



Civil Resolution Tribunal

Date Issued: April 11, 2022

Files: SC-2021-005075
SC-2021-005079
SC-2021-005081

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Premium Restoration Ltd. v. Mazdine*, 2022 BCCRT 411

B E T W E E N :

PREMIUM RESTORATION LTD.

APPLICANT

A N D :

FRANAK MAZDINE and BEHRAM MAZDINE

RESPONDENTS

A N D :

PREMIUM RESTORATION LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. These disputes are about residential home repairs and construction. The applicant, and respondent by counterclaim, Premium Restoration Ltd. (PRL), says it performed home repairs and upgrades for the respondents, and applicants by counterclaim, Franak Mazdine and Behram Mazdine. PRL says the Mazdines did not pay for all of its work, and it claims for unpaid invoices in three separate projects as follows: \$2,875.61 in dispute number SC-2021-005075, \$3,927.22 in SC-2021-005079, and \$5,000 in SC-2021-005081.
2. The Mazdines say that PRL did not complete its work as agreed, so they owe nothing further. In dispute number SC-2021-005075, the Mazdines counterclaim for \$4,801 in damages for items allegedly broken or soiled by PRL. PRL denies causing any damage or being responsible for soiling.
3. The Mazdines are self-represented in this dispute. An employee represents PRL in dispute numbers SC-2021-005075 and SC-2021-5079, and a different employee represents PRL in dispute number SC-2021-005081.

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). 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.
5. 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. The Mazdines requested cross examination of a PRL employee, which would require an oral hearing. Although the parties' submissions each call into

question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing with cross examination is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions. I note that the Mazdines provided written submissions, and PRL had an opportunity to respond to them.

6. 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.
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.
8. Under CRT rule 1.11, settlement discussions are confidential and must not be disclosed during the CRT decision process unless the parties agree, or in other circumstances not relevant here. All parties submitted correspondence containing settlement discussions. The Mazdines referred to this evidence in their submissions, and no party objected to it. I find that the parties waived settlement privilege over the documents in evidence, and they are admissible. Nothing turns on this however, since I did not rely on any settlement discussions in my decision below.
9. PRL says the 3 disputed invoices are separate claims for different work under different contracts, so it initiated 3 different CRT disputes. The Mazdines say the disputed invoices are all for PRL's work on their home, and that PRL improperly brought 3 CRT disputes to avoid the CRT's maximum small claim amount of \$5,000 per claim. As explained below, I find that the 3 disputes before me each contain distinct claims, and each claim is \$5,000 or less.

ISSUES

10. The issues in this dispute are as follows:

- a. Are the 3 disputed invoices separate claims each limited to \$5,000, or are they all part of the same claim and limited to \$5,000 in total?
- b. Did PRL complete the agreed tasks in a flooring scope of work, and if so, do the Mazdines owe PRL \$5,000 in dispute number SC-2021-005081?
- c. Did PRL complete the agreed tasks in an electrical scope of work, and if so, do the Mazdines owe PRL \$2,875.61 in dispute number SC-2021-005075?
- d. Did PRL complete the agreed tasks in the Mazdines' kitchen, and if so, do the Mazdines owe PRL \$3,927.22 in dispute number SC-2021-005079?
- e. Is PRL responsible for damaging and soiling the Mazdines' home and contents, and if so, does it owe \$4,801 in damages in the dispute number SC-2021-005075 counterclaim?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant PRL must prove its claims on a balance of probabilities, meaning "more likely than not". The Mazdines must prove their counterclaim to the same standard. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. In January 2020, the Mazdines' vacation home in a strata corporation (strata) suffered water damage from a burst pipe. The strata's insurance policy covered the cost of some repairs, including drywall replacement. The strata and its insurance company undisputedly hired PRL to do the water damage repairs, which introduced the Mazdines to PRL. I find that later, on 3 different occasions noted below, the Mazdines asked PRL to perform other upgrades to their home that were not covered by insurance. There are no formal written contracts for this additional work. I find the

parties' agreements for the work are reflected in written "scopes of work" and estimates that the Mazdines undisputedly approved.

