



Civil Resolution Tribunal

Date Issued: July 8, 2022

File: SC-2021-008221

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Conwright v. Baker Industries Ltd.*, 2022 BCCRT 787

BETWEEN:

KORY CONWRIGHT

APPLICANT

AND:

BAKER INDUSTRIES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a damaged kitchen counter. The applicant, Kory Conwright, hired the respondent, Baker Industries Ltd. (Baker), to replace a sink and faucet. Mrs. Conwright says that Baker's employee damaged her kitchen countertop while removing the old sink. She claims \$852.79 as the estimated cost of replacing the damaged countertop.

2. Baker agrees its employee, AG, damaged the countertop but denies liability. It says AG warned Mrs. Conwright that he might damage the countertop while removing the sink, and Mrs. Conwright accepted the risk.
3. Mrs. Conwright represents herself. Baker's employee or principal represents it.
4. For the reasons that follow, I find Mrs. Conwright has proven her claims and make the orders set out below.

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 "she said, he 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.

ISSUE

9. The issue in this dispute is whether Baker breached the parties' contract for repairs, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mrs. Conwright must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. I begin with the undisputed background. Mrs. Conwright hired Baker to replace her ceramic double basin kitchen sink with a new stainless-steel sink. Mrs. Conwright provided the new sink and replacement faucet. The parties proceeded informally, without a written contract or estimate.
12. Baker's employee, AG, arrived at Mrs. Conwright's residence on September 14, 2021. The ceramic sink was attached to the countertop using a white substance. At some point AG began using a hammer to destroy the ceramic sink to facilitate its removal. The parties disagree on whether AG warned Mrs. Conwright that removing the sink in this manner could damage the countertop and whether she provided permission to use the hammer after the warning. I discuss this below.

13. It is undisputed that when AG broke the sink apart with a hammer, a piece of the sink bounced up and broke off a piece of laminate on the countertop. Photos show a strip of grey laminate was torn off, revealing the particle board beneath it. AG stopped work after this and did not install the stainless-steel sink.
14. Baker invoiced Mrs. Conwright \$252 for removing the old faucet, garburator, and sink. A bank statement shows Mrs. Conwright paid the invoice.

Did Baker breach its contract for repairs?

15. Expert evidence is generally 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. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.
16. Here, it is undisputed that Baker was obligated to warn Mrs. Conwright if removing the sink would likely damage the countertop. The parties mainly disagree on whether AG provided such a warning on Baker's behalf. I also find that Baker was likely obligated to provide such a warning in any event. I reach this conclusion even though there is no expert evidence before me. This is because Mrs. Conwright still required the countertop to complete installing the new stainless-steel sink. I find that proceeding without such a warning would fall below reasonable standards as it would partially defeat the purpose of the renovation. So, I must consider whether Baker's employee, AG, reasonably warned Mrs. Conwright about the risk of damaging the countertop.
17. The parties provided different accounts of what happened. Mrs. Conwright says the following. AG started using a utility knife to remove the hard substance bonding the sink and countertop. Mrs. Conwright said that AG told her "if the knife slips it might leave a small scratch on the countertop". Mrs. Conwright consented to using the knife and left the room. She heard a loud crashing noise. When she returned, she found pieces of the sink on the floor and the countertop damaged.

18. In contrast, Baker says the following. AG saw that the sink was attached to the countertop with a very hard substance. AG said that using the utility knife to remove the hard substance could result in scratches. He suggested instead to break the sink apart with a hammer and using the knife from the inside of the sink to minimize the risk of scratching the countertop. He also warned that using the hammer could damage the countertop. Mrs. Conwright agreed to the risk of using the hammer and said she would replace the countertop if necessary.
19. Ultimately, I find Mrs. Conwright's version of events is more credible. AG did not provide any evidence in this dispute, such as a written statement. Baker says it summarized AG's version of events in its Dispute Response. However, Baker indicated to the CRT that someone else completed the Dispute Response. So, I find only Mrs. Conwright provided a direct, eyewitness summary in this dispute and I prefer her version of events largely for this reason.
20. Baker says that if Mrs. Conwright was displeased, she would not have paid its invoice of \$252. I disagree with this conclusion. Mrs. Conwright stopped AG from completing the sink replacement shortly after the countertop was damaged. I find this consistent with Mrs. Conwright's submission that AG failed to adequately warn her or obtain her permission to proceed with using the hammer.
21. Given the above, I find that Baker breached the parties' contract. Its work fell below reasonable standards because Mrs. Conwright was not warned of the risk of proceeding with the use of the hammer. The question that remains is what remedy is appropriate.
22. I find from the photos that Mrs. Conwright reasonably claims for replacing the laminate countertop. This is because a large part of it was damaged. Mrs. Conwright provided a September 16, 2021 estimate showing it cost \$1,142.10 plus GST to remove, supply, and install a new laminate countertop. I find she proceeded with this estimate as a handwritten note from someone named KC shows Mrs. Conwright paid a \$600 deposit to proceed. However, Mrs. Conwright only claimed \$852.79 in the

Dispute Notice. Given this, I order Baker to pay this amount, rather than the full cost of the estimate.

23. I also considered reducing the amount to account for the fact that the replaced laminate was old. However, I find it unnecessary to do so as Mrs. Conwright only claimed for partial reimbursement. Further, Baker did not suggest a more appropriate amount.
24. The *Court Order Interest Act* applies to the CRT. Mrs. Conwright is entitled to pre-judgment interest on the damages award of \$852.79 from September 16, 2021, the date of the estimate, to the date of this decision. This equals \$3.10.
25. 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 Mrs. Conwright is entitled to reimbursement of \$150 in CRT fees.
26. Mrs. Conwright also claimed \$270 as reimbursement for an April 3, 2022 invoice for “technical assistance”. On review, I find this charge was for assistance with using the CRT’s online system, rather than legal advice. I find this amount disproportionate to the claim amount and unreasonable in these circumstances. So, I decline to award reimbursement of it.

ORDERS

27. Within 14 days of the date of this order, I order Baker to pay Mrs. Conwright a total of \$1,005.89, broken down as follows:
 - a. \$852.79 as partial reimbursement for a new laminate countertop,
 - b. \$3.10 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$150 in CRT fees.
28. Mrs. Conwright is entitled to post-judgment interest, as applicable.

29. 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. 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