



Civil Resolution Tribunal

Date Issued: June 24, 2021

File: SC-2021-000086

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jones v. Bilinski*, 2021 BCCRT 696

BETWEEN:

GORDON JONES

APPLICANT

AND:

RUSSEL BILINSKI

RESPONDENT

AND:

GORDON JONES

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over flooring installation.
2. The applicant and respondent by counterclaim, Gordon Jones, installed flooring for the respondent and applicant by counterclaim, Russel Bilinski.
3. Gordon Jones asked to be referred to as Gordie Jones in this decision.
4. Gordie Jones claims Mr. Bilinski owes him \$2,856.20 for the flooring work. Mr. Bilinski says he does not owe anything because the flooring work was incomplete and deficient. Gordie Jones disagrees and says he did a professional flooring job and deserves to be paid for the work.
5. Mr. Bilinski filed a counterclaim against Gordie Jones for payment of \$4,800. He says this is the amount it will cost him to remove and redo all the flooring. Gordie Jones denies the counterclaim.
6. The parties are self-represented.
7. For the reasons that follow, I find Mr. Bilinski must pay Gordie Jones the claimed \$2,856.20 and I dismiss Mr. Bilinski's counterclaim.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.

10. 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.

11. 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

12. The issues in this dispute are:

- a. Was Gordie Jones' work incomplete, deficient or otherwise in breach of the contract?
- b. To what extent, if any, does Mr. Bilinski owe Gordie Jones \$2,856.20 for the flooring?
- c. To what extent, if any, must Gordie Jones pay Mr. Bilinski \$4,800 to redo the floors?

EVIDENCE AND ANALYSIS

13. As the applicant, Gordie Jones must prove his claims on a balance of probabilities. This means I must find it more likely than not that Gordie Jones' position is the correct one. Mr. Bilinski carries the burden to prove his counterclaim to the same standard.

14. 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.

Background

15. As set out in the agreed statement of facts, the parties entered into a verbal flooring contract. Gordie Jones agreed to perform the labour of preparing the subfloor and installing vinyl tile and carpet flooring. Mr. Bilinski agreed to supply the materials and pay for Gordie Jones's labour at a fixed rate.

16. I find the parties' contract also included an implied term that Gordie Jones would perform the job in a professional manner consistent with trade standards.

17. The parties agree that Gordie Jones started the job on about September 27, 2020. Both parties say there was not enough grout to complete the tiles and Mr. Bilinski agreed to finish the remaining grouting himself. The full extent of the remaining work is not before me. I find the parties mutually ended Gordie Jones' obligations on October 3, 2020 and Mr. Bilinski agreed to finish the job himself with no price adjustment.

18. On October 3, 2020, Gordie Jones invoiced Mr. Bilinski \$2,856.20 for the work he completed by that date. The invoice is broken down as follows: \$387.50 for installation of 15 ½ sheets of subfloor at \$25 each, \$1,980 for 495 square feet of tile installation at \$4 per square feet, \$138.90 for 17 ½ square yards of carpet installation at \$8 per square yard, \$50 to prepare the floor and remove carpet, and \$300 for travel. There is no dispute that Gordie Jones invoiced Mr. Bilinski at the agreed rates.

19. Mr. Bilinski immediately paid the October 3, 2020 invoice by cheque. On October 6, 2020, Mr. Bilinski stopped payment of the cheque because of alleged deficiencies. Mr. Bilinski did not subsequently pay Gordie Jones anything for the job and Gordie Jones claims payment of his \$2,856.20 outstanding invoice.

20. Mr. Bilinski says he owes nothing and asserts the new vinyl tiled floor needs to be replaced. In his counterclaim, Mr. Bilinski seeks \$4,800 from Gordie Jones to replace all the floors.

Gordie Jones' claim

21. In a breach of contract dispute over alleged defective work such as this one, the ultimate burden is on the party asserting the breach occurred: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. Here, the burden of proof to establish the flooring deficiencies and contractual breach is on Mr. Bilinski since he is the one alleging the deficiencies.

22. Normally, an assessment of the quality of a professional's flooring work requires expert evidence, unless the assessment of it is within a person's ordinary knowledge: *Bergen v. Guliker*, 2015 BCCA 283.

23. Mr. Bilinski alleges the following deficiencies with the vinyl tile work:

- a. Failure to clean the tiles leaving a hazy film
- b. Failure to clean the subfloor of debris resulting in bumps under the tiles
- c. Failure to follow the installation guidelines by allegedly cutting the tiles too short, not properly spacing the tiles, not using a roller to glue the tiles down, not ensuring the tiles were square with the walls and other installation issues
- d. Unfinished grouting

24. Mr. Bilinski does not raise any concerns over the subfloor sheet installation or carpet installation. So, I find there were no deficiencies with that work. I also find Gordie Jones did not breach the contract by not finishing the grouting considering the parties' mutual decision to end the job before the grouting was finished.

