



Civil Resolution Tribunal

Date Issued: August 25, 2022

Files: SC-2021-009411,
SC-2021-009413,
SC-2021-009417, &
SC-2021-009418

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roy's Tile Installation & Decoration Ltd. v. Acouteria Renovations Inc.*,

2022 BCCRT 954

B E T W E E N :

ROY'S TILE INSTALLATION & DECORATION LTD.

APPLICANT

A N D :

ACOUTERA RENOVATIONS INC. and MATTHEW DOERING

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. These 4 linked disputes are about payment for tile installations and repairs. In all 4 disputes, Roy's Tile Installation & Decoration Ltd. (RTID) is the applicant and Acouteria Renovations Inc. (Acouteria) and Matthew Doering are the respondents.
2. RTID says it performed tile installation work for Mr. Doering. RTID says Mr. Doering is a contractor for Acouteria.
3. In each dispute, RTID says Mr. Doering has not paid for RTID's completed work. In total, RTID claims \$17,600 for its unpaid work on 4 projects in the separate CRT disputes, as follows:
 - SC-2021-009411 - \$4,300
 - SC-2021-009413 - \$4,800
 - SC-2021-009417 - \$3,500
 - SC-2021-009418 - \$5,000
4. Mr. Doering says he has already paid RTID the agreed amounts for RTID's work on 3 of the 4 projects. RTID disputes this. Mr. Doering does not dispute that he has not paid RTID for any amounts claimed by RTID in SC-2021-009418 for the 4th project. However, Mr. Doering says RTID did not finish the 4th project and Mr. Doering had to hire another tiler to complete the work.
5. As discussed below, Acouteria did not file a Dispute Response for any of the four disputes addressed in this decision, and is technically in default. So, Acouteria did not participate in this dispute.
6. RTID is represented by its principal, Yao Lui. Mr. Doering is self-represented.

Linked disputes and monetary limit

7. As noted, RTID brings 4 separate disputes against the respondents for its unpaid work. Each claim is under the CRT's \$5,000 small claims monetary limit. If the claims were for the same contract, then these disputes should have been filed as 1 dispute and together they would be over the \$5,000 limit. However, none of the parties argue that the amounts claimed by RTID for its unpaid work are for the same contract. So, I find the work likely relates to distinct contracts and RTID did not improperly split its claims. Since the disputes involve the same parties and issues, I have issued 1 decision for all 4 disputes.

JURISDICTION AND PROCEDURE

8. 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.
9. 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

10. 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 in the interests of justice.
11. 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.
12. 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

13. The issues in this dispute are:
 - a. Who did RTID contract with to provide the tile installations?
 - b. What amounts, if any, must either of the respondents pay for RTID's work on the 4 projects?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicant RTID must prove each of 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.

Who did RTID contract with to provide the tile installations?

15. RTID says Mr. Doering is a contractor for Acouter. Somewhat contradictorily, RTID also says Mr. Doering worked for Acouter as the project manager. Mr. Doering did not specifically say whether he was Acouter's employee or contractor. For clarity, references below to Mr. Doering refer to Matthew Doering.
16. As noted, Acouter did not participate in this dispute, so did not provide any submissions on its relationship with Mr. Doering or RTID. However, two emails in evidence from Acouter's CEO, Brad Doering, to RTID show that Acouter requested RTID's insurance documentation to address alleged damage caused by RTID. There is no reference to Mr. Doering or any other entity in the 2 emails from Acouter's CEO. It is unclear whether this is for one of the projects RTID claims payment for. However, the emails suggest that Acouter likely contracted with RTID directly for tile installations. RTID also says that Acouter's CEO is Mr. Doering's brother. Mr. Doering does not dispute this. Further, the evidence shows that Mr. Doering provided an Acouter email address to RTID via text message as part of his contact information. Mr. Doering also says that he was removed from one project and no longer works with Acouter, and that Acouter is pursuing legal action against RTID. I make no findings about that potential legal action or about any set-off claim Acouter might have about deficiencies Mr. Doering alleges, given Acouter chose not to participate in these CRT disputes.
17. Based on the evidence and submissions, I find Mr. Doering was likely an authorized Acouter employee when he undisputedly entered into the verbal contracts with RTID for tile installations on the 4 projects. So, I find RTID contracted with Acouter to provide the tile installations, not with Mr. Doering personally.
18. At law, officers, directors and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation. See: *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. RTID did not allege that Mr. Doering committed a wrongful act independent of Acouter. So, for all 4 disputes I dismiss RTID's claims against Mr. Doering personally.

