, on balance, the evidence shows the parties agreed on a price for Orbit's services. As noted, Mr. Bains paid Orbit a 50% deposit of \$3,115.87. This means that the parties understood the total price was \$6,231.75. Given that this price was so precise and not a round figure, I infer that the parties at the time agreed on costs and pricing for materials and labour. For this reason, I find that the parties agreed on a price for Orbit's services.
21. Second, Mr. Bains allowed the contractor to perform some work at the residential home before stopping them. I find that if Mr. Bains had not contracted with Orbit, he would not have allowed the contractor to do any work to begin with.
22. For these 2 primary reasons, I find that Mr. Bains did contract with Orbit to supply and install vinyl and carpet flooring in his home on December 3, 2020.

### ***Issue 3: Can Mr. Bains cancel the contract?***

23. In Mr. Bains' submissions and evidence, he relies indirectly on the *Business Practices and Consumer Protection Act* (BPCPA) to say he can cancel the contract. For the reasons to follow, I find that Mr. Bains can cancel the contract under the BPCPA.
24. Under BPCPA section 17, it says a future performance contract is a contract between a supplier and a consumer for the supply of goods or services for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Section 17 lists certain exclusions but these do not apply.
25. It is undisputed that Orbit is a supplier and Mr. Bains is a consumer under the BPCPA, and that they were involved in a consumer transaction. Mr. Bains did not pay in full at the time the contract was made, nor did Orbit provide the services at the time. Given these facts, I find that the parties entered into a future performance contract.
26. Under BPCPA section 19, it requires a future performance contract to contain certain information, which includes, among other things not relevant to this dispute:
  - a. The date on which the contract is entered into,
  - b. A detailed description of the goods or services to be supplied,
  - c. An itemized purchase price for the goods or services,
  - d. Other costs payable by the consumer, including taxes and shipping charges,
  - e. A detailed statement of the terms of payment,
  - f. The total price under the contract,
  - g. A notice of the consumer's rights of cancellation, in the prescribed form and manner, if any, and
  - h. Any other restrictions, limitations, or other terms or conditions that may apply to the supply of the goods or services.

27. Further, BPCPA section 23(2) says that a future performance contract must contain the supply date and the date the supply will be complete, and if there are periodic payments, the amount of each.
28. Under BPCPA section 23(3), it requires a supplier to give a copy of the future performance contract to the consumer within 15 days after the contract is entered into. As noted above, there was no written contract at all and nothing provided to Mr. Bains. I find Orbit therefore breached section 23(2)(c).
29. Under BPCPA section 23(5), it states a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than 1 year after the date the consumer receives a copy of the contract if the contract does not contain the required information, as summarized above. Given that Mr. Bains did not receive a contract containing the required information, I find it was open for Mr. Bains to cancel the contract.
30. The next question then is whether Mr. Bains gave notice of cancellation to Orbit within 1 year of receiving a copy of the contract. BPCPA section 54 requires a consumer who wishes to cancel a future performance contract to give notice by any method that creates evidence of their intention to cancel the contract on a specific date. I find that Mr. Bains provided notice of cancellation when he stopped the contractor from further work on December 4, 2021, which is further supported by the stop payment placed on the deposit cheque on the same day or shortly thereafter.
31. In summary, given Orbit's failure to comply with the BPCPA, which I am bound to apply, Mr. Bains was permitted to cancel the contract. I turn to the last remaining issue.

***Issue 4: To what extent, if any, is Orbit entitled to the claimed \$1,200?***

32. Given my conclusion above, I find that Orbit is not entitled to recover the \$1,200 it claims. However, this is not the end of the matter. Although the contract was cancelled between the parties there is no dispute that Orbit performed some work on

the home and Mr. Bains benefited from that work. I find that it is an appropriate case to apply the principle of *quantum meruit*, which means value for the work done (see *Hodder Construction (1993) Ltd. v. Topolnisky*, 2021 BCSC 666).

33. Under the *quantum meruit* approach, where a binding contract is formed but the parties did not agree to a reasonable price, an applicant is entitled to the cost of the value provided (see *Hodder* at paragraph 178). I find that the value provided to Mr. Bains was from the partial cement levelling the contractor performed at the home.
34. Orbit submitted into evidence its contractor's invoice claiming, amongst other things, \$140 plus GST for "2 bag levelling labour". I find that this amount is reasonable for the value provided to Mr. Bains, so I find the applicant is entitled to payment of \$147 including GST for the partial cement levelling completed at the home.
35. While Mr. Bains says that the contractor's GST charge on the invoice was invalid because the contractor did not register the transaction with the Canada Revenue Agency (CRA), I find nothing turns on this. If a sale attracts GST, then Mr. Bains is responsible to pay it. As set out in *Dworak v. Kimpton*, 1996 CanLII 3451 (BCSC), GST is the buyer's responsibility, even though the seller collects the GST on the government's behalf. Should the contractor choose not to remit the GST, then that is an issue between the contractor and the CRA. For this reason, I find that the contractor's GST charge for the cement levelling remains payable.
36. I dismiss Orbit's remaining claims.

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

37. I find that Orbit is entitled to pre-judgement interest under the *Court Order Interest Act* (COIA) on the \$147. I calculate the pre-judgement interest from the date Mr. Bains stopped the contractors from working (December 4, 2020) to the date of this order. This interest equals \$0.36.



38. Under section 49 of the CRTA and CRT rules, the CRT will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Orbit was partially successful, I find that it is entitled to half of the \$125 tribunal fees paid, which equals \$62.50. The parties did not claim any disputed-related expenses, so I make no order for them.

## **ORDERS**

39. Within 30 days of the date of this order, I order Mr. Bains to pay Orbit a total of \$209.86, broken down as follows:

- a. \$147 as payment for the cement levelling work performed at the home,
- b. \$0.36 in pre-judgment interest under the COIA, and
- c. \$62.50 in CRT fees.

40. Orbit is entitled to post-judgment interest, as applicable.

41. The remainder of Orbit's claims are dismissed.

42. 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.

43. 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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Roy Ho, Tribunal Member