



# Civil Resolution Tribunal

Date Issued: May 19, 2023

Files: SC-2022-005433 and SC-CC-2022-008607

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Good Works Renovation and Restoration Ltd. v. Birak*, 2023 BCCRT 420

B E T W E E N :

GOOD WORKS RENOVATION AND RESTORATION LTD.

**APPLICANT**

A N D :

LORINDER BIRAK

**RESPONDENT**

A N D :

GOOD WORKS RENOVATION AND RESTORATION LTD.

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This decision involves 2 linked disputes about bathroom renovations. They involve the same parties and I find they consist of a claim and counterclaim. So, I have issued a single decision for both disputes. The applicant, and respondent by counterclaim, is Good Works Renovation and Restoration Ltd. (GWRR). The respondent, and applicant by counterclaim, is Lorinder Birak.
2. In dispute number SC-2022-005433, GWRR says Ms. Birak has wrongfully refused to pay the balance owing of \$2,232.47 under an invoice for work done. GWWR seeks payment of this amount. Ms. Birak denies liability. She says the balance owing is for unauthorized extra work. She says she paid GWWR for all the authorized work and is not entitled to any further amounts.
3. In dispute number SC-CC-2022-008607, Ms. Birak alleges that GWRR's work was deficient. She counterclaims \$3,025 as the estimate to repair or redo the deficient work. GWWR denies liability. It says the deficiencies are unproven, and in any event, it says Ms. Birak failed to make a warranty claim within the contract's warranty period.
4. GWWR's director represents it. Ms. Birak represents herself.
5. For the reasons that follow, I dismiss GWRR's claim and allow part of Ms. Birak's counterclaim.

## **JURISDICTION AND PROCEDURE**

6. 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.

7. 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. Some of the evidence in this dispute amounts to a “she said, they said” scenario. 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.
8. 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.
9. 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.
10. I note that section 13 of the parties’ contract says they agreed to resolve disputes through arbitration. However, as no party raised this issue, I find they waived this clause and have decided to resolve their dispute at the CRT.

## **ISSUES**

11. The issues in this dispute are as follows:
  - a. Did GWWR breach the contract by completing and charging for unauthorized work?

- b. Was GWWR's work deficient?
- c. Are any remedies appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, GWWR and Ms. Birak must prove their respective claims and counterclaims 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.
13. On November 14, 2021, the parties signed a contract for bathroom renovations. Section 2(a) said that GWWR agreed to remove and dispose of the following: a vanity unit, toilet, tub, and bathroom tiles. It also agreed to install the following new replacement items supplied by Ms. Birak: a vanity unit, toilet, tub, plumbing for the toilet and tub, shower hardware, and bathroom tiles. GWWR also agreed to paint the bathroom walls, install flooring and door trim, and use caulk as necessary.
14. Section 2(b) said that the work did not include drywall removal or major drywall repairs, plumbing repairs to existing faulty plumbing, or any changes outside of the work described in section 2(a).
15. Section 4 of the contract said GWWR charged a fixed price of \$3,750. Section 6 said that Ms. Birak could change the work in the following manner. Both parties had to sign a change order form. GWWR would charge based on the cost of materials plus an hourly rate of \$65. This sum was payable upon signing the change order. It is undisputed that the parties never signed or drafted a change order form.
16. Ms. Birak partially paid GWWR to begin work. After it completed its work, it issued an invoice on December 23, 2021 for \$3,182.47. It included \$950 as the balance owing for the contract's fixed-price portion. The parties agree that Ms. Birak paid the \$950 sum. GWWR also identified items totaling \$2,232.47 as extra work, which is GWWR's claimed amount. Ms. Birak counterclaims \$3,025 for deficient work.

