



Civil Resolution Tribunal

Date Issued: July 31, 2023

File: SC-2022-006076

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lim v. Kapanidis*, 2023 BCCRT 642

BETWEEN:

BENEDICT CHUA LIM

APPLICANT

AND:

VAMOS KAPANIDIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Benedict Chua Lim, hired the respondent, Vamos Kapanidis, to renovate 2 home bathrooms. Mr. Lim says the work was incomplete, defective, and proceeded slower than expected. He claims a partial refund of \$4,000.

2. Mr. Kapanidis disagrees. He says that Mr. Lim changed the scope of work, failed to properly provide instructions as Mr. Lim was outside the country at the time, and breached the parties' agreement by trying to directly hire Mr. Kapanidis' subcontractors. Mr. Kapanidis also says that Mr. Lim should pay him \$12,127.60 for work done. So, I find he argues he is entitled to a setoff that would negate Mr. Lim's claim.
3. The parties are self-represented.
4. For the reasons that follow, I find Mr. Lim has proven his claim.

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. Some of the evidence in this dispute amounts to a "he said, he 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.

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.
9. I note that Mr. Kapanidis did not properly make a counterclaim or pay the fee to do so under Civil Resolution Tribunal (CRT) rule 3.2. So, I have only considered his submission that he is owed money as a setoff and not a true counterclaim.

ISSUES

10. The issues in this dispute are as follows:
 - a. Did Mr. Kapanidis breach the parties' contract?
 - b. Is Mr. Kapanidis entitled to a setoff for money owing or any other reason?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Lim as the applicant must prove his 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. Mr. Kapanidis did not provide any written arguments though he had the opportunity to do so. So, I have relied on his statements from his Dispute Response and his submitted evidence worksheet.

12. The parties' July 10, 2022 written agreement said that Mr. Kapanidis would renovate Mr. Lim's 2 washrooms "fully". Mr. Kapanidis agreed to provide new plumbing and lighting fixtures, tiles, grout, and exhaust fans. He would only reuse the toilet and a medicine cabinet from the main bedroom bathroom. The contract also said that all work had to be finished before July 15, 2022.
13. The contract specified a fixed price of \$21,500. There were no terms about an hourly rate or how to calculate charges for additional work. Mr. Lim also agreed to pay a down payment of 40%, or \$9,800. The contract also said there would be a progress payment of 55% of the price, depending on the items completed. There would also be a final payment of 5%, subject to final testing and approval of the work.
14. Mr. Lim provided a down payment of \$9,000. While this was less than the amount specified in the contract, a receipt shows Mr. Kapanidis accepted this amount, and it is undisputed that Mr. Kapanidis started work on June 10, 2022.
15. Mr. Lim was out of the country from the first week of July and returned on August 30, 2022. Mr. Lim's family member paid Mr. Kapanidis, I find on Mr. Lim's behalf, another \$3,000 on July 14, and again on July 18, 2022, as shown in 2 receipts. Mr. Lim says, and I accept, that the payments were made in part to encourage Mr. Kapanidis to finish the first bathroom before Mr. Lim returned near the end of August 2022. Mr. Kapanidis says that Mr. Lim still owes \$12,127.60 for work done, but he did not directly contradict Mr. Lim's submission that he paid \$15,000. So, I accept that Mr. Lim paid \$15,000 in total to Mr. Kapanidis.
16. Mr. Lim says that when he returned on August 30, 2022, Mr. Kapanidis had only finished 90% of the work on the first bathroom. Overall, I find Mr. Lim's summary of the work is supported by the evidence. Photos of the first bathroom show that Mr. Kapanidis largely completed work on it, but there were still some visible issues. A light switch was missing a cover. The transition point between the bathroom tiles and entryway flooring showed a large amount of tile grout that I find was messy and inconsistently thick as compared to the grout showing around the surrounding tiles. A part of the wall close to the bathroom ceiling fan was also uneven instead of flat.

17. Given the photos, I find it proven that the missing switch cover, transition point, and uneven wall are proven deficiencies, as they are obviously defective.
18. Photos of the second bathroom show the following. There were large sections of drywall cut out, exposing insulation, piping, and wall studs. Photos of the attic above the second bathroom also show Mr. Kapanidis removed some panels from the attic floor and disconnected flexible ductwork. I find this shows incomplete work or work in progress, as the parties' submissions indicate Mr. Kapanidis had not done any significant work on the second bathroom.

Did Mr. Kapanidis breach the parties' contract by failing to complete the work or providing defective work?

