



Civil Resolution Tribunal

Date Issued: April 28, 2022

File: SC-2021-008124

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marvici v. Miller*, 2022 BCCRT 497

BETWEEN:

JOSEPH MARVICI

APPLICANT

AND:

SHELLEY MILLER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a partially unpaid invoice for bathroom renovations. The applicant, Mr. Joseph Marvici, seeks payment of \$1,864 as the balance remaining for the work.

2. The respondent, Ms. Shelley Miller, denies liability. She says Mr. Marvici wrongfully billed based on an hourly rate of \$50, when in fact he agreed to a fixed price of \$1,200 for the work. Ms. Miller also says Mr. Marvici's work was deficient. She says that in these circumstances, Mr. Marvici is not entitled to any further payment.
3. The parties are self-represented.
4. For the reasons that follow, I find Mr. Marvici has proven most of his claim.

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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue

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 as follows:
 - a. Did the parties agree on a fixed price or hourly rate for the work?
 - b. Is Ms. Miller entitled to a set-off for deficient work?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Marvici as the applicant must prove his claims on a balance of probabilities. This means more likely than not. 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. Mr. Marvici provided submissions and evidence but no final reply submissions though he had the opportunity to do so.
11. I begin with the background facts. On August 26, 2021, Mr. Marvici met with Ms. Miller at her residence. The parties entered into a verbal agreement for bathroom renovations. A mutual acquaintance, JD, had referred Mr. Marvici to Ms. Miller. JD was present at the time.
12. In this dispute the parties disagree on key terms of their contract, including the price and scope of work.

13. Mr. Marvici says the parties agreed to the following. He would renovate Ms. Miller's bathroom by installing the gyprock over the paneling and over the ceiling tiles. He would also level the floor to stop the toilet from rocking. He would charge based on an hourly rate of \$50, and estimated the total cost would be \$1,200. He says that when he started work on August 30, 2021, Ms. Miller added additional work. The added work included removing the bathtub, ceiling tiles, taps and shower plumbing, installing a tub surround and new insulation in the ceiling, replacing the pre-existing sink and cabinet, and replacing some light and plumbing fixtures. He says he warned Ms. Miller that this would increase the cost of the work and Ms. Miller agreed.
14. Ms. Miller disagrees and says Mr. Marvici agreed to the following. He quoted a fixed price of \$1,200. She says for this price he agreed to add new plywood to level the floor, install new gyprock, replace the existing vanity for smaller one, remove existing ceiling tiles to install a vapor barrier, install new faucets, and install the tub surround. Ms. Miller says they discussed replacing the existing bathtub and Mr. Marvici advised that this would not increase the fixed price, provided she pay for the new bathtub. She says that when he arrived on August 30, 2021, the parties agreed that he would remove the tub as well.
15. I find the best evidence comes from JD as he was the most neutral witness to the parties' discussion of August 26, 2021. In his January 25, 2022 statement, submitted by Mr. Marvici, JD said the parties agreed that Mr. Marvici would charge \$50 hourly and that the \$1,200 quote was only an estimate. He did not write down what the parties said would be the exact scope of work. In a September 28, 2021 letter, JD also wrote that the parties never said that the bathroom "had to be done to completion", though JD felt Mr. Marvici's estimate was low for the work involved, whatever it was. I also find it unlikely that Mr. Marvici would agree to remove the bathtub on August 30, 2021, without increasing the total price. Ultimately, I find JD's evidence lends more support to Mr. Marvici's version of events, and I find it was likely what happened.

16. Mr. Marvici started work on August 30, 2021 as contemplated. I find it likely he completed the work outlined in his September 22, 2021 invoice, though as noted below, Ms. Miller says this work was deficient. The work included “gutting” the bathroom, including floors and ceiling, for renovation, removing the bathtub and old plumbing, installing the new bathtub, picking up supplies, insulating and installing new insulation and a sub floor, fixing a water leak under the house, insulating the ceiling, painting part of a wall, and installing gyprock. He charged for a total of 46 hours, plus supplies and GST, for a total of \$2,664.
17. Ms. Miller was away in another city while the work occurred. She paid him \$800 at some point. In this dispute, Mr. Marvici claims for the balance of \$1,864.
18. It is undisputed that on September 16, 2021, Mr. Marvici called Ms. Miller. He said he caused a temporary water leak under the house while shutting off the main water valve. He says he fixed this, though the parties dispute how much damage this caused. It is also undisputed that on September 20, 2021, Mr. Marvici called Ms. Miller and advised that the roof was leaking. The parties disagree on whether Mr. Marvici caused the leak by changing the bathroom vent. I discuss Mr. Marvici’s work below.
19. The parties shared a contentious phone call on September 22, 2021. They disagreed on whether Mr. Marvici’s work had to be done for the fixed price of \$1,200. Mr. Marvici decided to stop work unless he was paid what he said was owing as outlined in the September 22, 2021 invoice.
20. Ms. Miller says that Mr. Marvici’s work is deficient, so I find she claims a set-off based on the law about deficiencies. When a customer alleges that a contractor’s work was below a reasonably competent standard, the customer must prove the deficiencies: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. Generally, expert evidence is required to prove a professional’s work was below a reasonable standard: *Bergen v. Guliker*, 2015 BCCA 283. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard:

Schellenberg v. Wawanesa Mutual Insurance Company, 2019 BCSC 196, at paragraph 112.

