Civil Resolution Tribunal

Date Issued: October 14, 2021

File: SC-2021-001979

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reid v. Beuselinck*, 2021 BCCRT 1089

B E T W E E N :

DONALD REID (Doing Business As D.C. REID CONTRACTING)

APPLICANT

A N D :

RANDY BEUSELINCK and CANDACE OLSEN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The respondents, Randy Beuselinck and Candace Olsen, hired the applicant, Donald Reid (Doing Business As D.C. Reid Contracting), to remove old flooring and install new flooring in their home.

2. The applicant says he is owed more, but has claimed $4,999.99 to stay within the small claims monetary limit of the Civil Resolution Tribunal (CRT). I find he has abandoned any claim to amounts over $4,999.99.

3. The respondents have not paid the applicant anything. They say the applicant quoted $4,200. They allege numerous deficiencies with the applicant's flooring work, and say it is incomplete. The respondents say they offered the applicant $2,000 when he claimed he was finished, but the applicant declined the offer.

4. The applicant represents himself. The respondents represent themselves and made identical submissions.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.

6. 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

7. 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.

8. 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.

9. The respondents submitted all of their evidence, which consisted of 9 photos, after the evidence submission deadline. I find the evidence relevant to the issue of whether the work was deficient. The applicant had an opportunity to respond to the late evidence, so I find there would be little prejudice to the applicant in admitting it. Given the CRT's mandate that includes flexibility, I have allowed the late evidence and considered it in my decision.

ISSUES

10. The issues in this dispute are:

    a. Did the parties agree on a price for the flooring work, and what was included?

    b. Did the applicant substantially breach the contract, entitling the respondents to end it?

    c. If not, what remedy, including any set-off for deficiencies, is appropriate?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove his claim on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

12. In September 2020, the respondents approached the applicant about redoing their floors. The respondents had previously hired the applicant to install flooring in a different home without any issues. There was a degree of familiarity and trust, which likely explains why there was no written quote, no written contract, and no deposit.

13. The respondents say the applicant verbally quoted $4,200 for the job. They say the quote included removing the old flooring, leveling the surface and installing 1,000 square feet of new flooring that the owners supplied. They say they also agreed to pay for self-leveling concrete at $39 per bag, above the $4,200.

14. The applicant does not confirm or deny giving a verbal quote. In a December 3, 2020 text, the applicant provided an "invoice" for $5,075 plus GST. He provided the following breakdown, which corresponds with the claimed amounts in this dispute:

    a. $2,500 for 1,000 square feet of flooring at $2.50 per square foot,

    b. $1,100 for 20 bags of self-level concrete at $55 per bag, and

    c. $1,475 for grinding and levelling labour.

15. Apart from the concrete, the applicant claims $3,975 plus GST, or $4,173.75, for his labour. Since this is less than the $4,200 that the respondents say he quoted, I find there is no dispute that the labour price is $4,173.75. As for the concrete, based on the parties' text messages I find the respondents agreed to pay for self-leveling concrete at the actual price the applicant paid. The invoices show that to be $38.69 plus tax per bag. There is no dispute that the applicant used 20 bags of concrete, so I find the concrete cost is $864.86, not $1,100.

16. The above amounts exceed what the applicant has claimed, so I find the applicant is entitled to $4,999.99, subject to my findings below on the alleged contract breaches.

Alleged breaches of contract

17. An owner has the right to end a contract where the contractor has breached the contract in such a substantial or fundamental way that it amounts to a "repudiation"

or rejection of the contract. In such circumstances, the contract is at an end and both parties are excused from further contractual obligations. Work that is alleged to be poor quality or defective generally does not amount to a repudiation and instead may entitle an owner to damages: *Lind v. Storey,* 2021 BCPC 2.

18. As discussed above, the applicant agreed to remove the old flooring, level the floor, and install new flooring. This was the substance of the contract and the applicant undisputedly did these things. I address the respondents' specific allegations of contractual breaches below. The applicant's general response is that he had the respondents' approval before every step he took in the renovation and the respondents expressed no concern about the work until after he invoiced them.

19. First, the respondents says the applicant did not install all the flooring himself. They say that one of the workers the applicant employed was not qualified to install flooring. Their evidence is that the worker was frustrated that the job was difficult and said he was "not usually a flooring installer" The applicant says the worker was not "usually" a flooring installer in that he preferred and usually did more challenging work, but he was a very good flooring installer.

20. The respondents' own evidence is that the flooring work was delayed in part due to the worker's opinion that the surface was not sufficiently prepped to install the new floor. I find it unlikely that someone unqualified to install floors would form this opinion rather than simply proceeding with the installation. As well, as explained below, I find the respondents have not proven any significant deficiencies, which does not support their claim that the installers were not qualified.