***Issue #1. Did GWWR breach the contract by completing and charging for unauthorized work?***

17. I will first outline the invoice's breakdown for the extra work. It included the following costs for labour: \$130 for installing towel and hand bars plus a toilet paper dispenser, \$520 for making and installing a plumbing cover box, and \$910 for installing tile board. Photos show the box cover was made of unfinished plywood and covers what would otherwise be exposed pipes. GWWR also sought reimbursement for 2 invoices: a \$463.50 invoice from HS Plumbing for installing new vanity unit plumbing and shower valves, and a \$208.94 invoice for tile board material called DensShield. Together, these amounts total GWWR's claim, less a few cents.
18. GWWR says that, despite never signing a change order form, Ms. Birak agreed to the extra work. It says the emails and text messages show she did so. Ms. Birak disagrees. She says the extra work charges surprised her and she would have refused to have the renovations done at all if she had known of the extra cost.
19. I find the contract clearly specified the steps the parties had to follow if Ms. Birak wanted to add extra work. I put significant weight on the fact that the parties did not sign any change order forms and conclude from this that Ms. Birak never requested any chargeable extra work. I find this greatly undermines GWWR's claim.
20. I also find that the other evidence is insufficient to otherwise prove GWWR's claim. GWWR provided 2 November 2021 emails. The first shows that Ms. Birak forwarded the contact information of a plumber GWWR did not use. The second shows the invoice from HS Plumbing that GWWR paid. There is no indication in the emails that Ms. Birak agreed to any extra work or that these amounts were excluded from the fixed-price work.
21. GWWR also provided photos of the completed extra work. While I find they show GWWR complete the depicted work, they show no indication that Ms. Birak agreed to be charged extra for them.

22. Ms. Birak also relied on a November 15, 2021 email. I find it supports her allegation that GWWR charged extra for at least some of the fix-price portion of the work. Prior to work starting, GWWR wrote that it would use DensShield in its work. However, inconsistent with this, GWWR later charged \$208.94 for this material and \$910 for installing it as part of the extra work. In reply to this, GWWR correctly notes that section 2(b) excludes drywall from the fixed-price work. It says this means the charges for DensShield are excluded from the fixed-price work. I disagree as there is no evidence that DensShield is drywall. The invoice identifies it as “tile board”.
23. I also considered whether I should order Ms. Birak to pay under the doctrine of unjust enrichment. This is when one person is unfairly enriched at the expense of another. To prove unjust enrichment, GWWR must show that a) Ms. Birak was enriched, b) GWWR suffered a corresponding loss, and c) there was no juristic reason or valid basis for the enrichment. See *Moore v. Sweet*, 2018 SCC 52. Here, I find the contract terms permitted the enrichment as the parties agreed on the process for charging for extra work.
24. In summary, I find the evidence shows Ms. Birak did not request any chargeable extra work. Further, at least some GWWR’s claim is for work or materials that were properly part of the fixed-price work. I dismiss GWWR’s claim for extra work of \$2,232.47.

***Issue #2. Was GWWR’s work deficient?***

25. Ms. Birak alleges that GWWR laid the wall tiles unevenly, laid the topmost wall tiles uneven with the ceiling, left an area of drywall behind the toilet unfinished, neglected to caulk around the tub, installed scratched wall tiles in several areas, installed an outdated electrical outlet, and made a plumbing box with a displeasing appearance.
26. GWWR says it is not responsible for any defects because Ms. Birak did not make a claim within the contract’s warranty period. It also submits that Ms. Birak’s complaints are not genuine because she only made them after this dispute began. GWWR further denies that its work is deficient or that Ms. Birak hired it to install the electrical outlet.

