



Civil Resolution Tribunal

Date Issued: March 7, 2023

File: SC-2022-004711

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Discount Carpet and Flooring Ltd. v. Mavedati*, 2023-BCCRT 183

B E T W E E N :

DISCOUNT CARPET AND FLOORING LTD.

APPLICANT

A N D :

OMID MAVEDATI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about payment for construction work. The applicant, Discount Carpet and Flooring Ltd. (DCF), says the respondent, Omid Mavedati, owes it \$3,780 for floor-levelling work it did during a renovation of Dr. Mavedati's veterinary clinic.

2. Dr. Mavedati says he did not have a contract with DCF and explicitly denies agreeing to pay it for the floor-levelling work. He says he hired BP's All Pro Contracting Inc. (BP) for the renovation and BP was responsible for hiring and paying any subcontractors involved in the project. Dr. Mavedati says he paid BP in full, which included payments for the floor-levelling work. He says if DCF is owed anything, it is BP's responsibility to pay it. BP is not a party to this dispute.
3. DCF is represented by an employee or principal, SA. Dr. Mavedati is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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

8. The issues in this dispute are:
 - a. Did DCF and Dr. Mavedati have an enforceable contract for the floor-levelling work?
 - b. If not, does DCF have a claim for unjust enrichment?

BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant DCF must prove 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 the evidence and argument that I find relevant to provide context for my decision. DCF did not provide final reply submissions despite having the opportunity to do so.
10. The following facts are undisputed. Dr. Mavedati hired BP for his veterinary clinic renovation. BP engaged DCF to install the clinic’s flooring. During installation, DCF discovered the subfloor was uneven and needed levelling.
11. DCF says BP approved this additional work and asked DCF to invoice Dr. Mavedati directly for payment. It also says it sought advance verbal approval from Dr. Mavedati for the floor-levelling work. Once the flooring job was complete, DCF says Dr. Mavedati refused to pay it for the floor-levelling work despite having previously agreed to do so.
12. It is undisputed DCF has not recovered payment from BP for this extra work, and I accept this is the case.

Did the parties have an enforceable contract?

13. Though it does not use these words, I find DCF alleges Dr. Mavedati breached its contract with him. A claim in breach of contract requires a valid and enforceable contract. The party relying on the contract must prove a mutual intention to create

legal relations, consideration (something of value) given in return for a promise, essential terms that were sufficiently clear, and offer and acceptance of those terms (see *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216 at paragraph 66). Whether there is an enforceable contract involves an objective test based on what a reasonable person in the parties' situation would have believed, rather than on the parties' subjective beliefs (see *Berthin v. Berthin*, 2016 BCCA 104, at paragraph 46).

14. In determining objective intent, a court (or the CRT) may look at all the circumstances, including evidence of past agreements involving other parties, the circumstances in which the parties made the alleged agreement, and the parties' future actions and representations (see *Leemhuis v. Kardash Plumbing Ltd.*, 2020 BCCA 99 at paragraph 17).
15. Here, Dr. Mavedati points to his signed contract with BP (the BP contract) in support of his claim he did not contract with DCF for the floor-levelling work. The BP contract incorporates a 24-point list of the renovation work to be performed for a fixed price of \$66,150.00, including all labour, material, and garbage removal. Certain specified additional work is expressly excluded from the BP contract. However, point 5 of the list states "Clean and prep the floor for new flooring." Dr. Mavedati asserts this includes any floor-levelling work. He says this proves he did not agree to pay DCF separately for that work since it was already accounted for in the BP contract.
16. DCF disagrees and says the floor-levelling work was not part of the BP contract, though it does not directly address point 5 about prepping the floor. Instead, DCF relies on verbal consent it says Dr. Mavedati gave to proceed with the floor-levelling work. It also relies on text messages between Dr. Mavedati and SA, in which it says Dr. Mavedati provided his email address so that DCF could invoice him for direct payment.
17. For the following reasons, I find DCF and Dr. Mavedati did not have an enforceable contract.

