



Civil Resolution Tribunal

Date Issued: April 11, 2022

File: SC-2021-008184

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Floorica Construction Ltd. v. Schmidt*, 2022 BCCRT 409

BETWEEN:

FLOORICA CONSTRUCTION LTD.

APPLICANT

AND:

JANOS SCHMIDT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is over payment for tiling services. The respondent, Janos Schmidt, hired the applicant, Floorica Construction Ltd. (Floorica), to do a tile renovation job plus

other related work. Floorica says Mr. Schmidt has failed to pay the \$1,584.20 outstanding balance.

2. Mr. Schmidt says there was “no official agreement” on price. He also says the scope of work “completely changed” and not all the work claimed to have been completed was done.
3. Floorica is represented by its owner, Bassem El-Helou. Mr. Schmidt is self-represented.

JURISDICTION AND PROCEDURE

4. 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). CRTA section 2 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.
5. CRTA section 39 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, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.
6. CRTA section 42 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.

7. 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.

ISSUE

8. The issue in this dispute is whether Floorica is entitled to payment of its outstanding \$1,584.20 invoice balance for tile work.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Floorica must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. Floorica says Mr. Schmidt hired it to do a tile renovation job, “plus fixing the floor and installing of subway tiles on the wall”. Floorica says its work also included delivery of the necessary material to the job site. The parties had no formal written contract.
11. Mr. Schmidt does not deny hiring Floorica for tile work. His first argument is that the parties had no formal or signed contract. Contrary to Mr. Schmidt’s apparent assertion, a verbal agreement is still binding but can be harder to prove. I address Mr. Schmidt’s other defenses below.
12. Floorica’s October 26, 2021 invoice (marked due on receipt), shows the total job was \$3,784.20 and reflected a \$2,200 “deposit”, with the claimed \$1,584.20 as the balance due. The invoice’s body describes the following work:
 - a. 270 square feet of porcelain tiles, for \$810

- b. Installation/labour for the 270 square feet of tile installation, for \$1,890
 - c. Subway tile installation, for \$400
 - d. "Fixing the floor", for \$250
 - e. Delivery, for \$200
13. Mr. Schmidt says Floorica's estimated and "ball-park" price was "for more scope than what was completed in the end". Yet, significantly, he did not identify what the alleged original scope was. He did not identify the alleged original price or what Floorica allegedly failed to complete under its invoice. I find Floorica's invoice sufficiently detailed, and I prefer it in contrast to Mr. Schmidt's vague submission.
14. Mr. Schmidt also denies agreeing to pay any delivery fee, saying he would have picked up the materials himself. Yet, there is no evidence that Mr. Schmidt offered to arrange delivery himself and I find it common practice that a contractor would charge a delivery fee. I find nothing obviously unreasonable about a \$200 delivery charge given the volume of tiles.
15. Mr. Schmidt also says Floorica misidentified the square footage as 270 square feet when the area to be tiled was 225 square feet. Floorica says 225 square feet is "without wastage". I find nothing improper in Floorica's invoice accounting for wastage in tile cutting. In other words, I find it unsurprising Floorica had to buy more tiles than the exact 225 square foot area being tiled, to account for wastage in cutting and application. Mr. Schmidt submitted no evidence to the contrary.
16. As supporting evidence for his position, apart from a copy of Floorica's invoice, Mr. Schmidt submitted only 2 things. First, a close-up photo of 2 tiles, which appear to show they are slightly off-level. He also submitted a photo of a large tile with a jagged edge, uninstalled and leaning against a wall, showing it had been broken somehow.
17. I cannot say that based on the off-level tile photo Floorica's work was obviously deficient, and so I find expert evidence is required (see *Bergen v. Guliker*, 2015 BCCA 283). Yet, Mr. Schmidt submitted no expert evidence that Floorica's tile work was

deficient. Mr. Schmidt has the burden of proving deficiencies (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 6). Here, I find he has not done so. As for the tile with the broken edge, I say the same thing, noting Floorica undisputedly expected some wastage in cutting tiles. Mr. Schmidt has not proven otherwise.

18. Next, while Mr. Schmidt also says Floorica charged him for a full box of broken tiles, I find this unproven noting there no photos of such a full box in evidence.
19. In his response submission, Mr. Schmidt also says on an unspecified date he spoke to Mr. El-Helou's son who confirmed that \$2,200 was an appropriate charge for the completed work. Mr. Schmidt says Floorica then 2 months later sent him its invoice "out of nowhere" asking for more money.
20. Floorica did not address the alleged \$2,200 price cap in its reply submission. However, in context I find Floorica is clear in its position that it never agreed to such a cap. On balance, I do not fault Floorica for not having submitted a witness statement from Mr. El-Helou's son, since that \$2,200 allegation was only made in Mr. Schmidt's response argument, after the evidence submission stage had completed.
21. I also acknowledge that in its final reply submission Floorica referenced having a written statement from its installer that he had completed the job for Mr. Schmidt. Floorica submitted no witness statement. I considered drawing an adverse inference against Floorica for not producing that statement. I decline to do so, because as noted Mr. Schmidt provided no details about how the job was allegedly left incomplete.
22. On balance, I find Floorica is entitled to the claimed \$1,584.20, because I accept Mr. Schmidt hired it to do the job described in Floorica's invoice. I find deficiencies unproven and I do not accept Mr. Schmidt's unsupported and vague assertion that Floorica did not complete the job as agreed.
23. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicant is entitled to pre-judgment interest under the COIA on the \$1,584.20. Calculated from October 26, 2021 to the date of this decision, this equals \$3.27.

24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Floorica was successful, I order Mr. Schmidt to reimburse it \$125 in CRT fees. No dispute-related expenses were claimed.

ORDERS

25. Within 30 days of this decision, I order Mr. Schmidt to pay Floorica a total of \$1,712.47 broken down as follows:

- a. \$1,584.20 in debt,
- b. \$3.27 in pre-judgement interest under the COIA, and
- c. \$125 in CRT fees.

26. Floorica is entitled to post-judgment interest, as applicable.

27. 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 the party receives notice of the CRT's final decision.

28. Under CRTA section 58.1, the Provincial Court of BC can enforce a validated copy of the CRT's order. 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 a Provincial Court of BC order.

Shelley Lopez, Vice Chair