21. I find that expert evidence is necessary in this dispute as it involves a professional's work. Further, the hourly rate work was left unfinished, so I do not find it immediately obvious from the evidence, such as Ms. Miller's photos and videos, that the work done was substandard.
22. I find that Ms. Miller did not provide any expert evidence that comprehensively explained the flaws in Mr. Marvici's work or how much it would cost to fix them. For example, Ms. Miller says Mr. Marvici's work did not comply with applicable building codes and the work was so poor she had to remove the tub. Some of these allegations are also mentioned in commentary in the videos by unnamed individuals. However, there is no expert evidence, such as a plumber comments, to support these allegations.
23. Ms. Miller also provided a January 22, 2022 letter from DR, a co-worker. DR says Mr. Marvici caused the roof leak through substandard roof vent work. However, Mr. Marvici did not include this work in his invoice, and it was not mentioned in the August 26, 2021 discussions. DR also did not list his qualifications as required by CRT rule 8.3(2), so I find his letter is not expert evidence. I find Mr. Marvici's responsibility for the roof leak to be unproven.
24. Ms. Miller also provided a January 5, 2022 email from Don Hartford, a superintendent at an excavating company. He says he has over 40 years experience in all aspects of construction, including renovations. Give this, I find he is qualified under CRT rule 8.3 to give an opinion on Mr. Marvici's work. Mr. Hartford says he viewed the work on September 15, 2021, before it was completed. He say he was "taken back by the unorganized and very unprofessional work". He says Mr. Marvici used a substandard shower faucet support and worked in inadequate lighting. However, I found DH's evidence otherwise lacked specifics and it was about Mr. Marvici's work in progress, so I put less weight on it.

25. That said, I find the evidence shows Mr. Marvici negligently damaged Ms. Miller's fabric belly liner, as explained below. Ms. Miller provided an undated letter from Ethan Mills, a local contractor with a ticket in the carpentry trade that also has experience in plumbing and electrical work. I note that Mr. Marvici is not a plumber, so I find Mr. Marvici's work was more general in nature, and Mr. Mills is qualified to comment on it as an expert under CRT rule 8.3. In a written submission, Mr. Marvici said Mr. Mills was not neutral because he is Ms. Miller brother-in-law. However, he did not explain the basis for this submission. So, I find it unproven, and in any event, I would rely on Mr. Mill's opinion because it is consistent with other evidence as discussed below.
26. Mr. Mills reported the following. He visited Ms. Miller's property in mid-June 2021 for other work. At the time he had to go under her mobile home to turn off the water main multiple times. He saw that the fabric belly liner was intact at the time, which is normally used in mobile homes such as Ms. Miller's. He reviewed Ms. Miller's photos and videos and said they show the liner was subsequently damaged. He concluded that Mr. Marvici "must have had a mishap while working on the plumbing in the bathroom" and cut the liner open in an attempt to hide the flood damage. He also said Ms. Miller reported damage underneath the floors, which was consistent with his conclusion.
27. Mr. Mill's evidence is consistent with the photos and video evidence, which show an obvious tear affecting the liner. Mr. Marvici did not directly address Mr. Miller's analysis. So, I accept Mr. Mill's evidence and conclusions, and I find that Mr. Marvici's work was substandard in this respect. However, there is no evidence about how much it would cost to repair the damage. Mr. Miller also says that Mr. Marvici's workmanship was "well below code standards", but he did not explain why or how much this would cost to repair. As noted above, Ms. Miller bears the burden to prove deficiencies and entitlement to a set-off.
28. Given the above, I find that Mr. Marvici likely worked the hours claimed and was entitled to charge an hourly rate of \$50, though his work was substandard to the extent that it damaged Ms. Miller's fabric belly liner. So, I order Ms. Miller to pay Mr.

Marvici \$1,864. On a judgment basis and based on the size of the damage done to the liner shown in the photos, I award a set-off of \$300 in Ms. Miller's favour.

29. The *Court Order Interest Act* applies to the CRT. Mr. Marvici is entitled to pre-judgment interest on the \$1,564 debt from September 22, 2021, the date of the invoice, to the date of this decision. This equals \$4.21.
30. 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 Mr. Marvici is entitled to reimbursement of \$125 in CRT fees as he has proven the majority of his claims.

ORDERS

31. Within 14 days of the date of this order, I order Ms. Miller to pay Mr. Marvici a total of \$1,693.83, broken down as follows:
 - a. \$1,564 in debt,
 - b. \$4.21 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
32. Mr. Marvici is entitled to post-judgment interest, as applicable.
33. 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.

34. 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.

David Jiang, Tribunal Member