



Civil Resolution Tribunal

Date Issued: February 23, 2023

File: SC-2021-009615

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Andruski v. 0911186 B.C. Ltd. Doing Business As Absolutely Floored*,
2023 BCCRT 159

B E T W E E N :

HEATHER JANE ANDRUSKI

APPLICANT

A N D :

0911186 B.C. LTD. Doing Business As ABSOLUTELY FLOORED

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Heather Jane Andruski, hired the respondent, 0911186 B.C. Ltd. Doing Business As Absolutely Floored (Absolutely Floored), to supply and install new flooring in her strata lot. Ms. Andruski alleges that Absolutely Floored failed to properly level the subfloor before installing the new flooring. She says Absolutely

Floored's work is deficient and breaches its 100% satisfaction guarantee. She claims \$5,000 as damages.

2. Absolutely Floored denies liability. It says it installed vinyl planks for Ms. Andruski in a professional manner. It says the flooring issues are because of humidity and not faulty work.
3. Ms. Andruski represents herself. Absolutely Floored's owner, Steve Faurschou, represents it.
4. For the reasons that follow, I dismiss Ms. Andruski's claims.

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. 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.
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.

Absolute Floored's Late Evidence

9. Absolutely Floored provided as late evidence a copy of an online ad. It shows that Ms. Andruski advertised her strata lot for sale in November 2022. Ms. Andruski says I should not consider the evidence because it is both late and irrelevant.
10. Some of the photos show the installed flooring. I find them relevant to this dispute. Ms. Andruski had the opportunity to comment on the late evidence and did so. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to the parties and so I admit the late evidence.
11. That said, I find the fact that Ms. Andruski advertised her strata lot for sale has little bearing on whether Absolutely Floored's work was deficient. My decision does not turn on the late evidence and I do not rely on it in my analysis.

ISSUE

12. The issue in this dispute is whether Absolutely Floored breached the parties' contract, and if so, whether it should pay Ms. Andruski \$5,000.

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, Ms. Andruski as the applicant 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.
14. Absolutely Floored provided Ms. Andruski an October 26, 2020 quote to install approximately 794 square feet of vinyl planks in her strata lot. Absolutely Floored estimated \$7,282.99 plus tax for the work. As part of the price, it included floor leveling

to the extent of using “10 bags of leveling” for a total of \$997.50 plus tax. Elsewhere, the quote said that floor leveling was not included and billed on a time plus materials basis if needed. The quote said Absolutely Floored provided a warranty for its labour for 2 years after completing installation.

15. Ms. Andruski’s undisputed submission is that the parties discussed floor leveling before work began. Absolutely Floored said that levelling was required, but using laser leveling would be costly. Ms. Andruski replied that she wanted to keep costs down.
16. Ms. Andruski says that Absolutely Floored provided a 100% satisfaction guarantee. She relies on a copy of an online ad. It said, “Absolutely Floored offers 100% customer satisfaction, the best price, and the best selection.” I find this wording too vague to be a binding contractual term. Ms. Andruski’s interpretation is also inconsistent with the estimate, which limits Absolutely Floored’s warranty to labour for a limited period of time. So, I find Absolutely Floored did not provide a 100% satisfaction guarantee.
17. I return to the chronology. The following facts are undisputed. Ms. Andruski partially paid Absolutely Floored to begin its work. Absolutely Floored installed the flooring in November 2020. At the time Ms. Andruski noticed the flooring was uneven or spongy in areas. In particular, she complained of a low spot between the bathroom door and the hallway. Absolutely Floored reinstalled the flooring in this area. Ms. Andruski said this “made a difference” but moved the problem further on, which I accept.
18. Ms. Andruski further complained in December 2020 of squeaks and creaks. Absolutely Floored returned but its representative did not hear the sounds. Ms. Andruski says this is because the issue was intermittent. Ms. Andruski provided a video recording demonstrating the sounds. Given this evidence, I accept her floors would sometimes squeak or creak intermittently.
19. In February 2021 the flooring’s manufacturer, Monterey Flooring (Monterey), sent a representative, DC, to inspect the flooring. Monterey determined that Absolutely

Flooring installed the flooring properly and the source of the noise was normal “humidity shifting”. Monterey also said that the floor was “level up to manufacturers standards”. DC wrote a letter about the visit, and I discuss it below.

