



# Civil Resolution Tribunal

Date Issued: June 24, 2022

File: SC-2021-008528

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marquis Glass Ltd. v. Dhaliwal*, 2022 BCCRT 736

BETWEEN:

MARQUIS GLASS LTD.

**APPLICANT**

AND:

SUNDEEP DHALIWAL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about alleged unpaid work to install steel stair stringers.
2. The applicant, Marquis Glass Ltd. (Marquis) says it installed steel stair stringers for the respondent, Sundeep Dhaliwal, but has not been paid for its completed work.

Marquis asks for an order that Dr. Dhaliwal pay Marquis \$4,137 for the stair stringer installation.

3. Dr. Dhaliwal says Marquis did not complete the work and should not be paid the complete amount. Dr. Dhaliwal says he had to pay another contractor to finish the work. He also says Marquis's owner asked him to pay a third party for the work, that Dr. Dhaliwal did not have any relationship or contract with. Dr. Dhaliwal also says Marquis threatened and harassed him, his wife, and his children and made defamatory comments about him online. Dr. Dhaliwal did not file a counterclaim.
4. Marquis is represented by its owner, Tyler Jackson. Dr. Dhaliwal is self-represented.

## **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. 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.

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.

### ***Defamation and harassment claims***

9. As noted, Dr. Dhaliwal says Marquis posted defamatory comments about him online. He included posts from various websites in evidence. However, Dr. Dhaliwal did not file a counterclaim. Even if he did, defamation claims are expressly excluded from the CRT's jurisdiction under CRTA section 119. So, I have not addressed Dr. Dhaliwal's defamation allegations.
10. Dr. Dhaliwal also alleged that Marquis's owner, Mr. Jackson, threatened and harassed him, his wife, and his children. In his submissions, he claims damages at the CRT's discretion for Mr. Jackson's harassment and bullying towards him, his wife and his children. First, I note that Mr. Jackson, and Dr. Dhaliwal's wife and children are not parties to this dispute. Again, as noted, Dr. Dhaliwal did not file a counterclaim. So, I have not addressed that issue in this decision.

### **ISSUE**

11. The issue in this dispute is to what extent, if any, Dr. Dhaliwal must pay Marquis \$4,137 for its stair stringers installation.

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Marquis 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.
13. Marquis says Dr. Dhaliwal contracted with Marquis in 2020 to install the stair stringers. Dr. Dhaliwal does not dispute this. Marquis says it installed the stair stringers in late 2020, but Dr. Dhaliwal failed to pay Marquis the \$4,137 owing.
14. Although Dr. Dhaliwal argued Mr. Jackson sought payment to a third party company, there is no dispute that Dr. Dhaliwal contracted with Marquis and Marquis performed the work. Marquis is the party claiming payment from Dr. Dhaliwal in this dispute, so I find nothing turns on Dr. Dhaliwal's allegations about a third party company.
15. I find text messages between Marquis's owner, Mr. Jackson, and Dr. Dhaliwal show that between July and October 2021, Dr. Dhaliwal repeatedly told Marquis that he was waiting on the funds to pay for Marquis's work. Dr. Dhaliwal said he was working with his lawyer and his bank to access the funds. During this time, there is no evidence that Dr. Dhaliwal raised any concerns with Marquis's work.
16. The invoice itself is not in evidence. However, the text messages also include a photograph of a \$16,275 invoice for stair stringers, partially cut off, sent to Dr. Dhaliwal. Based on this evidence, I find that the total invoice for Marquis's work was \$16,275. I also find the total invoiced amount is not obviously unreasonable.
17. Dr. Dhaliwal does not dispute that \$4,137 remained outstanding on the invoice, or suggest that the total invoiced amount was unreasonable or inflated. Dr. Dhaliwal does not dispute that the stair stringers were installed, and photographs in evidence confirm they were. However, as noted, Dr. Dhaliwal says Marquis is not entitled to payment of the outstanding \$4,137 because he says the stair stringers were damaged and the work was not complete.

18. Dr. Dhaliwal says he had to pay another contractor to repair and finish the stair stringers, and says Marquis should be responsible for the cost of doing so. As Dr. Dhaliwal did not file a counterclaim, I find he asks for the amounts paid to another contractor be set off from the \$4,137 Marquis claims is owing.
19. Dr. Dhaliwal also argues that Marquis grossly delayed the stair stringer installation and caused him to pay several months interest on a construction mortgage. However, Dr. Dhaliwal did not provide further details of the alleged delay, or any documentary evidence in support of this allegation. He also did not explain why it would relieve him of his contractual obligation to pay Marquis for the stair stringer installation. So, I place no weight on this allegation.
20. Based on all the above, I find Marquis has proven on balance that it is entitled to payment of the claimed \$4,137 for the stair stringer installation, subject to any set-off for proven deficiencies.

