



# Civil Resolution Tribunal

Date Issued: August 30, 2022

File: SC-2022-001400

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Spectrum Stone Ltd. v. Bishaj-Gashi*, 2022 BCCRT 966

B E T W E E N :

SPECTRUM STONE LTD.

**APPLICANT**

A N D :

ARBERESHA BISHAJ-GASHI

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about payment for kitchen countertops. The applicant, Spectrum Stone Ltd. (Spectrum), installed new quartz countertops for the respondent, Arberesha Bishaj-Gashi. Spectrum says Mrs. Bishaj only paid part of its countertop invoice. It claims \$1,207.50 for the remaining balance owing. Mrs. Bishaj says the installed

countertops did not have the appearance she expected and that the parties agreed on, so she owes nothing further.

2. Mrs. Bishaj is self-represented in this dispute. A director represents Spectrum.

## **JURISDICTION AND PROCEDURE**

3. These are the formal 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.
4. 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. 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.
5. 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.
6. 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.
7. In its Dispute Notice, Spectrum claimed \$1,357.50 for the unpaid countertop balance. However, in its later submissions, Spectrum said that Mrs. Bishaj paid an additional \$150 and only owes \$1,207.50.

## **ISSUE**

8. The issue in this dispute is whether Spectrum broke the parties' contract by not providing the agreed countertops, and if not, whether Mrs. Bishaj owes \$1,207.50 or another amount.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Spectrum must prove its claims on a balance of probabilities, meaning "more likely than not." I have read the parties' submissions and evidence but refer only to the evidence and arguments I find relevant to provide context for my decision.
10. The parties do not dispute that, as shown in a submitted July 28, 2021 invoice, the total agreed price for Spectrum to provide new quartz countertops and install them was \$4,357.50. Mrs. Bishaj undisputedly paid Spectrum a total of \$3,150.
11. There was no formal written contract between the parties for the countertop installation. I find that submitted text messages and other correspondence are the only written evidence of what the parties agreed to. I find those documents formed the parties' contract.
12. The undisputed evidence is that Spectrum showed Mrs. Bishaj samples of different types of quartz, but she was not interested in those types. Mrs. Bishaj then went to a third-party stone seller who showed her some different quartz samples. Mrs. Bishaj liked the "Eternal Calacatta Gold" quartz sample provided by the third party. She sent a photo of the sample to Spectrum, which contained the quartz's model information, and said she wanted that quartz. She says Spectrum later saw the sample in person, and although Spectrum disagrees, I find nothing turns on that. Spectrum says it ordered Eternal Calacatta Gold quartz from a stone manufacturer and used it in the countertops, although that quartz is also known by other names that include the words Calacatta Gold.

13. Mrs. Bishaj says that during Spectrum's installation, she noticed that the countertops did not have exactly the same appearance as the sample she had obtained from the third-party stone seller, because there were fewer or smaller gold-coloured veins. She says the material did not have the appearance she expected, so she should not have to pay the remaining balance of Spectrum's invoice.
14. The parties each cited sections of the *Sale of Goods Act* (SGA) in support of their arguments. However, this dispute is about the appearance of the quartz material used for the countertops, and not the quality of that material or of Spectrum's countertop manufacturing or installation work. So, I find nothing turns on the implied warranties set out in SGA section 18, because Mrs. Bishaj does not allege that the installed countertops were unfit to function as countertops, or were not of merchantable quality, or were not reasonably durable.
15. I also find that the SGA section 19 implied warranties, for contracts of sale by sample, are not applicable here for the following reasons. Although Spectrum undisputedly saw at least a photo of the third-party quartz sample, Spectrum did not provide the sample or say how well the ordered material would match it. As further explained below, I find the evidence does not show that Spectrum agreed to be responsible for any differences in appearance between the Eternal Calacatta Gold quartz ordered from the stone manufacturer and the third-party sample. Further, I find the evidence does not show that the parties' countertop agreement contained an express or implied term that it was a contract for sale by sample, as required by SGA section 19(1).
16. However, SGA section 17(1) says that in a contract for sale by description, there is an implied condition that the goods must correspond with the description. Spectrum agrees that the countertops were sold by description, that description being Eternal Calacatta Gold quartz as labelled on the third-party quartz sample. Spectrum says it used Eternal Calacatta Gold quartz for the countertops.
17. I find submitted correspondence from the stone manufacturer confirms that the quartz used in the countertops was the Eternal Calacatta Gold type. Based on photos of the sample and the countertops, the stone manufacturer said that the Eternal Calacatta

Gold sample Mrs. Bishaj obtained from the third-party stone seller was an older generation of that product. The stone manufacturer said that older generation had larger gold-coloured veins, but it was no longer produced. I note that neither the stone manufacturer, nor the third-party stone seller who provided the sample, are named as parties to this dispute.