20. Ms. Andruski paid Absolutely Floored its remaining balance on February 25, 2021. However, in October 2021 she emailed further complaints. In particular, she said she could not close the bathroom door because the floor had become raised. In another email she noted that the floor sank down again so she could close the door. Absolutely Floored replied that it could either shave the door or relevel and reinstall the flooring. However, it said for the second option, Ms. Andruski would have to pay for the releveling. Ms. Andruski refused.

Did Absolutely Floored breach the parties’ contract?

21. Ms. Andruski says that Absolutely Floored insufficiently levelled the subfloor before installing new vinyl planks. She also says Absolutely Floored should have recommended further levelling before installing the flooring. Absolutely Floored denies providing deficient work.
22. Where a party asserts deficient work, that party must prove that the work was deficient. See *Absolute Industries v. Harris*, 2014 BCSC 287. Generally, expert evidence is required to prove a professional’s work was below a reasonable standard. The two exceptions to this are where the deficiency is not technical in nature, or where the work is obviously substandard. See *Schellengberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196.
23. I find that the proper preparation of the subfloor is technical in nature and outside ordinary experience. I do not find it obvious that the flooring in this dispute is substandard. Ms. Andruski’s evidence demonstrates that the floor creaked and could be uneven. I accept this is the case. However, as noted by Ms. Andruski, some of these issues were intermittent and developed over the course of several months. So, I find expert evidence is necessary for Ms. Andruski to show that Absolutely Floored breached reasonable standards.

24. Ms. Andruski provided an email and quote from Promaster Floors Ltd. The author, MS, recommended replacing the entire floor. However, MS did not comment on whether Absolutely Floored breached professional standards. MS did not say Absolutely Floored should have recommended more levelling than it did. I also find the email is not expert evidence since the author's qualifications are not stated. So, I put little weight on the email and quote.
25. Ms. Andruski also provided a document with comments from several websites about the general preparation of the subfloor for new flooring. However, the comments are general in nature and not about the facts in this dispute. Not all the authors' qualifications are listed as required by CRT rules 8.3(2). So, I put little weight on this document.
26. I find the best evidence on this issue is DC's undated letter. It generally supports Absolutely Floored. I find it is not expert evidence as DC's only stated qualification is that they are Monterey's sales representative and not experienced in the standards in flooring installation. However, it shows that DC examined the floor and has experience with Monterey's products. So, I put weight on it for that reason.
27. DC wrote the following. After hearing about the flooring issue, Monterey checked its stock and found the supplied flooring did not have any defects. DC and Mr. Faurschou attended Ms. Andruski's residence in February 2021. DC found that there "was no noise" and the "flooring appeared to be clean". He added there were "no signs of product failing" and all the joints were "properly clicked together with no sign of coming apart". DC also found the floor was "level up to manufacturers standards" and there were "adequate gaps under the baseboards". DC says Monterey's team concluded that the flooring was not the source of any noise problems or noise generated by the floor itself. DC says noise, if any, could be caused by humidity shifting, which is "normal for floating floors" like this one.
28. In summary, DC did not identify any issues with Absolutely Floored's work. DC only commented on manufacturer standards. DC did not say if Absolutely Floored breached the applicable professional standards. There is no other evidence that says

Absolutely Floored breached such standards. Given this, I find it unproven that Absolutely Floored's work fell below professional standards. Accordingly, I find it unproven that Absolutely Floored breached the parties' contract.

29. 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 dismiss Ms. Andruski's claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDER

30. I dismiss Ms. Andruski's claims and this dispute.

David Jiang, Tribunal Member