19. Case law holds that an applicant may hire someone else to fix or redo work if the applicant has reasonably lost confidence in their hired contractor. See, for example, *Canadian Quality Stucco Ltd. v. Pangli*, 2022 BCPC 126 at paragraph 124 and my non-binding decision of *Perk v. Savard*, 2022 BCCRT 775 citing *Canadian Quality Stucco Ltd.*
20. I find that Mr. Kapanidis breached the parties' contract by failing to complete the bathroom renovations before the agreed-upon date of July 15, 2022. There is no evidence that Mr. Lim requested extra work that required this deadline to be extended. Mr. Lim also provided a written statement from MH, a subcontractor Mr. Kapanidis hired for tiling. MH said that Mr. Kapanidis still owed them for work done. MH also said that Mr. Lim took over the renovations after Mr. Kapanidis refused to finish the work after "repetitive absences and not returning to the project as he promised".
21. Given the above, I find that Mr. Lim reasonably allowed Mr. Kapanidis further time to complete the work in July 2022, but he also reasonably lost confidence in Mr. Kapanidis thereafter. This is because the photos show that by August 30, 2022, the work on the second bathroom was not close to completion. Further, workers like MH were not being paid, which I find would support Mr. Lim's conclusion that the work

might not be completed. So, I find Mr. Lim was entitled to hire someone else, such as MH directly, to fix, redo, or complete the work.

22. Mr. Kapanidis provided a January 15, 2023 expert opinion from Mike Mavroidis, a site supervisor of quality control for Vancity Development Group Corporation. Their qualifications include being a licensed residential builder. According to the report, Mike Mavroidis physically inspected the site on June 23, 2022. Mr. Kapanidis asked the expert about whether a vent behind a wall was of unusual construction, whether the waterproofing in the first bathroom met minimum requirements, and whether the renovation was considered “custom or spec”.
23. While I accept Mike Mavroidis is an expert under the CRT rules, I find the report is not relevant to whether Mr. Lim reasonably lost confidence in Mr. Kapanidis as a contractor. It is not about the completion time stated in the parties’ contract, which was a firm date. It also does not comment on the actual flaws Mr. Lim pointed to in the evidence. As noted earlier, these include the missing light switch cover, the floor tile transition point, and area of uneven wall near the fan. It also does not provide an estimate for the value of the work done, which is a topic I discuss below.
24. Having found that Mr. Kapanidis breached the contract, I turn to the appropriate remedy. Mr. Lim says that to determine damages, I should consider 1) how much Mr. Lim paid, 2) determine the value of the work done by Mr. Kapanidis, and 3) order damages equal to any “overpayment” by Mr. Lim. I have found that Mr. Lim paid \$15,000. Mr. Lim says that Mr. Kapanidis only finished 50% of the work, so the value of the work done is \$10,750. He says that the gap between the \$15,000 paid and the \$10,750 value for work done is approximately equal to his claim of \$4,000.
25. I agree with Mr. Lim’s suggested approach in these circumstances, which is to estimate the value of the work done. Having seen the photographs, I am satisfied that Mr. Kapanidis nearly finished work on the first bathroom subject to the proven deficiencies noted above, and had started preliminary work on the second bathroom. So, I find Mr. Kapanidis finished approximately 50% of the work. The gap between

the \$15,000 Mr. Lim paid and the \$10,750 estimate of value for work done is \$4,250. So, I order Mr. Kapanidis to pay \$4,000 as this is the claim amount.

26. Mr. Kapanidis claims a setoff because he says Mr. Lim owes him \$12,127.60. However, as he breached the contract and did not complete the work, I find it unproven that he is entitled to any setoff for unpaid work. As noted earlier, Mr. Kapanidis also alleges that Mr. Lim changed the scope of work and failed to properly provide instructions. I find these are essentially bare allegations and unproven by evidence. Mr. Kapanidis also says Mr. Lim breached their agreement by directly hiring MH. However, I have already found that by then, Mr. Lim had reasonably lost confidence in Mr. Kapanidis and was entitled to hire MH to complete the work.
27. The *Court Order Interest Act* applies to the CRT. Mr. Lim is entitled to pre-judgment interest on damages of \$4,000 from August 30, 2022, the date of work had clearly stopped by, to the date of this decision. This equals \$128.19.
28. 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. As Mr. Lim proved most of his claim, I find Mr. Lim is entitled to partial reimbursement of \$175 in CRT fees.
29. Mr. Kapanidis claims \$500 as reimbursement for the expert report mentioned above. I decline to order reimbursement because he was the unsuccessful party. I would also decline reimbursement because I found the report was largely irrelevant to the issues in this dispute and therefore not a reasonable expense.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Kapanidis to pay Mr. Lim a total of \$4,303.19, broken down as follows:
 - a. \$4,000 in damages for breach of contract,

- b. \$128.19 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 CRT fees.

31. Mr. Lim is entitled to post-judgment interest, as applicable.

32. I dismiss Mr. Kapanidis' claims for reimbursement.

33. 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.

David Jiang, Tribunal Member