18. While a verbal contract is enforceable like a written contract, it is harder to prove. First, DCF's admission that BP engaged it to install the flooring supports Dr. Mavedati's position that subcontracted work flowed through BP and was not done through side agreements, verbal or otherwise, between the subcontractor and Dr. Mavedati.
19. Second, I consider Dr. Mavedati's alleged consent for the floor-levelling work. Dr. Mavedati does not deny he agreed to the floor-levelling work, only that he did not agree to pay DCF for it. So, I find Dr. Mavedati likely consented to the work. A text message in evidence indicates SA advised Dr. Mavedati the floor installer would be coming to check the floor level. There is no written evidence Dr. Mavedati acknowledged that message, or subsequently consented to or approved payment for the floor-levelling work. There is only Dr. Mavedati's assertion that he did not do so and DCF's assertion that he did. In the face of an evidentiary tie, I find DCF has not met its burden of proving Dr. Mavedati consented to paying DCF for this work.
20. Even though I find Dr. Mavedati likely consented to DCF carrying out the floor-levelling work, I find this is not proof of an enforceable contract between DCF and Dr. Mavedati. I find that objectively, prepping for floor installation logically includes floor-levelling work done to ensure the installation is performed to a reasonable standard. So, I find any consent Dr. Mavedati gave DCF to proceed with the floor-levelling work was given with a reasonably held belief it was prep work done in anticipation of the floor installation, and therefore included in the BP contract fixed price.
21. Next, I turn to Dr. Mavedati's email address. In submissions, Dr. Mavedati says he never dealt directly with DCF. However, DCF submitted text messages between Dr. Mavedati and SA in which Dr. Mavedati provided SA with his email address. So, I find Dr. Mavedati did deal directly with DCF in providing him with his email address. However, the text messages do not include any information other than Dr. Mavedati's email address. For example, there is no discussion of the floor-levelling work, or, importantly, any discussion of price. They are also the only text messages from Dr. Mavedati to SA that DCF submitted into evidence, and they provide no context for

the sharing of this information by Dr. Mavedati. On these facts, I find Dr. Mavedati's provision of his email address to SA insufficient to prove the parties had a contract for the floor-levelling.

22. In these circumstances, I find Dr. Mavedati did not intend to enter into an agreement with DCF for the floor-levelling work. So, I find the parties did not have an enforceable contract.

Does DCF have a claim for unjust enrichment?

23. In the absence of an enforceable contract, I considered whether DCF has a claim for unjust enrichment. To prove unjust enrichment, DCF must show a) Dr. Mavedati was enriched, b) DCF suffered a corresponding loss, and c) there was no "juristic reason" or valid basis for the enrichment (see *Moore v. Sweet*, 2018 SCC 52).

24. I accept Dr. Mavedati was enriched, and DCF deprived, by the floor-levelling job DCF did in respect of Dr. Mavedati's veterinary clinic renovation. The question is whether there was a juristic reason for the enrichment. In *Infinity Glass Co. Ltd. V. DBD Westcoast Construction Ltd.*, 2022 BCCRT 1296, a CRT member found there was a juristic reason for a retailer's enrichment where a subcontractor had not been paid. The tribunal member noted that the law is well-established that if there is a contractual chain from an owner to a general contractor to a subcontractor, that contractual chain is generally a juristic reason to deny recovery (see *Abstract Construction Inc. v Margolis*, 2020 BCSC 59, at paragraphs 58-59 and *Boundary Consulting Services Ltd. v. Stuart*, 2023 BCCRT 172 at paragraph 30). This is in part because the subcontractor has remedies against the general contractor.

25. While previous CRT decisions do not bind me, I agree with and adopt the reasoning in *Infinity Glass*. Here, I find there was a contractual chain from Dr. Mavedati to BP to DCF. Given the explicit reference in the BP contract to the renovation work including cleaning and prepping the floor for new flooring as part of the \$66,150.00 fixed price, I find it was BP's responsibility to pay DCF as its subcontractor for that work. So, I dismiss DCF's claim.

26. I make no finding about whether BP was unjustly enriched by withholding payment to DCF, because DCF did not claim against BP for non-payment of the floor-levelling work.

27. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Dr. Mavedati was successful but did not pay CRT fees, and neither party claimed dispute-related expenses. As it was unsuccessful, I dismiss DCF's claim for reimbursement of CRT fees.

ORDER

28. I dismiss DCF's claims and this dispute.

Megan Stewart, Tribunal Member