25. I turn to the other alleged deficiencies. Mr. Bilinski submitted photographs of 2 tiles with what looks like a hazy film over them. Mr. Bilinski says that on October 3, 2020

his wife started to wash the haze off the tiles and found it was not coming off. The parties agree Mr. Bilinski spoke to Gordie Jones by phone about it that same evening and Gordie Jones agreed to follow up on it.

26. Mr. Bilinski says he did not hear back from Gordie Jones after this phone call, which is not disputed. Gordie Jones says the supplier told him cleaning the haze off the tiles “should not be a problem”. He says he tried to call Mr. Bilinski back about it but found out after the CRT process started that he had been calling the wrong number. He says Mr. Bilinski did not tell him about the other alleged problems, which I accept as Mr. Bilinski does not dispute it.
27. Mr. Bilinski says he spoke to the supplier who told him cleaning was the installer’s responsibility but to try to clean the tiles with ammonia. Mr. Bilinski says it took his wife over 20 hours to clean the tiles to remove the haze. Mr. Bilinski says he did not attempt to call Gordie Jones again about it because he assumed Gordie Jones had abandoned the job.
28. Without more information about the flooring products, I am not satisfied the hazy residue was Gordie Jones’s fault rather than a fault with the product itself. Considering the Bilinskis were able to remove the haze, I find the haze was not a permanent defect. Also, since the parties mutually ended the job before the tile work was complete, I am not satisfied Gordie Jones was responsible for the hazy residue or final clean up. Gordie Jones did not charge Mr. Bilinski anything extra for cleaning.
29. Next, Mr. Bilinski’s submitted photographs showing what looks like a bump under each of 3 vinyl tiles. Mr. Bilinski says the bumps are from debris left on the subfloor. Gordie Jones says bumps are not uncommon under vinyl tile and are probably from “a small piece of sand or floor patch”. He says a light tap on the bump removes it 90% of the time. I find Mr. Bilinski did not inform Gordie Jones about the bumps or give him the opportunity to correct them. Mr. Bilinski does not say whether he tried to remove the bumps himself such as by tapping them down. There is also no statement from a flooring professional about it. I am not satisfied on the evidence that the bumps are permanent defects or that it would cost Mr. Bilinski anything to remove them. The

standard is not one of perfection. I find Mr. Bilinski has not proven a contractual breach and is not entitled to a reduction in the amount due under the invoice because of the 3 bumps.

30. As for the other alleged deficiencies, Mr. Bilinski submitted photographs of the tile flooring together with installation guidelines. He argues the photographs show the tiles were not installed according to the guidelines. Gordie Jones says the guidelines apply to a square box type space and not to a space like Mr. Bilinski's more open plan home.
31. There is no statement in evidence from a flooring expert about the quality of Gordie Jones' tiling work or stating it needs to be redone. I find Mr. Bilinski's own unqualified opinion the job was deficient is unreliable and not sufficiently neutral. So, I put no weight on it. I find no obvious problems with the tiling based on the photographs and installation guidelines alone. Without an expert opinion critical of Gordie Jones's flooring work, I find Mr. Bilinski has not proven the tiling work fell below a reasonable or industry standard.
32. Based on the evidence before me, I find Gordie Jones reasonably completed the flooring job as agreed and Mr. Bilinski must pay for Gordie Jones' labour at the agreed rate. I find Mr. Bilinski owes Gordie Jones the full \$2,856.20 invoiced amount.
33. The parties had no agreement on interest and so, I find the *Court Order Interest Act* applies. Gordie Jones is entitled to pre-judgment interest on the \$2,856.20 debt from the October 3, 2020 invoice date to the date of this decision. The interest equals \$9.33.

Mr. Bilinski's Counterclaim

34. Considering my conclusions above, I find Mr. Bilinski has not established that the flooring needs to be redone. I dismiss Mr. Bilinski's counterclaim.

CRT FEES AND EXPENSES

35. 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 Gordie Jones is entitled to reimbursement of his \$125 in paid CRT fees. As he was unsuccessful, I dismiss Mr. Bilinski's claim for CRT fees he paid for the counterclaim. Neither party claimed dispute-related expenses.

ORDERS

36. Within 30 days of the date of this order, I order Mr. Bilinski to pay Gordie Jones a total of \$2,990.53, broken down as follows:

- a. \$2,856.20 in debt,
- b. \$9.33 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

37. Gordie Jones is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

38. I dismiss Mr. Bilinski's counterclaim.

39. 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.

40. 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