Number of Claims

13. CRTA section 118(1) and the *Tribunal Small Claims Regulation* say that the CRT has jurisdiction to resolve a claim if it is less than or equal to \$5,000. CRTA section 1 says that a claim "includes any matter that may be resolved by the tribunal". The CRTA does not define a "claim" further.
14. In *De Bayer v. Yang*, 2019 BCCRT 298, which is not binding on me but which I find persuasive, a tribunal member determined that an applicant may bring multiple claims against the same defendant that total more than the CRT's monetary limit, as long as the claims are sufficiently distinct and are different and separate claims. In breach of contract disputes such as those before me, the key consideration is whether multiple claims arise from the same breach of contract. For the following reasons, I find that PRL's claims in the 3 disputes before me do not arise from the same breach of the same contract.
15. PRL provided the Mazdines with an April 14, 2020 scope of work and estimate for electrical upgrade work priced at \$2,875.61, which it charged the Mazdines in an April 23, 2020 invoice. PRL provided a different scope of work and estimate on June 12, 2020 for vinyl flooring and related work estimated at \$9,050.84, and it charged \$7,736.86 for completed flooring work in an October 16, 2020 invoice. On July 14, 2020, PRL provided the Mazdines with a \$3,927.22 bill for agreed structural upgrades to their kitchen. The Mazdines undisputedly approved the differently dated scopes of work, estimates, and bill. PRL assigned each project a different file number and billed for each type of work in separate invoices. Submitted correspondence from the Mazdines and their lawyer referred to each of the kitchen, electrical, and flooring projects as different contracts.
16. As noted, the strata and its insurer hired PRL for the insured water damage work, and the Mazdines did not. The submitted evidence contains no contract between PRL and

the strata or its insurer. On the evidence before me, I find there was no master contract between the parties that governed their relationship for all of the work they agreed to. I find that the 3 packages of work ordered by the Mazdines were negotiated separately, on different dates, and each related to a distinct project in the Mazdines' home.

17. I find the evidence shows that each of the kitchen, electrical, and flooring work agreements were separate agreements, and it was appropriate to invoice the work under each agreement separately (see for example *Wah Loong Ltd. v. Fortune Garden Restaurant (Richmond) Ltd.*, 2000 BCPC 163). So, I find that PRL's claims in the 3 disputes before me do not arise from the same alleged non-payment breach in the same contract, but are separate and distinct claims under different contracts, each limited to \$5,000. Further, I find that the \$5,000 claim for flooring work in dispute number SC-2021-005081 relates to the \$7,736.86 flooring invoice in evidence, and that PRL has abandoned any amounts exceeding \$5,000 in that claim.

Flooring Invoice (SC-2021-005081)

18. The June 12, 2020 "Repair Scope/Quotation" letter in evidence provided PRL's scope of work and cost summary for removing flooring and replacing it with vinyl planks, in addition to wall painting, baseboard and casing replacement, and other incidental work. The cost summary totalled \$9,050.84, after subtracting a \$5,865.44 flooring credit paid under the strata insurance claim. The letter also said that the "flooring allowance provided by the strata insurance claim has been provided". I infer this means PRL had been paid \$5,865.44 in insurance proceeds toward the proposed flooring work, which the Mazdines allege in their submissions and PRL does not deny. The scope of work included "complete filling and leveling of concrete substrates" to allow the vinyl planks to be installed, although no leveling cost was separately identified in the cost summary.
19. On August 11, 2020, PRL told the Mazdines that it would cost an extra \$6,250 plus tax to properly level the floor. I find this was a significant cost increase of 77% over the original estimate that included levelling in the scope of work and did not say that

it would cost extra. PRL does not deny that it refused to install the flooring without this extra payment, so I find PRL effectively repudiated the parties' flooring contract, and the Mazdines accepted the repudiation. This means that the Mazdines owed nothing further under the contract except for work already performed.

