



Civil Resolution Tribunal

Date Issued: June 2, 2022

File: SC-2021-009476

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Inner-City Flooring Sales & Installation Inc. v. Bailuk*, 2022 BCCRT 644

BETWEEN:

INNER-CITY FLOORING SALES & INSTALLATION INC.

APPLICANT

AND:

MICHELLE BAILUK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a partially unpaid flooring invoice. The applicant, Inner-City Flooring Sales and Installation Inc. (ICF) says the respondent, Michelle Bailuk, refused to pay for floor levelling work ICF completed. ICF claims \$3,819.35 for its partially unpaid invoice.

2. Mrs. Bailuk does not dispute that the floor levelling work was completed, but says ICF did not include the floor levelling cost in the estimate it provided, she was never told about the cost, and ICF overcharged for the floor levelling materials used.
3. ICF is represented by a director, Jen Biddlecombe. Mrs. Bailuk 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). 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. In some respects, both parties in 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. 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.
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.

ISSUE

8. The issue in this dispute is to what extent, if any, ICF is entitled to payment of \$3,819.35 for its floor levelling work.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant ICF must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
10. It is undisputed that ICF installed new flooring in Mrs. Bailuk's home. A July 27, 2021 estimate in evidence show the estimated cost of installing vinyl plank flooring, carpet, underlay, stair risers, baseboards, as well as removal and disposal of tile at \$14,577.47. It is undisputed that floor levelling costs were not included in the estimate.
11. An October 18, 2021 invoice from ICF to Mrs. Bailuk shows that ICF charged \$2,860 to supply and install 26 bags of "self leveler" at \$110 per bag. Along with the other work completed, the invoice totaled \$15,726.97 before tax, and \$16,686.32 including tax. From the total, ICF deducted \$9,837.77 for Mrs. Bailuk's paid deposit, and a further reduction of \$3,029.20 for another payment. The balance due on the invoice is \$3,819.35.
12. ICF says it informed Mrs. Bailuk to budget for floor levelling costs both in its store, and on site at Mrs. Bailuk's home. ICF says it explains to each customer that ICF

cannot estimate levelling costs until the old flooring is lifted to see the subfloor's condition. ICF says it also explained that the installer would determine what levelling is required because the installer need to ensure the product complies with the flooring manufacturer's specifications.

13. ICF also says one of its directors, Patrick Biddlecombe, attended at Mrs. Bailuk's home to provide her with a jackhammer to remove the existing tile herself. ICF says that when Patrick Biddlecombe was at Mrs. Bailuk's home, they explained that significant levelling was required because of the height difference from Mrs. Bailuk's living room to hallway. ICF says Patrick Biddlecombe also suggested a transition strip between the rooms to reduce the levelling costs, but Mrs. Bailuk did not want a transition strip. Finally, ICF says when its installer was on site, they confirmed the need for levelling and estimated that 25 to 30 bags would be required. ICF says Mrs. Bailuk told its installer and employee to go ahead with the levelling. Emails between the parties in evidence show Mrs. Bailuk confirming that ICF did advise her that levelling may be required, although she disputed being told the cost would be \$110 per bag. The emails also confirm she was aware that her existing floor was not level, and that she was placing sheeting down to try to level it out.
14. Mrs. Bailuk does not dispute that ICF discussed levelling with her, and acknowledged that some levelling was required. However, Mrs. Bailuk says ICF did not tell her that "most of the floor" would have to be levelled, that it would cost \$110 per bag of levelling material, or that 25 to 30 bags would be required. Mrs. Bailuk says the floor levelling costs should have been included in the original estimate, and ICF should have told her when it realized the amount of levelling required.
15. Mrs. Bailuk also alleges that ICF made errors with the carpet measurements which required ICF to order a large piece of carpet it could not return. She alleges that the floor levelling costs is ICF's "way of recouping some of that cost". ICF denies this, and I place no weight on this allegation because the available evidence does not support it.

16. Parties can form a contract through their correspondence and their conduct if they show that they agreed to the contract's terms (see *Crosse Estate (Re)*, 2012 BCSC 26, at paragraph 30). Mrs. Bailuk does not dispute being informed of the need for floor levelling. She also does not dispute that she agreed to the floor levelling and permitted ICF to proceed with the floor levelling work in her home prior to installing the flooring over top. I find all of these undisputed actions indicate that she agreed to the floor levelling work.
17. Although Mrs. Bailuk says that ICF should have included the floor levelling costs in the estimate, she does not dispute that it did not do so. The estimate itself breaks down the items for which estimates were provided, but does not show any amount estimated for floor levelling costs. Given this, I find there is no basis on which Mrs. Bailuk can claim that the floor levelling costs were included in the estimate ICF originally provided. As Mrs. Bailuk agreed to the floor levelling work that was not included in the estimate, I find she agreed to pay for the reasonable costs of doing so. On balance, I find ICF has proven that Mrs. Bailuk is responsible to pay for reasonable floor levelling costs.
18. As noted above, Mrs. Bailuk says that ICF overcharged for the floor levelling costs. ICF says \$110 per bag is consistent with industry rates. In an email to ICF, Mrs. Bailuk says a friend in construction was only charged \$50 per bag. The available evidence does not show what other companies charge for floor levelling, or any documentary evidence to show that the \$110 per bag charged by ICF was not reasonable. Given the above, I find ICF's charge of \$110 per bag for floor levelling was reasonable.
19. As noted above, ICF claims \$3,819.35 for the unpaid balance of its October 18, 2021 invoice. However, I find the October 18, 2021 invoice total is not the amount ICF initially invoiced Mrs. Bailuk. A November 17, 2021 email from ICF to Mrs. Bailuk including an invoice for payment shows that the invoice sent to Mrs. Bailuk totaled \$15,726.97, with no taxes applied. This amount is consistent with the total (before taxes) in the October 18, 2021 invoice discussed above. Further, a November 23, 2021 email from ICF to Mrs. Bailuk confirmed that ICF removed all the taxes off of

Mrs. Bailuk's invoice as a gesture of goodwill. I find the email shows that ICF voluntarily reduced the taxes on Mrs. Bailuk's invoice. I find ICF cannot now claim for the unpaid portion of the October 18, 2021 invoice, which included \$959.35 in tax charges that were not previously invoiced to Mrs. Bailuk. I find ICF is bound by the invoice it sent to Mrs. Bailuk on November 17, 2021 by email. I find the outstanding balance due on that invoice is \$2,860 (\$15,726.97 minus the \$9,837.77 paid deposit and the \$3,029.20 payment). So, I find Mrs. Bailuk must pay ICF \$2,860 for its floor levelling work.

CRT fees, expenses, and interest

20. The *Court Order Interest Act* applies to the CRT. ICF is entitled to pre-judgment interest on the \$2,860 from November 17, 2021, the date ICF emailed the invoice to Mrs. Bailuk to the date of this decision, which I find is reasonable in the circumstances. This equals \$6.96.
21. 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. As ICF was successful in this dispute, I find it is entitled to reimbursement of \$175 in CRT fees. ICF did not claim any dispute-related expenses, so I award none.

ORDERS

22. Within 30 days of the date of this order, I order Mrs. Bailuk to pay ICF a total of \$3,041.96, broken down as follows:
 - a. \$2,860 in debt for floor levelling costs,
 - b. \$6.96 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
23. ICF is entitled to post-judgment interest, as applicable.

24. 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.
25. 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.

Leah Volkens, Tribunal Member