18. I find Mrs. Bishaj does not allege, and submitted photos do not show, that the sample viewed by Spectrum displayed any generation information or indicated that different generations might have been produced. Further, I find that Mrs. Bishaj did not order a specific generation of Eternal Calacatta Gold quartz from Spectrum.
19. Mrs. Bishaj also says she asked Spectrum to use the “Eternal Calacatta Gold with the thick golden veins” for the countertops. However, I find the evidence before me does not show that she specified “thick golden veins,” or said anything at all about golden colour features in the quartz, before the parties came to an agreement about the countertops and Spectrum manufactured and installed them. I find the evidence only shows that the parties agreed the countertops would be made of Eternal Calacatta Gold quartz, and I find that they were. So, I find that Spectrum satisfied the SGA section 17(1) implied condition that the supplied quartz corresponded with its description. I find the evidence does not show that Spectrum breached any implied warranties under the SGA.
20. I turn now to the parties’ explicit agreement about the countertops. As noted, I find that the parties did not agree the countertops would contain a specific amount of gold colour. However, Mrs. Bishaj says Spectrum failed to inform her that the supplied quartz might not be exactly the same as the third-party sample she obtained, and that newer quartz generations might have a different appearance.
21. I find the correspondence and other evidence before me does not show that Spectrum was responsible for informing Mrs. Bishaj about typical variations in quartz products, or that the quartz she ordered might not perfectly match the third-party sample. Further, I find the parties did not agree that the countertops’ appearance would be exactly the same as the sample. I also find there is no evidence that Spectrum knew

that there were different generations of Eternal Calacatta Gold quartz. As noted above, I find the evidence does not show the parties agreed that the quartz used would have an unspecified minimum amount of gold colour.

22. I find that submitted photos show the third-party quartz sample contained a few thin gold-coloured veins and the installed countertops contained even less gold colour. However, I find that the sample and the countertops had the same general appearance. So, I find the evidence does not show that Spectrum should have known that the Eternal Calacatta Gold quartz it used for the countertops would not satisfy Mrs. Bishaj's then-unstated expectations about its appearance. I also find that the evidence does not show Mrs. Bishaj asked to view and approve the actual quartz material Spectrum obtained before it manufactured and installed the countertops.
23. For the above reasons, I find that Spectrum provided the countertops as agreed, including the type of quartz material specified by Mrs. Bishaj. So, I find Mrs. Bishaj is not entitled to a reduction of the agreed countertop price, because there was no breach of contract. I allow Spectrum's claim for the unpaid balance remaining, which I find is \$1,207.50.

### ***CRT Fees, Expenses, and Interest***

24. Although Spectrum's invoice said overdue accounts were charged 18% interest per year, I find there is no evidence that Mrs. Bishaj agreed to any interest charges. So, in the absence of an agreement about interest, I find Spectrum is entitled to pre-judgment interest under the *Court Order Interest Act* on the \$1,207.50 owing. I find this pre-judgment interest is reasonably calculated from July 28, 2021, which is the date of the invoice that was due "on presentation," until the date of this decision. This equals \$8.46.
25. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Spectrum was successful in this dispute, so I find it is entitled to reimbursement of

the \$125 it paid in CRT fees. Mrs. Bishaj paid no CRT fees, and neither party claimed CRT dispute-related expenses.

## **ORDERS**

26. I order that, within 30 days of the date of this decision, Mrs. Bishaj pay Spectrum a total of \$1,340.96, broken down as follows:
- a. \$1,207.50 in debt,
  - b. \$8.46 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
27. Spectrum is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
28. 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.

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Chad McCarthy, Tribunal Member