20. PRL does not say how much of the flooring contract work it completed, or how long it spent on those tasks. On the evidence before me, PRL simply invoiced the Mazdines \$7,736.86 on October 16, 2020 without further explanation. I find photos in evidence show that PRL removed the old flooring and baseboards and disposed of them, which PRL's estimate said would cost \$500 plus taxes, overhead, and profit. I find the evidence does not show that PRL purchased or installed any flooring or any baseboards or casings. I find several submitted invoices confirm that the Mazdines hired Me N Mar Construction to complete most of the items in the PRL flooring scope of work, including purchasing and installing flooring without requiring any levelling, and purchasing and installing baseboards.
21. Even if PRL had completed all of the other items in the flooring scope of work except the new flooring and new baseboards, which I find is unproven, according to PRL's cost summary the total cost would have been \$3,814.86. I find this is less than the \$5,865.44 in insurance proceeds PRL received towards the flooring work. I find that ordering any further flooring payments would result in double recovery. So, I dismiss PRL's claim for \$5,000 in dispute number SC-2021-005081.

Electrical Invoice (SC-2021-005075)

22. PRL's April 14, 2020 "Repair Scope/Quotation" letter in evidence provided a scope of work and cost summary for various heating and air conditioning wiring work, including related fire stop caulking and vapour barrier installation. The cost summary was \$2,875.61, which is the amount PRL invoiced the Mazdines on April 23, 2020.
23. PRL says it completed all of the invoiced electrical work. It also submitted an invoice from E-Tron Electric Ltd., whom I infer was an electrical subcontractor, which showed E-Tron completed \$1,580.68 in electrical work at the Mazdines' home.

24. The Mazdines never paid the electrical invoice and said that PRL never completed the agreed work. However, I find the Mazdines do not identify any specific incomplete or deficient electrical work. I find the evidence does not show that any items in the electrical scope of work were not completed or were deficient. On balance, I find that PRL completed all of the electrical work. I allow PRL's claim for \$2,875.61 in dispute number SC-2021-005075.

Kitchen Invoice (SC-2021-005079)

25. PRL's July 14, 2020 "Repair Service Breakdown" letter to Mr. Mazdine detailed the time and materials PRL spent to remove a kitchen wall, including tying in to truss systems and restoring a vapour barrier and insulation. PRL says it completed all of the work outlined in the letter, which billed \$3,927.22.

26. The Mazdines never paid this kitchen bill and say that PRL never completed the agreed work. In correspondence with PRL, the Mazdines said PRL did not install a microwave and hood fan, and that the kitchen wall cap was deficient. I find nothing before me shows that microwave and hood fan installations were included in the parties' agreed scope of work. Further, I find there is no evidence showing that any kitchen wall cap work was deficient, other than the Mazdines' unsupported allegations, or that there were any other incompletions or deficiencies in the agreed kitchen work. On the evidence before me, I find that PRL completed all agreed kitchen work. I allow PRL's claim for \$3,927.22 in dispute number SC-2021-005079.

Alleged Damage (SC-2021-005075)

27. The Mazdines say that PRL broke items in their home. They counterclaim \$4,801 in damages as follows: \$539 for broken mirror doors, \$200 for a damaged countertop, \$400 in labour to reassemble beds, \$2,612 to supply and install baseboards, \$400 to replace 2 air conditioners, \$250 for furniture cleaning, and \$400 for plumbing repair.