What amount, if any, must Acoutera pay RTID for its work?

19. I will first address Acoutera's liability. Given Acoutera's failure to file a Dispute Response for any of the 4 linked disputes addressed in this decision, it is technically in default. Liability is generally assumed where a respondent is in default. However, despite this default status, for the following reasons I find the evidence and submissions show that Acoutera is only responsible for some of RTID's claimed amounts.
20. As noted, I have found that Mr. Doering was likely an authorized Acoutera employee and contracted with RTID on Acoutera's behalf. So, although I have dismissed RTID's claim against Mr. Doering personally, I have considered Mr. Doering's evidence and submissions in determining whether RTID has proved it is entitled to the amounts claimed, despite Acoutera's default status.
21. Acoutera and RTID had no written contracts. However, a verbal contract is enforceable like a written contract, but it can be harder to prove. Similarly, when parties choose to deal in cash, it is harder to prove what amounts, if any, have not been paid. The onus is generally on the payor to prove what they paid once the debt is proven.
22. At the outset, I note that RTID provided limited evidence and submissions to support its claims. RTID did not submit invoices to support the amounts claimed for any of the 4 projects, or say when the work was performed or when payments were requested. I also note that RTID did not explain how it determined the tile installation and repair costs for each project, or provide any evidence of its labour and materials costs.
23. I further note that although RTID disputes being paid for any of the 4 projects addressed in this decision, RTID says it accepted a cash payment from Mr. Doering for another project. However, neither RTID nor Mr. Doering explained why such large sums were being paid in cash with no record of payments.
24. I will now address RTID's specific claims for each of the 4 linked disputes.

SC-2021-009411 - \$4,300 claim

25. RTID claims \$4,300 for work on a 12th Street project. RTID claims \$3,500 for tile installation, grouting and waterproof membrane installation, plus \$800 for repairs.
26. Mr. Doering does not dispute that RTID performed the above installation work. However, Mr. Doering also says he has already paid RTID \$3,200 in cash, which he says was the agreed upon price for this project.
27. RTID says Mr. Doering forgot that there was a larger shower niche and that is why the price was increased to \$3,500. However, I find text messages between Mr. Doering and RTID show that RTID quoted \$3,500 for the work, but then agreed to accept only \$3,200. So, I find RTID agreed to \$3,200 for its tiling work on the 12th Street project.
28. It is undisputed that RTID completed the work. Mr. Doering submitted a bank account withdrawal record that he says shows him withdrawing \$3,000 on October 6, 2021 to pay for RTID's work. Mr. Doering also submitted text messages that he says show the October 14, 2021 meeting time to pay for RTID's 12th Street project work. The text messages do not specifically confirm the meeting's purpose, however, RTID did not dispute this evidence or provide another explanation for the meeting. Further, I find the evidence shows that the RTID and Mr. Doering were texting about the 12th Street project, and I find none of the texts in evidence suggest that Mr. Doering failed to pay for RTID's work.
29. As noted, very little documentary evidence was provided in support of this claim, and I find the documentary evidence that was provided supports Mr. Doering's submission that he paid RTID \$3,000 in cash for its work. I find he did so on Acoutera's behalf.
30. As noted, I have found that \$3,200 was the agreed price, and Mr. Doering's withdrawal record is only for \$3,000. Mr. Doering did not explain how or when he paid RTID the outstanding \$200. So, I find it likely he did not. Therefore, I find Acoutera is responsible to pay RTID \$200 for RTID's work on the 12th Street project.