27. I turn to the applicable law. 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.
28. A contractor is generally entitled to a reasonable opportunity to return to a worksite and repair deficiencies. If the customer denies such an opportunity, the customer is generally not entitled to claim damages for having the deficiencies fixed by a third party. However, a customer may hire someone else to fix or redo work if they have reasonably lost confidence in their hired contractor. See *Lind v. Storey*, 2021 BCPC 2, at paragraph 91 and *Canadian Quality Stucco Ltd. v. Pangli*, 2022 BCPC 126 at paragraph 124.
29. Section 9 of the contract says that GWWR will correct, at its own expense, any defects in work done due to either faulty materials or workmanship for a period of 1 year from the date of completion. It also says that Ms. Birak must give GWWR written notice of the defects within a reasonable period of time, and in any event within the warranty period of 1 year.
30. I will first consider whether Ms. Birak is outside the contractual warranty period. GWWR emailed its invoice to Ms. Birak on December 23, 2021. So, I find she had to give GWWR written notice of the defects by at least December 23, 2022.
31. There are no emails, text messages, or other evidence that show Ms. Birak told GWWR its work was deficient before she provided the November 16, 2022 dispute notice for her counterclaim. CRT staff advise that it served GWWR that same month, so I find she gave written notice of the defects through the dispute notice before December 23, 2022.
32. I find that in these circumstances, 1 year was a reasonable period of time. This is the uppermost limit in the contract. I find no compelling reason that it should be shorter.

I note that it is significantly shorter than, for example, the normal limitation period of 2 years under the *Limitation Act*. So, I find that Ms. Birak provided GWWR notice of the defects within the contractual time limit.

33. In submissions GWWR denied that Ms. Birak advised of the deficiencies within the warranty period. It did not say Ms. Birak refused its requests for entry. So, I find this is not a situation where Ms. Birak denied GWWR an opportunity to fix the deficiencies.
34. I next consider whether any deficiencies are proven. As evidence, Ms. Birak provided several photos and videos. She also provided a November 2, 2022 estimate of \$3,025 from Levine Contracting. There is no indication she had the work done.
35. Ms. Birak says that the wall tiles were scratched in several areas, the tub lacked caulking, and the bathtub wall tiles did not meet the ceiling in an even line. I find these allegations proven by the photos, videos, and estimate comments. In particular, the photos and videos show missing caulking where the tub meets the wall and faint scratches on multiple tiles. The video also shows the topmost tiles are not parallel with the ceiling and appear to be cut too small. As such, the mortar becomes increasingly thick to compensate. The estimate also briefly comments on observing these same issues.
36. I find these deficiencies proven based on this evidence. I note that I find the estimate is not expert evidence because the author's qualifications are not stated, as required by the CRT rules. However, I find expert evidence is not necessary to prove these are deficiencies, as I find they are not technical matters or outside ordinary experience. This is because they relate to the appearance of the work. The estimate provides a total of \$1,325 to remove and reapply the caulking, repair the top tiles, and replace the scratched tiles. So, I order GWWR to pay this amount.
37. I find the other deficiencies unproven and dismiss the balance of her counterclaim for the following reasons.
38. I agree with GWWR that it did not agree to do any electrical work. So, I find the alleged deficiencies in the electrical outlet are unproven or irrelevant.



39. Ms. Birak complains about the plumbing box. However, as I have found the box was not part of the agreed-upon work, I find GWWR has no obligation to do any further work on it.
40. Ms. Birak also says there is uneven spacing between the tiles. Having reviewed Ms. Birak's photos and video, I disagree that this is the case.
41. This leaves the area of unfinished drywall behind the toilet. Ms. Birak did not provide an estimate for this work, and the contract excludes drywall removal or repairs. So, I decline to award any compensation as I find it is not part of the contract.
42. The *Court Order Interest Act* applies to the CRT. Ms. Birak is entitled to pre-judgment interest on damages of \$1,325 from December 1, 2022, the approximate date GWWR received notice of the deficiencies, to the date of this decision. This equals \$24.37.
43. 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 find Ms. Birak largely successful as she resisted GWWR's claim and proved part of her counterclaim. I order GWWR to reimburse her \$125 in CRT fees. I dismiss GWWR's claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

## **ORDERS**

44. Within 30 days of the date of this order, I order GWWR to pay Ms. Birak a total of \$1,474.37, broken down as follows:
  - a. \$1,325 as damages,
  - b. \$24.37 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
45. Ms. Birak is entitled to post-judgment interest, as applicable.

46. I dismiss GWWR's claim and the balance of Ms. Birak's counterclaim.

47. 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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David Jiang, Tribunal Member