28. As shown in a March 31, 2020 letter, the Mazdines undisputedly paid PRL \$1,247.47 to pack up items in their home and wrap them in plastic, because those items remained in the home during construction. The Mazdines say that despite this

packing and wrapping, many of their items became covered in drywall dust from PRL's work. I find that submitted photos show significant dust on what appears to be an outdoor air conditioner unit with a prominent label reading "do not cover", as well as some dust on a portable electrical appliance. A photo of furniture shows no dust or soiling. I find there is no evidence that the visible dust in the photos could not have been brushed off the electrical appliances. I find there are no cleaning invoices or estimates in evidence that say they are for the specific furniture and appliance soiling the Mazdines allege. There is also no evidence showing that 2 air conditioners were damaged or otherwise needed to be replaced. I dismiss the Mazdines' counterclaims for furniture cleaning and air conditioner replacement.

29. The Mazdines say PRL unnecessarily removed baseboards, so the Mazdines needed to supply, install, caulk, and paint new baseboards. However, I find that the agreed scope of work for the parties' flooring agreement included removing and disposing of baseboards. I find any baseboard removal was done with the Mazdines' permission. Further, I find the question of whether any baseboard removal was necessary in the circumstances is a subject beyond ordinary knowledge and experience, and requires expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124). There is no such expert evidence before me. I dismiss the Mazdines' counterclaim for baseboards.
30. I find the evidence before me does not show any damage to plumbing or to a countertop, so I dismiss the Mazdines' counterclaims for those items.
31. I find that although the Mazdines paid PRL for packing and wrapping services, nothing before me shows that PRL agreed to unpack or reassemble any of the items it packed. So, I find PRL was not responsible for reassembling beds. I dismiss the Mazdines' counterclaim for bed reassembly labour.
32. The Mazdines submitted photos of broken mirror doors, which were badly shattered. The Mazdines say PRL broke the doors. In correspondence with the Mazdines, PRL said that any damage was likely caused by falling ceiling drywall debris from the water leak before they began their work. The Mazdines undisputedly used the home for

vacation purposes, and they do not say whether they viewed the door before PRL began its work, and whether it was unbroken at that time. On the evidence before me, I find the Mazdines have not met their burden of proving that PRL broke the mirror doors and is responsible for their replacement.

33. I dismiss the Mazdines' entire counterclaim in SC-2021-005075.

CRT Fees, Expenses, and Interest

34. The *Court Order Interest Act* applies to the CRT. I find PRL is entitled to pre-judgment interest on the \$2,875.61 owing in dispute SC-2021-005075, calculated from the April 23, 2020 invoice date (which was due on receipt) until the date of this decision. This equals \$33.64. I also find PRL is entitled to pre-judgment interest on the \$3,927.22 owing in dispute SC-2021-005079, reasonably calculated from the July 14, 2020 bill date until the date of this decision. This equals \$30.84.

35. Under section 49 of the CRTA, and the 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.

36. PRL was successful in its dispute number SC-2021-005075 electrical work claim, so I find it is entitled to reimbursement of the \$125 it paid in CRT fees for that dispute. The Mazdines were unsuccessful in their counterclaim in the same dispute, but PRL paid no CRT fees for that counterclaim. Neither party claimed CRT dispute-related expenses in that dispute.

37. PRL was successful in its dispute number SC-2021-005079 kitchen work claim, so I find it is entitled to reimbursement of the \$175 it paid in CRT fees for that dispute. Neither party claimed CRT dispute-related expenses in that dispute.

38. PRL was unsuccessful in its dispute number SC-2021-005081 flooring work claim. However, the Mazdines paid no CRT fees, and neither party claimed CRT dispute-related expenses, in that dispute. So, I order no reimbursements in that dispute.

ORDERS

39. Within 30 days of the date of this decision, I order the Mazdines to pay PRL a total of \$7,167.31, broken down as follows:
- a. \$2,875.61 in debt in dispute number SC-2021-005075,
 - b. \$3,927.22 in debt in dispute number SC-2021-005079,
 - c. \$64.48 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$300 in CRT fees.
40. I dismiss PRL's claim in dispute number SC-2021-005081, and the Mazdines' counterclaim in dispute number SC-2021-005075.
41. 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.
42. 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.

Chad McCarthy, Tribunal Member