31. As for the \$800, RTID says it agreed to perform repairs for \$800 after a carpenter made a mistake. There is no evidence Mr. Doering agreed to this amount, and Mr. Doering says the repair work was due to RTID's own mistakes. Mr. Doering provided photographs that he says show RTID's mistakes that required repair. I find the photographs show uneven tile edges and some missing tiles. RTID disputes this and says the homeowner would remember what happened. However, there are no statements from the homeowner or the carpenter. I find the evidence does not show the parties agreed to an additional charge for this repair work. Further, RTID has not provided any breakdown or details of the \$800 charged for the repairs, to prove that it is reasonable. So, I find RTID has not met its burden of proving it is entitled to a further \$800 for the repairs. So, for this project, I find RTID is entitled to a total of \$200.

SC-2021-009413 - \$4,800 claim

32. RTID claims \$4,800 for work on a Helmcken Street project. RTID claims \$4,000 for tile installation, grouting and waterproof membrane installation, plus \$800 for repairs.

33. Mr. Doering does not dispute that RTID performed the above installation work. However, Mr. Doering also says he has already paid RTID \$4,000 in cash. He also disputes the \$800 charge because he says RTID agreed to redo its deficient tile work.

34. Mr. Doering submitted a bank account withdrawal record that he says shows him withdrawing a total of \$4,000 between September 16 and 20, 2021 to pay for RTID's work. Mr. Doering also submitted text messages that he says show the September 20, 2021 meeting time to pay for RTID's Helmcken Street project work. RTID says Mr. Doering paid him a different amount for a different project at the September 20, 2021 meeting. However, RTID does not say which project it was paid for, or how much it was paid.

35. As with RTID's first dispute discussed above, very little documentary evidence was provided for this dispute. I find the documentary evidence that was provided shows that Mr. Doering paid RTID \$4,000 in cash for RTID's Helmcken Street project work.

I find he did so on Acoutera's behalf. So, I dismiss RTID's \$4,000 claim for its work on the Helmcken Street project.

36. As for the \$800, RTID says Mr. Doering asked RTID to re-install some wall tiles due to gap in the corner. RTID says the gap was not a problem, but followed Mr. Doering's instruction and charged \$800 for the repair work. There is no evidence to suggest Mr. Doering agreed to this amount. Mr. Doering says the gap was large and a deficiency and RTID agreed to fix its mistake. Mr. Doering provided a receipt for what he says was extra tile purchased for the repair, and photographs that I find show gaps at the corner of the wall tiles, and a scratched hardwood floor. I find the evidence does not show the parties agreed to an additional charge for this repair work. Further, RTID has not provided any breakdown or details of the \$800 charged for the repairs, to prove that it is reasonable. So, I find RTID is not entitled to \$800 for the repairs.

SC-2021-009417 - \$3,500 claim

37. RTID claims \$3,500 for work on a West 4th Avenue project. RTID claims \$3,000 for its initial tile installation, grouting and waterproof membrane, plus \$500 for extra tile installation.
38. Mr. Doering does not dispute that RTID performed the above installation work. However, Mr. Doering says he has already paid RTID \$3,000 in cash. He also says RTID did not install some tiles correctly around a vanity, and the extra tile installation was a result of RTID's mistakes.
39. Mr. Doering submitted a bank account withdrawal record that he says shows him withdrawing \$3,000 on October 26, 2021 to pay for RTID's work. Mr. Doering also submitted text messages that he says show the October 26, 2021 meeting time to pay for RTID's West 4th Street project work. The text messages do not specifically confirm the meeting's purpose. However, RTID did not dispute this evidence or provide another explanation for the meeting. I find the little available documentary evidence shows Mr. Doering's paid RTID \$3,000 in cash for its West 4th Street project

work. I find he did so on Acoutera's behalf. So, I dismiss RTID's claim for \$3,000 for its work on the West 4th Street project.