### **Set-off**

21. When a customer alleges that a contractor's work was below the required standard, they must prove the deficiencies (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Generally, an allegation that a professional's work was below a reasonably competent standard requires expert evidence to prove. This is because the standard expected of professionals in a particular industry is generally outside the common knowledge of ordinary people. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112). Here, I find whether the stair stringer installation was substandard is outside common knowledge and therefore requires expert evidence.
22. There is no expert evidence in this dispute that proves the stair stringers were substandard.
23. Dr. Dhaliwal submitted several photographs of the stringers that he says show damage and unfinished work. Marquis says the photographs submitted by Dr.

Dhaliwal only shows scratches that may or may not be from the install. Marquis also says that it told Dr. Dhaliwal it would paint those areas once paid. I find the photographs show the installed stair stringers, with some scratches. Dr. Dhaliwal did not explain what work remained unfinished. However, text messages between the parties in evidence confirm that there was “touch-up” work to complete. In particular, October 13, 2021 text messages between Dr. Dhaliwal to Mr. Jackson show that Dr. Dhaliwal asked Mr. Jackson who was “going to finish the minor work left”. In response, Mr. Jackson said he would do the “touch ups”. Dr. Dhaliwal did not raise any other deficiencies at that time, and again confirmed he would pay Marquis. I find these text messages and the photographs in evidence prove that the stair stringers were substantially complete, with only some “touch-ups” remaining.

24. Dr. Dhaliwal also submitted a March 31, 2022 invoice from another contractor totaling \$5,145 to repair the stringers, including finishing, colour matching stringers to existing paint, scaffold rental, tightening bolts to existing frame, colour matching bolts to stringers, and removing scratches, filling dents, sanding, and colouring areas of the stringers. However, the invoice did not provide the hourly rate charged, the totals hours, or any materials costs. In consideration of the photographs and text messages in evidence that indicate that only “touch-ups” were required, and given my finding that the stair stringers were substantially complete, I find this invoice appears on its face to be excessive. As noted, there is no expert evidence that alleges Marquis’s work was substandard. So, I also find the submitted invoice does not, on its own, prove that there were deficiencies in Marquis’s work, or that Dr. Dhaliwal reasonably spent \$5,145 to correct those alleged deficiencies.
25. Despite this, as noted above, the text messages confirm that the stair stringers required touch up work, and Marquis said it would do so once paid. It is undisputed that Marquis was not paid and did not return to complete the touch ups. However, as a general principle, a contractor is entitled to payment upon substantial completion of the work (see *Belfor (Canada) Inc. v Drescher*, 2021 BCSC 2403). I have already found that the available evidence proves the stair stringer installation was

substantially complete. So, I find Marquis was entitled to payment, despite not returning to complete the touch up work.

26. Given all the above, I find Dr. Dhaliwal has not proven that he is entitled to any set off. I find Marquis is entitled to payment of \$4,137 for its stair stringer installation.

### ***CRT fees, expenses and interest***

27. The *Court Order Interest Act* applies to the CRT. Marquis is entitled to pre-judgment interest on the \$4,137 award. Marquis claims interest from March 1, 2021. I cannot tell when the invoice in evidence was issued, however, I infer that it was issued, at the latest, by July 2021 when the parties began discussing when Dr. Dhaliwal would pay. Given this, I find it reasonable to award interest from July 1, 2021 to the date of this decision. This equals \$18.26.

28. 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 Marquis is entitled to reimbursement of \$175 in CRT fees.

29. Marquis also claims \$3,000 for time spent dealing with this dispute. Marquis did not say how much time Mr. Jackson spent on this dispute on its behalf, or provide any evidence about the value of his time. Generally, time spent by a party on litigation is not recoverable as damages, though it may be recoverable as “costs” (see: *Rossmore Enterprises Ltd. v. Ingram*, 2013 BCSC 894 at paragraph 48). The CRT does not award costs, but time spent may be considered a dispute-related expense. The CRT rules say that compensation for “time spent” is usually not awarded except in extraordinary cases. This was a straightforward debt claim, and I find extraordinary circumstances do not exist. So, I dismiss Marquis’s claim for \$3,000 for time spent on this dispute.

30. In submissions, Dr. Dhaliwal also claimed \$7,035 in dispute-related expenses for the 15 hours he says he spent on this dispute at \$469 per hour. As Dr. Dhaliwal is the

unsuccessful party in this dispute, and given the same reasons noted above, I also dismiss his claim for time spent.

## **ORDERS**

31. Within 30 days of the date of this order, I order Dr. Dhaliwal to pay Marquis a total of \$4,330.26, broken down as follows:
  - a. \$4,137 in debt for the stair stringer installation,
  - b. \$18.26 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
32. Marquis 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.

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Leah Volkens, Tribunal Member