



Civil Resolution Tribunal

Date Issued: February 7, 2022

File: SC-2021-004279

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Donald Flooring Contract Sales Ltd. v. Melka Development Ltd.*,

2022 BCCRT 145

BETWEEN:

DONALD FLOORING CONTRACT SALES LTD.

APPLICANT

AND:

MELKA DEVELOPMENT LTD.

RESPONDENT

AND:

DONALD FLOORING CONTRACT SALES LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about floor installation work. The respondent and applicant by counterclaim, Melka Development Ltd. (Melka), hired the applicant and respondent by counterclaim, Donald Flooring Contract Sales Ltd. (Donald), to install flooring. Donald claims \$2,500 for unpaid work in its application for dispute resolution. However, in its submissions, Donald says that only \$2,000 is unpaid.
2. Melka says that only it only owes \$2,000 for unpaid work. Further, Melka counterclaims against Donald for breach of contract for allegedly finishing its work late. Melka counterclaims for \$3,052.88, plus tax, for damages resulting from Donald's alleged delay. So, offsetting the \$2,000 Melka says it owes Donald for unpaid work, Melka is claiming that it owes Donald nothing and that Donald owes it net damages of \$1,052.88, plus tax. . Donald denies Melka's counterclaim and says that it performed its worked in a timely way but it had to wait for Melka.
3. Both parties are represented by an employee or principal.

Late evidence

4. Melka submitted evidence late, consisting of notes and invoices relating to a contract with a non-party. I find that this evidence is relevant to Melka's alleged damages. Further, I find that Donald was not prejudiced by this late evidence because it had an opportunity to respond. So, I have allowed Melka's late evidence and I have considered it in my decision.

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. 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.
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.

ISSUES

9. The issues in this dispute are:
 - a. Does Melka owe Donald a debt for unpaid work? If so, how much?
 - b. Does Donald owe Melka damages for breach of contract by allegedly performing its work late? If so, how much?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Donald, as the applicant, must prove its claims on a balance of probabilities. Melka has the same burden for its counterclaim. 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.

Donald's claim for unpaid work

11. The following facts are undisputed. Donald gave Melka a July 28, 2020 quote for \$8,427 to install luxury vinyl tile flooring to the floors and stairs and install a rubber base along the walls. Melka accepted the quote and hired Donald in an August 24, 2020 email. In doing so, I find that the parties entered a binding contract on the quote's terms.
12. Donald issued a September 3, 2020 invoice for the amount quoted plus tax, which totaled \$8,848.35. Since Melka does not dispute the invoice amount, I find that the invoice is accurate.
13. Since Melka acknowledges that Donald completed its work, I find that Melka owed Donald \$8,848.35 for its work. I address Melka's argument about lateness further below.
14. In its application for dispute resolution, Donald says that Melka owes \$2,500 in unpaid work. However, in its submissions Donald says that Melka only owes \$2,000. Melka says that only \$2,000 is unpaid.
15. Donald provided the following receipts for Melka's payments:
 - A March 1, 2021 receipt for \$3,848.35.
 - An April 29, 2021 receipt for \$1,000.
 - A May 19, 2021 receipt for \$1,500.
 - A June 15, 2021 receipt for \$500.
16. Since Melka does not dispute these receipts, I find that they are accurate records of Melka's payments. Based on the above receipts, I find that Melka has paid Donald

\$6,838.35. So, I find that Melka owes Donald \$2,000, subject to its counterclaim discussed below.

Melka's counterclaim

17. Melka claims Donald breached the contract by finishing its work late. Melka has not provided any evidence or submissions about an agreed completion date. In the absence of an agreement, I find that it is an implied term that Donald would complete its work in a reasonable time.
18. Melka says it asked Donald 3 times to complete the work, but it did not finish the work until early December 2020. Specifically, Melka says the rubber bases along the walls floor bases were not installed and the stairs were not finished. However, Melka did not say when it asked Donald to finish its work. The only document showing such a request was Melka's December 5, 2020 email to Donald. This email asked Donald to install the bases and to fix the stairs.
19. In contrast, Donald says it finished all its work, other than the installation of the rubber bases along the walls, by October 5, 2020. I find that Melka has not provided sufficient evidence to prove that Donald took an unreasonably long time to perform its work, other than the bases' installation, in the 6 weeks after the formation of the contract on August 24, 2020.
20. Donald said it could not install the bases earlier because it needed to wait for Melka to complete the walls. Since Melka does not dispute this submission, I accept it as accurate. Donald says that Melka did not notify it that the walls were ready for the bases' installation until it received the December 5, 2020 email. Donald also says that Melka also complained of stair deficiencies for the first time in that email. Donald says it installed the rubbers bases and repaired the stairs on December 11, 2020. Since Melka does not dispute this, I find that Donald completed its work at that time.
21. I find that Melka has not proved that it notified Donald that the walls were ready for Donald's base installation work before December 5, 2020. Since Melka has not proved that the site was ready for Donald's work before that time, I find that Donald

did not breach the contract by not finishing before December 5, 2020. Further, I find that Melka has not provided sufficient evidence to show that Donald's completion 6 days later on December 11, 2020 was an unreasonable delay. So, I find that Melka has not proved that Donald breached the contract by finishing its work late.

22. For the above reasons, I dismiss Melka's counterclaim and find that Melka must pay Donald \$2,000 for unpaid work.

Interest, CRT fees and dispute-related fees

23. The *Court Order Interest Act* (COIA) applies to the CRT. Donald is entitled to pre-judgment interest on its \$2,000 debt from the invoice date of September 3, 2020. This equals \$12.86.

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. Since Donald was generally successful in its claim, I find that it is entitled to reimbursement of its \$125 CRT fees. Since Melka was not successful in its counterclaim, I find that it is not entitled to reimbursement of her CRT fees. Neither party claimed reimbursement of dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order Melka to pay Donald a total of \$2,137.86, broken down as follows:

- a. \$2,000 as unpaid work,
- b. \$12.86 in pre-judgment COIA interest, and
- c. \$125 in CRT fees.

26. Donald is entitled to post-judgment interest, as applicable. I dismiss Melka's counterclaim.

27. 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.
28. 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.

Richard McAndrew, Tribunal Member