



Civil Resolution Tribunal

Date Issued: March 25, 2022

File: SC-2021-006787

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Craig v. Westcoast Appliance Centre 2014 Ltd.*, 2022 BCCRT 342

BETWEEN:

BRENDA CRAIG

APPLICANT

AND:

WESTCOAST APPLIANCE CENTRE 2014 LTD., FRED ARAM and
BYRON LOUCKS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about appliance installation services.
2. The applicant, Brenda Craig, purchased appliances from the respondent, Westcoast Appliance Centre 2014 Ltd. (Westcoast). Ms. Craig paid installation fees for the dishwasher and microwave, but says they were either not installed or installed

incorrectly. Ms. Craig claims reimbursement of the \$349 she says she paid for installation costs.

3. Westcoast says that its installer could not completely install either appliance because Ms. Craig's contractors had not installed water lines for the dishwasher, venting for the microwave, and had installed the microwave cabinet too low for the microwave to fit above the stove. Westcoast says it offered to return to complete the installation for a further fee but Ms. Craig refused.
4. The respondents Fred Aram and Byron Loucks are Westcoast directors. Mr. Loucks did not provide a Dispute Response, which I address below.
5. Ms. Craig represents herself. Mr. Aram represents himself and Westcoast.

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.

Preliminary Matters

10. First, the evidence shows Fred Aram emailed Ms. Craig about the appliance installation on behalf of Westcoast, prior to this dispute. Mr. Aram filed his Dispute Response under the name Tahamtan Aram, which is the same name used in the BC Company Summary from the Corporate Registry. I find Fred and Tahamtan Aram are likely the same person. However, since Ms. Craig has not consented, I have not amended the style of cause to reflect the name Tahamtan Aram. Given my conclusions below, I find nothing turns on how Mr. Aram is named in the style of cause.
11. Second, I note that Mr. Loucks is technically in default as he did not provide a completed Disputed Response, as required under the CRT rules. Although liability is generally assumed when a party is in default, I decline to make that assumption here. This is because Ms. Craig made no specific claims against either Mr. Loucks or Mr. Aram in their personal capacity. Rather, she claims Westcoast failed to provide the installation services she paid for.
12. As a corporation, Westcoast is a separate legal entity from its directors, Mr. Loucks and Mr. Aram. I find the directors are not personally liable for the installation agreement between Ms. Craig and Westcoast, nor are they personally liable for any alleged breach of that agreement. It is undisputed that neither director attempted to install either appliance. So, I dismiss Ms. Craig's claims against Mr. Loucks and Mr. Aram personally, despite Mr. Loucks being in default.

ISSUE

13. The remaining issue in this dispute is whether Westcoast breached the parties' agreement by failing to install, or incorrectly installing, Ms. Craig's appliances and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this the applicant, Ms. Craig, must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.
15. Ms. Craig purchased several appliances from Westcoast, including a dishwasher and a combination microwave hood-fan on March 15, 2021. The invoice says Ms. Craig paid \$199.99 for dishwasher installation and a further \$175 for microwave hood-fan installation. There is no explanation why she claimed only \$149 for the microwave installation when she paid more. However, I find nothing turns on the difference, given my findings below.
16. I find the terms of the parties' agreement are set out in the March 15, 2021 invoice. The face page says appliance installation includes removing and replacing an existing unit only. It specifically notes dishwasher installation does not include running a new water line, drain, or electrical. The front page refers to the terms and conditions on the back page. The back page reiterates that installation service is "Removal and Replacement only". It specifically says Westcoast will not provide "new plumbing, ducting, electrical or cabinetry adjustment or removal". As Ms. Craig provided a copy of this invoice as evidence, I find she was aware of the terms. I find Ms. Craig agreed to the terms by paying the purchase price for the appliances.
17. Although Ms. Craig says Westcoast should have pointed out the installation limitations on the parties' agreement, I find no legal basis for that. In some circumstances surprisingly onerous or unfair contract terms will be unenforceable if

the presenting party does not draw the consenting party's attention to those terms (see *Tilden Rent-A-Car Co. v. Clendenning*, 1978 CanLII 1446 (ON CA) and *Apps v. Grouse Mountain Resorts Ltd.*, 2020 BCCA 78). However, I find nothing onerous or surprising here. I find it reasonable for Westcoast to limit its installation services, particularly in cases where further plumbing, electrical, or carpentry work are required, such as here.

