



# Civil Resolution Tribunal

Date Issued: July 22, 2022

File: SC-2021-008522

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wicksteed v. Barton*, 2022 BCCRT 836

BETWEEN:

JANE WICKSTEED

**APPLICANT**

AND:

BRIAN BARTON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a bathroom renovation.
2. The applicant, Jane Wicksteed<sup>i</sup>, hired the respondent, Brian Barton, to renovate her bathroom.

3. Jane Wicksteed says Mr. Barton fraudulently quoted her \$860 for her entire bathroom renovation. She says Mr. Barton later asked for a further \$3,000 to pay the subcontractors required, that she paid under duress. She says the subcontractors then came to her directly for payment. Jane Wicksteed claims \$2,000 for the balance of Mr. Barton's quote and some excess money she says she had to pay.
4. Mr. Barton disputes Jane Wicksteed's claim and says he quoted \$3,866 for the work on the bathroom renovation for his work, and the work of his helper, SH. Mr. Barton says his quote did not include the cost of subcontractors required for the bathroom renovation. He also says Jane Wicksteed still owes the drywall subcontractor \$903 and still owes him \$866 for the bathroom renovation. Mr. Barton did not file a counterclaim.
5. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.

8. 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.
9. 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.

### ***Discussions with CRT staff***

10. In her evidence, Jane Wicksteed refers to a conversation she had with CRT staff about Mr. Barton during the CRT's facilitation phase. CRTA rule 1.11 says that communications made attempting to settle claims by agreement in the CRT process are confidential and must not be disclosed during the tribunal decision process. So, I have not considered it in reaching my decision.

## **ISSUES**

11. The issues in this dispute are:
  - a. Did Mr. Barton's provide a fraudulent bathroom renovation quote?
  - b. If yes, what is the appropriate remedy?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Jane Wicksteed must prove her 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. The parties' accounts of the bathroom renovation quote differ significantly.
14. Jane Wicksteed says she agreed to Mr. Barton's \$860 quote for the entire bathroom renovation. She says he removed the sink and the walls, and then asked for \$3,000 to pay subcontractors. She says she paid him \$3,000 under duress. She says a week later, the subcontractors came to her for payment. She said she realized she had been tricked, so did not pay all the subcontractors.
15. Mr. Barton says he told Jane Wicksteed that he could only provide a labour and materials quote for him and his helper, SH. He says he quoted \$3,866, which included the following work, plus materials:
  - a. Tear out and removing 2.5 bathroom walls,
  - b. Tear out tile floor and electrical floor heating install new sub-floor,
  - c. Remove vanities, cabinetry, towel racks, light fixtures and toilet,
  - d. 3 trips to dispose of materials,
  - e. Re-frame bathroom walls and reinstall cabinets and mirrors, and
  - f. Install new sub-floor, new countertop, transition strips, venting, trim, molding, and baseboards.
16. Jane Wicksteed does not dispute that Mr. Barton and SH completed the above listed work.
17. Mr. Barton says he advised Jane Wicksteed that he could arrange for the subcontractors required for the bathroom renovation to meet with her to discuss their

materials, labour and price, and told her that he could not determine the scope of their work until after the bathroom's demolition. He says he clearly explained to her that she would be responsible to pay the subcontractors separately, and that his quote only covered his and SH's labour and materials costs. He says Jane Wicksteed gave him a \$3,000 draw to start work, with a balance owing of \$866.

18. Mr. Barton submitted a statement from SH, which largely confirmed Mr. Barton's version of events. Mr. Barton also provided a statement from BN at DK Plumbing Ltd. (DK). BN said that they installed a hot water tank and re-piped water lines and drainage for Jane Wicksteed. They said they were never under the impression that Mr. Barton was going to pay them. They said that Jane Wicksteed paid them directly, and did not mention that she thought Mr. Barton would be paying their bill.
19. Jane Wicksteed submitted evidence that shows she paid \$3,000 to Mr. Barton in early July 2021, plus a collective total of \$3,385.39 to the flooring contractor, painter, electrician, and plumber, DK in late July 2021. As noted, Mr. Barton says Jane Wicksteed has not yet paid the drywall contractor \$903. Jane Wicksteed does not dispute this.
20. The standard of proof for allegations of fraud is the same for any civil matter, namely proof on a balance of probabilities (see *F.H. v. McDougall*, 2008 SCC 53 at paragraph 49). The 4 elements of civil fraud, which is also known as fraudulent misrepresentation, were set out by the Supreme Court of Canada in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, at paragraph 21. In order to be successful, Jane Wicksteed must establish:
  - a. Mr. Barton made a false representation,
  - b. Mr. Barton had some level of knowledge of the falsehood of the representation (whether through knowledge or recklessness),
  - c. The false representation caused Jane Wicksteed to act, and
  - d. Jane Wicksteed's actions resulted in a loss.

21. The first element Jane Wicksteed must prove in order to establish fraudulent misrepresentation is that Mr. Barton made a false representation.
22. Considering the evidence as a whole, I find Jane Wicksteed has not proved that Mr. Barton told her that the entire bathroom renovation would cost \$860, including subcontractors' costs. I say this because I find Mr. Barton's version of events and his explanation of what he told Jane Wicksteed when providing the bathroom renovation quote is more consistent with what actually occurred with the bathroom renovation. That is, Mr. Barton, SH, and other contractors worked on Jane Wicksteed's bathroom renovation, and charged her directly for their work.
23. Further, in reply submissions, Jane Wicksteed says that right after Mr. Barton quoted her \$860, Mr. Barton said that a new water tank would be an additional \$1,000, which she agreed to. She says she understood this was the total amount for the renovation. I find this new information about a different quoted amount is inconsistent with her application for dispute resolution and her initial submissions, which both state without qualification that the quote was for \$860 for the entire renovation. Given this inconsistency, I place little weight on Jane Wicksteed's submissions about the original quoted amount, and I find they are not persuasive.
24. I also place significant weight on the fact that Jane Wicksteed only claimed \$2,000 in this dispute. Based on the evidence, the renovation cost in excess of \$7,000. Given this, if Mr. Barton had quoted \$860 for the entire bathroom renovation including the cost of other required contractors, I would have expected Jane Wicksteed to claim the difference between the quoted amount and the total actual bathroom renovation costs. However, she did not. This also supports a finding that Mr. Barton did not quote \$860 for the entire renovation, including the cost of subcontractors.
25. I agree that the alleged \$860 quote does not accurately reflect the bathroom renovation's entire cost, and is therefore false. However, since I have found Mr. Barton did not provide a \$860 quote for the entire renovation, I find there was no false representation.

26. Without a false representation, it is not necessary for me to consider the other 3 elements of fraudulent misrepresentation. I find that Jane Wicksteed has not proven her claim that Mr. Barton gave her a fraudulent bathroom renovation quote.

27. I note that Mr. Barton says Jane Wicksteed still owes him \$866 for the bathroom renovation work. However, as noted, he did not file a counterclaim. So, I have not addressed this issue in this decision.

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. As Jane Wicksteed was unsuccessful, I dismiss her fee claim. Mr. Barton did not pay any CRT fees, so I award none. Neither party claimed dispute-related expenses.

## **ORDER**

29. I dismiss Jane Wicksteed's claims and this dispute.

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Leah Volkers, Tribunal Member

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<sup>i</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. Jane Wicksteed indicated her preferred pronouns are she/her/hers, but did not indicate her preferred title. I will therefore refer to Jane Wicksteed by her full name throughout this decision.