21. As for the suggestion that the applicant not personally installing all the floor was a breach of contract, I disagree. The respondents do not say that the applicant agreed to personally install all the flooring or that he previously installed all the flooring himself. So, I find personal installation was neither an explicit nor implicit contractual term. Given the job's size, I find that a reasonable homeowner would expect a contractor to use employees or helpers at the contractor's cost. I find the applicant did not breach the contract by using other workers.

22. Second, the respondents take issue with the “transitions”, or trim, used to hide gaps in the floor planks between rooms. The respondents undisputedly wanted to avoid transitions altogether. They say the applicant said transitions between rooms were necessary with the style of flooring they chose. They say other tradespersons in their home later told them it was unnecessary to have the transitions. The respondents did not submit any evidence from any tradespersons, so these statements are hearsay evidence and I give them little weight.

23. I find the parties’ text messages confirm the respondents agreed to the transitions after the applicant said avoiding transitions would add additional cost. Even if another contractor could have installed the same flooring without transitions, which was not proven on the evidence, that does not mean the applicant breached the contract. It means the respondents changed their minds about transitions after the work was finished. I find no breach of contract related to the transitions.

24. Third, the respondents say, without providing any supporting evidence, that there is “bounce” in some areas of the floor. They say other tradespersons working on the renovation said the bounce was because of the absence of a necessary underlay and vapour barrier. Again there is no statement from these tradespersons. The applicant says the vapour barrier would have no effect and the flooring product the respondents choose came with a foam or rubber backer to facilitate installation on bare concrete without underlay.

25. I find the respondents’ claim is that the applicant’s work quality – and specifically, his decision not to use a vapour barrier and underlay – fell below the standard of a professional floor installer. A claim that work quality fell below the required professional standard usually requires expert evidence to prove if the subject matter is outside ordinary knowledge: see *Bergen v. Guliker*, 2015 BCCA 283. I find that whether a particular type of flooring requires underlay, and whether underlay will reduce “bounce”, is beyond ordinary knowledge. There is no evidence, such as a statement from a professional floor installer, about the need for an underlay with the

flooring the respondents chose. So, I find the respondents have failed to meet their burden of proving the failure to use underlay was a breach of contract.

26. Fourth, the respondents generally assert that the applicant's work was of poor quality. The respondents rely on 9 photos of different parts of the flooring. One photo shows a chip or crack in the flooring, but the photo was not taken until July 2021, over 6 months after the installation, so it is possible that the damage occurred after installation. I find this is not a proven deficiency.

27. Most of the photos show gaps between the flooring's edge and the walls. The applicant says this gap is necessary to allow the flooring to move, and is usually covered by a baseboard. Some photos show that baseboards had not been installed when the photos were taken. So, I find not all of the gaps represent deficiencies.

28. Some photos show small visible gaps near doorframes where a baseboard is unlikely to be installed because the doorframe trim meets the floor. I find it is within ordinary knowledge that these gaps will not be covered by standard baseboard and trim. I also find that these gaps could have been avoided with careful measuring and cutting. I say this in part because some photos show no gaps at the doorframes. As well, the applicant did not address the gaps near the door frames – rather, he said gaps are "almost always" covered by a baseboard. I find the gaps near the door frames are proven deficiencies.

29. I find that these deficiencies are minor and do not amount to a substantial breach. As noted above, the usual remedy for unremedied deficiencies is damages. I find it is appropriate to set off these damages against the respondents' contractual debt: see *Jamieson v. Loureiro*, 2010 BCCA 52.

30. The respondents provided no evidence of what it will cost to address the few small gaps near the doorframes. On a judgment basis, I allow a set-off of $200.

Conclusion

31. I have found that the respondents owe the applicant the claimed $4,999.99 under the contract. I allow a $200 set-off for the deficiencies. The result is that the respondents owe the applicant $4,799.99.

32. The *Court Order Interest Act* (COIA) applies to the CRT. Interest under the COIA is excluded from the CRT's monetary limit, as are CRT fees and dispute-related expenses. The applicant is entitled to pre-judgment interest on the $4,799.99 debt from December 23, 2020, the date the applicant invoiced the respondents, to the date of this decision. This equals $17.52.

33. 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 applicant is entitled to reimbursement of $175.00 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

34. Within 14 days of the date of this order, I order the respondents to pay the applicant a total of $4,992.51, broken down as follows:

    a. $4,799.99 in debt,

    b. $17.52 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175.00 in CRT fees.

35. The applicant is entitled to post-judgment interest, as applicable.

36. Under CRTA section 48, 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 receiving notice of the CRT's final decision.

37. Under CRTA section 58.1, 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.

Micah Carmody, Tribunal Member