



Civil Resolution Tribunal

Date Issued: July 22, 2022

File: SC-2021-008174

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Burbidge v. Ghazarian*, 2022 BCCRT 837

BETWEEN:

NOEL BURBIDGE and CDCL CREATE DESIGN & CONSTRUCTION
LIMITED

APPLICANTS

AND:

SABINA GHAZARIAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about an insurance deductible and subfloor installation.
2. The applicants, Noel Burbidge and CDCL Create Design & Construction Limited (CDCL), say they completed various home repairs for the respondent, Sabina Ghazarian, that were largely paid for by her insurer. The applicants say Ms.

Ghazarian agreed to an upgraded subfloor that was not covered by her insurer, but has refused to pay for the upgraded subfloor or her insurance deductible. The applicants claim \$2,812.43 for the unpaid deductible and the subfloor installation.

3. Ms. Ghazarian says she only agreed to pay a maximum of \$600 for the subfloor, as originally quoted. She also says that other portions of the applicants' work were unsatisfactory and unfinished. She says she is not responsible to pay anything.
4. Mr. Burbidge represents himself and CDCL. Ms. Ghazarian 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.

ISSUES

9. The issues in this dispute are:
 - a. Do both applicants have standing to make the claims?
 - b. Is Ms. Ghazarian responsible to pay either of the applicants the claimed \$2,812.43?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their 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.

Mr. Burbidge's claim

11. The original application for dispute resolution was submitted by Mr. Burbidge as the sole applicant. However, the Dispute Notice was later amended to include the applicant's corporation name, CDCL. Based on this amendment, I find Mr. Burbidge is CDCL's principal. As noted, Mr. Burbidge represents both himself and CDCL.

12. The amount claimed in the application for dispute resolution is reflected in evidence by two CDCL invoices issued to Ms. Ghazarian. CDCL statements of account for the amount claimed in this dispute were also sent to Ms. Ghazarian. The evidence does not show that Mr. Burbidge ever personally contracted with Ms. Ghazarian. I find the claims in this dispute are based on work performed by CDCL, and rely on CDCL's invoices. I therefore find CDCL was the contracting party with Ms. Ghazarian, not Mr. Burbidge personally. Given this, I dismiss Mr. Burbidge's claims. I will discuss CDCL's claims below.

CDCL's claim for payment of its invoices

13. CDCL claims payment of two invoices that collectively total \$2,812.43.

14. An April 9, 2020 invoice from CDCL to Ms. Ghazarian charged a total of \$2,549.93 to source and install a "DRICORE" subfloor. This amount included \$1,265 for 22 hours to source and install the subfloor at \$57.50 per hour, and \$1,163.50 for the subfloor material, plus \$121.43 in GST. The invoice also noted that CDCL had been instructed by Ms. Ghazarian's insurer that the dricore subfloor is considered an upgrade and not covered by her insurance.

15. A second April 9, 2020 invoice from CDCL to Ms. Ghazarian charged \$262.50 for Ms. Ghazarian's insurance deductible, including GST.

16. CDCL says it completed various other repairs in Ms. Ghazarian's home after flood damage. CDCL says the majority of the work was paid for by Ms. Ghazarian's insurer. However, CDCL says Ms. Ghazarian's insurance adjuster advised that Ms. Ghazarian is responsible to pay CDCL for the subfloor directly because it was an upgrade, as well as the deductible. A May 29, 2020 email from a senior claims adjuster at Coast Claims Insurance Services (Coast Claims), LD, to CDCL confirmed that LD advised Ms. Ghazarian that she was responsible to pay CDCL her deductible and the subfloor costs.

17. Ms. Ghazarian says Coast Claims does not support CDCL's claim for payment. However, Ms. Ghazarian has not provided any direct evidence from Coast Claims, or

her insurer, to support this bare assertion or contradict the May 20, 2020 email from LD discussed above. So, I do not accept this bare assertion and I find Coast Claims confirmed that Ms. Ghazarian is responsible to pay CDCL for her deductible and the subfloor costs.