18. Westcoast delivered Ms. Craig's appliances on July 27, 2021. Westcoast's installer, RS, mounted the microwave under the existing cabinet above the stove. He did not install any ducting or a collar to vent the range-hood portion of the microwave. He did not install the dishwasher. None of this is disputed.
19. Ms. Craig says the microwave was installed too close to the stove, which is obvious in Ms. Craig's photos as the microwave appears very close to the cook top. Ms. Craig admits the installed cabinet above the stove (from which the microwave hung down) was built too large for the space, although she only realized that after the microwave was installed. She says RS should have told her the space was too small for the microwave, but he did not.
20. In a May 4, 2021 email, Westcoast had provided Ms. Craig with all the "spec sheets" for her purchased appliances. I find the installation instructions clearly show the size of each appliance, and how much space was required between the cabinet and the cooktop for the microwave's installation. So, I find Ms. Craig should have been aware of the space requirements for the microwave installation before it arrived. I find it was not Westcoast's responsibility to ensure the space was adequate, particularly as the parties' agreement says Westcoast will not adjust or remove cabinetry for installation.
21. Ms. Craig also says RS failed to install the necessary ducting and venting for the microwave. Although Westcoast says that RS told Ms. Craig he would return to install that portion once the cabinetry and missing electrical plug had been fixed, Ms. Craig denies it. As Westcoast did not provide RS' witness statement or any supporting evidence, I prefer and accept Ms. Craig's version of what RS said or did not say. However, I am not persuaded that microwave installation should have included

ducting and venting, given Westcoast's specific exclusion of those items on page 2 of the parties' agreement. Further, even if RS had installed the proper venting for the microwave, Ms. Craig would have received no benefit from it as it would have had to be undone and redone, when the above stove cabinet was later adjusted for size.

22. Finally, Ms. Craig also says RS must have failed to turn the motor in the microwave "around" to vent it to the interior of her apartment, as required in the installation manual. Although Ms. Craig provided a video clip which she says shows the microwave making a loud noise with operation, she has provided no evidence that the noise is the result of the allegedly incorrect motor orientation. Nor has she proven that the motor is in the wrong direction for interior venting. Specifically, Ms. Craig has not provided any expert evidence explaining the microwave noise, or what RS may have done incorrectly to cause the alleged problem. I find Ms. Craig has not proven RS failed to turn the microwave motor around or that he should have done so.
23. I turn now to Ms. Craig's claims about the dishwasher which Westcoast undisputedly did not install.
24. It is undisputed that Ms. Craig's countertop, kitchen sink or faucets had not yet been installed. Westcoast says the plumbing line for the dishwasher had not been installed as of July 27, 2021. Ms. Craig does not dispute it and it is supported by a later plumbing invoice to Ms. Craig to install the water line. I find Westcoast was not required to run a water line to the dishwasher for installation, as that is specifically excluded in their invoice terms. I find Westcoast was unable to install the dishwasher on July 27, 2021 because the plumbing lines were insufficient.
25. I find the lack of sufficient plumbing was Ms. Craig's responsibility. On the back of its invoice, Westcoast requires the customer to review the delivery information provided to ensure measurements are accurate and to verify all outlets and plumbing are appropriate and available for the new appliances. I find Westcoast provided Ms. Craig with the dishwasher installation manual on May 4, 2021, which showed what plumbing was required in what place for the dishwasher installation. So, I find it was Ms. Craig who breached the parties' agreement, rather than Westcoast.

26. It is undisputed that Westcoast offered to send RS or another installer back to complete the dishwasher installation, and check on the microwave, for a further fee. The first page of the invoice states that any additional trips to complete an installation will be at the purchaser's expense. I find this authorizes Westcoast to charge further fees to complete Ms. Craig's installation.
27. Ms. Craig undisputedly declined Westcoast's offer to complete the appliance installation. By doing so, I find she terminated the parties' agreement and is therefore not entitled to a refund of her paid installation fees. I dismiss Ms. Craig's claims.
28. As Ms. Craig was unsuccessful in her claims, I find she is not entitled to reimbursement of any CRT fees or dispute-related expenses under section 49 of the CRTA And the CRT rules. The successful respondents claimed no dispute-related expenses.

ORDER

29. I dismiss Ms. Craig's claims and this dispute.

Sherelle Goodwin, Tribunal Member