



Civil Resolution Tribunal

Date Issued: January 24, 2022

File: SC-2021-004776

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Colonial Countertops Ltd. v. JCB Contracting Ltd.*, 2022 BCCRT 91

B E T W E E N :

COLONIAL COUNTERTOPS LTD.

APPLICANT

A N D :

JCB CONTRACTING LTD. and JASON BARNETT

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. The respondent, JCB Contracting Ltd. (JCB), hired the applicant, Colonial Countertops Ltd. (Colonial), to manufacture and install quartz countertops in a new residential development. Colonial says JCB has failed to pay all of its invoice relating to the countertops installed in unit 254. Colonial claims \$1,323 for the unpaid balance of its invoice.

2. The respondent, Jason Barnett, is a principal of JCB. Mr. Barnett says Colonial installed a countertop in unit 217 incorrectly, so JCB reduced its payment of Colonial's invoice for the unit 254 countertop by the amount it cost him to fix the deficiencies with the unit 217 countertop. Mr. Barnett says that he and JCB owe Colonial nothing.
3. JCB did not file a Dispute Response, which I will address further below.
4. Colonial is represented by an employee. Mr. Barnett is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
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. 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.
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.

Preliminary Issues

Parties to this dispute

9. As noted, JCB did not file a Dispute Response in this proceeding. Normally, this would result in JCB being found in default, with liability assumed against it. For the following reasons, I decline to find JCB in default. As noted, Mr. Barnett filed a Dispute Response, and it is undisputed that Mr. Barnett is the principal of JCB. I find the contents of Mr. Barnett's Dispute Response, submissions, and evidence, indicate that he is responding to this dispute on his own and on JCB's behalf. So, I am satisfied that JCB is not in default, and I will proceed to determine this dispute as against JCB and Mr. Barnett on its merits.

Evidence

10. I was originally unable to open one item of Mr. Barnett's evidence, so CRT staff asked Mr. Barnett to provide the item in a readable format. I find it is a duplicate of a photograph attached to an email already in evidence, and that Colonial referred to the photograph in its submissions. Therefore, I decided it was unnecessary to provide the duplicate photo to Colonial for its further submissions, and I decline to admit the photograph in its new format.

ISSUE

11. The issue in this dispute is to what extent, if any, Colonial is entitled to payment of \$1,323 for its countertop work.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Colonial must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

13. The background facts are undisputed. JCB is a contractor that was involved with a new residential development. Colonial was hired to supply and install quartz countertops in multiple units, including units 217 and 254. JCB provided Colonial with measurements and specifications for the unit 254 kitchen island countertop, which turned out to be incorrect. The evidence shows that Colonial provided JCB with an August 20, 2019 quote for \$2,520 to redo the island countertop.
14. The parties' email evidence shows that JCB approved Colonial's quote for the replacement countertop, which required a 50% deposit. Colonial provided JCB with a September 19, 2019 invoice, totalling \$2,646 including tax. It is undisputed that JCB paid a \$1,323 deposit, leaving the claimed \$1,323 outstanding. It is also undisputed that Colonial installed the new island countertop. JCB alleges no deficiencies with Colonial's work in unit 254. Yet, JCB did not pay Colonial's October 15, 2019 invoice for the \$1,323 balance owing on the replacement countertop.
15. JCB says that it discovered deficiencies with one of Colonial's countertops installed in unit 217. JCB says the countertop had pulled away from the wall, resulting in an approximate $\frac{1}{4}$ inch gap between the wall and the countertop. JCB says it held back payment of Colonial's invoice for the unit 254 work to pay for repairs of Colonial's allegedly deficient work in unit 217.
16. Colonial denies that its work was deficient. In any event, Colonial argues that it is inappropriate to deduct damages for its work in unit 217 from its unrelated work in unit 254. For the following reasons, I agree.
17. First, I find that JCB did not contract with Colonial for the countertop installation in unit 217. The evidence shows that in about February 2018, a third-party cabinetry company, CKD, provided Colonial with drawings and measurements for the unit 217 countertops to be installed on CKD's cabinets. Colonial invoiced CKD directly for the unit 217 countertop installation. There is no evidence before me that JCB contracted with Colonial for the countertops in unit 217, and, on balance, I find Colonial contracted only with CKD for the unit 217 countertops.

18. The doctrine of privity of contract provides that, as a general rule, a contract cannot provide rights or impose obligations on any person except the parties to that contract. While there are some limited exceptions to this, I find there is insufficient evidence before me that any of them apply here. Because JCB was not a party to the contract with Colonial for the unit 217 countertops, I find JCB cannot advance a breach of contract claim against Colonial for alleged deficient work in unit 217. I also find there is no legal basis to permit JCB to deduct a contractual debt in one matter for alleged negligence in another.
19. Further, even if JCB had been a party to the contract for unit 217 or JCB otherwise established that Colonial owed it a duty of care, I would have found JCB was not entitled to a set-off against the amount owing to Colonial for its unit 254 work. This is because JCB did not file a counterclaim. In the absence of a counterclaim, only if the claimed set-off arose from the same course of dealings between the parties and engaged the same issues requiring resolution in the dispute, would it be reasonable to consider a set-off (see *Dhothar v. Atwal*, 2009 BCSC 1203).
20. Here, the work in the 2 relevant units was contracted for separately and was completed about a year apart. So, I find the alleged deficiencies in unit 217 are not sufficiently connected to Colonial's work in unit 254 to warrant considering a set-off in the absence of a counterclaim.
21. Given all the above, I find JCB has not established it was entitled to deduct anything from the amount owing to Colonial for Colonial's work in unit 254. Therefore, I find I do not have to consider whether JCB has proven Colonial's work in unit 217 was deficient or the cost to remedy the alleged deficiencies.
22. I find JCB must pay Colonial the \$1,323 balance owing for its September 19, 2019 invoice. There is no evidence before me that Mr. Barnett contracted with Colonial in his personal capacity, so I dismiss Colonial's claims against Mr. Barnett.

23. The *Court Order Interest Act* applies to the CRT. Colonial is entitled to pre-judgment interest on the \$1,323 from October 15, 2019, the date of Colonial's invoice, to the date of this decision. This equals \$27.65.
24. 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 Colonial is entitled to reimbursement of \$125 in CRT fees. Colonial did not claim any dispute-related expenses.

ORDERS

25. Within 21 days of the date of this decision, I order JCB to pay Colonial a total of \$1,475.65, broken down as follows:
 - a. \$1,323 in debt,
 - b. \$27.65 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
26. Colonial is entitled to post-judgment interest, as applicable.
27. I dismiss Colonial's claims against Mr. Barnett.
28. 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.

29. 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.

Kristin Gardner, Tribunal Member