18. As noted, Ms. Ghazarian also says she only agreed to pay a maximum of \$600 for the subfloor. She says CDCL's employee, AH, assured her the subfloor cost would not exceed \$600. She says that she asked for written confirmation, but says CDCL went ahead and installed the subfloor without providing written confirmation of the quoted amount. CDCL denies that AH provided a \$600 quote, and says its staff would not have done so without involving Mr. Burbidge, CDCL's principal, in the discussion in advance.
19. In general, I find CDCL's version of events is more supported by the documentary evidence than Ms. Ghazarian's. Specifically, Ms. Ghazarian's assertion that Coast Claims did not support CDCL's claim for payment is directly contradicted by emails from Coast Claims that indicate it specifically advised her to pay CDCL for the deductible and subfloor. Given this, I find her unsupported submissions less reliable and I place little weight on them. On this basis, I find it more likely that CDCL did not provide a \$600 maximum quote for the subfloor.
20. It is undisputed that CDCL installed the subfloor. Ms. Ghazarian does not dispute that she is responsible for the subfloor costs, rather than her insurer. I have found there was no fixed price agreed to for the subfloor. Therefore, Ms. Ghazarian is responsible to pay for the reasonable subfloor costs. Ms. Ghazarian did not allege that labour and materials charges in the subfloor invoice are inaccurate. Rather, she only alleged that it was more than the \$600 quote. I find the invoiced amount for the subfloor is not objectively unreasonable. Therefore, I find CDCL is entitled to payment of \$2,549.93 for its subfloor invoice, subject to any setoff, which I will address below.
21. Ms. Ghazarian did not address the \$262.50 deductible invoice in the Dispute Response or in her submissions or evidence. So, I accept CDCL's position, supported by emails from Coast Claims, that she is responsible to pay CDCL the \$250

deductible portion of CDCL's work, plus GST. I find Ms. Ghazarian must pay CDCL \$262.50 for its deductible invoice.

Set-off

22. Ms. Ghazarian alleges that other portions of CDCL's work, paid for by her insurer, were unsatisfactory and partially incomplete. I find Ms. Ghazarian claims a set-off for alleged deficiencies. As the party claiming the set off, Ms. Ghazarian must prove the alleged deficiencies.

23. I find emails from LD at Coast Claims to CDCL confirm that Ms. Ghazarian's insurer agreed to pay CDCL's invoice for the insured portion of its work in full. This supports a finding that the insured portion of CDCL's work was not deficient as Ms. Ghazarian alleges. Ms. Ghazarian also says Coast Claims provided her with a price quote for the work CDCL left incomplete, and says a Coast Claims letter providing the price quote to her is in evidence. However, the available evidence does include any letters from Coast Claims to Ms. Ghazarian. Ms. Ghazarian did submit an estimate for outstanding work from another contractor that lists Ms. Ghazarian as the customer and is directed to the attention of Coast Claims. However, I find the available evidence does not show the estimate was requested by Coast Claims, or that the estimate is for work required due to any alleged CDCL deficiencies. Further, Ms. Ghazarian did not provide any photographs or other documentary evidence to prove any of the alleged deficiencies, or further explain or fully detail the alleged deficiencies. Given all the above, I find Ms. Ghazarian has not proved any deficiencies and is not entitled to any set-off.

24. In summary, I find Ms. Ghazarian is responsible to pay CDCL \$2,812.43 for its unpaid invoices for her deductible and the subfloor.

CRT fees and interest

25. The *Court Order Interest Act* applies to the CRT. CDCL is entitled to pre-judgment interest on the \$2,812.43 from April 9, 2020, the date of the invoices, to the date of this decision. This equals \$40.66.

26. 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. CDCL was successful in this dispute. However, CDCL did not pay any CRT fees in this dispute. So, I make no order for reimbursement of CRT fees in this dispute. None of the parties claimed dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order Ms. Ghazarian to pay CDCL a total of \$2,853.09, broken down as follows:

a. \$2,812.43 in debt,

b. \$40.66 in pre-judgment interest under the *Court Order Interest Act*.

28. CDCL is entitled to post-judgment interest, as applicable.

29. I dismiss Mr. Burbidge's claims.

30. 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.

Leah Volkers, Tribunal Member