40. As for the \$500, RTID says it installed three rows of tile on the wall by the vanity, as instructed by Mr. Doering. RTID says Mr. Doering told RTID the tile was not high enough and asked RTID to install another row of tiles. RTID says it agreed and charged \$500 for the additional tile installation. There is no evidence to suggest that Mr. Doering agreed to this amount. RTID says the painter and homeowner would remember this. However, there are no statements from the painter or the homeowner. Mr. Doering says the additional tile was required because RTID did not follow his initial tile layout instructions for the vanity. I find the evidence does not show the parties agreed to an additional charge for this work. Further, RTID has not provided any breakdown of the \$500 charged, to prove that it is reasonable. So, I find RTID has not proved that it is entitled to a further \$500 for the additional tile installation.

SC-2021-009418 - \$5,000

41. RTID claims \$5,000 for work on a Drake Street project. RTID claims \$4,500 for its initial tile installation, grouting and waterproof membrane, plus \$500 to remove and redo the grout.
42. Mr. Doering does not dispute that RTID performed the above installation work and admits that he has not paid RTID anything. However, Mr. Doering says the agreed price for RTID's work on the Drake Street project was \$3,000.
43. I find text messages show that RTID requested payment of \$3,000 from Mr. Doering at the end of November, 2021. The text message does not clearly indicate which project the \$3,000 requested was for. However, in submissions RTID says it refused to do further work for Mr. Doering after Mr. Doering promised to pay \$3,000 and failed to do so. RTID did not specially address or clarify the text message request for payment, or identify another project that the \$3,000 was requested for. Given the limited submissions and evidence, I find it likely that RTID agreed to \$3,000 for its Drake Street tiling work.

44. Mr. Doering says he wanted to “settle up” with RTID for this project, but RTID would not finish the work. Mr. Doering says RTID scratched the floor tiles, but refused to replace them. RTID denies scratching the tiles. RTID says Mr. Doering asked RTID to use wall tiles on the floor, which was wrong. RTID says the tile store agreed to pay for replacement tiles and labour. As noted, RTID also says it refused further work when Mr. Doering did not pay \$3,000 as promised. Mr. Doering says he had to hire another tiler to replace the floor tiles. However, since Acouteria is in default and did not file a counterclaim or claim any set off, I find Acouteria must pay RTID \$3,000 for RTID’s work on the Drake Street project.
45. As for the \$500, RTID says Mr. Doering asked RTID to remove and redo the grout in one bathroom, and RTID agreed to do so for an additional \$500. Mr. Doering says RTID mixed the grout incorrectly, and agreed to redo the grout work at no charge. Mr. Doering submitted photographs in evidence that I find show discoloured and uneven grout. RTID says it did not mix the grout incorrectly, and suggests that someone else wiped the tiles before the grout dried. I find the evidence does not show the parties agreed to an additional charge for this work. Further, RTID has not provided any breakdown of the \$500 charged, to prove that it is reasonable. So, I find RTID has not proved that it is entitled to \$500 to remove and redo the grout.

Summary

46. In summary, as a total for all 4 disputes, I find Acouteria must pay RTID \$3,200.

CRT fees, expenses and interest

47. The *Court Order Interest Act* applies to the CRT. RTID is entitled to pre-judgment interest on the \$3,200 owed. RTID did not say when these amounts were due, and there are no invoices in evidence. RTID said it became aware of its claims on December 13, 2021. So, I find RTID is entitled to interest from December 13, 2021, which I find is reasonable in the circumstances, to the date of this decision. This equals \$16.24.

48. 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. RTID paid \$175 in CRT fees for each of the 4 disputes addressed in this decision, which totals \$700. However, RTID was only partly successful in 2 of the 4 disputes addressed in this decision, so I find it is only entitled to reimbursement of \$350 for half its paid CRT fees. The respondents did not pay CRT fees. None of the parties claimed dispute-related expenses, so I award none.

ORDERS

49. Within 30 days of the date of this order, I order Acouteria to pay RTID a total of \$3,566.24, broken down as follows:

- a. \$3,200 in debt,
- b. \$16.24 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$350 in CRT fees.

50. RTID is entitled to post-judgment interest, as applicable.

51. I dismiss RTID's claims against Mr. Doering personally, and RTID's remaining claims.

52. 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 Volkens, Tribunal Member