



Civil Resolution Tribunal

Date Issued: October 13, 2023

File: SC-2022-008933

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thoma v. Ashton's Floor Covering Centre Ltd.*, 2023 BCCRT 871

B E T W E E N :

SEAN THOMA

APPLICANT

A N D :

ASHTON'S FLOOR COVERING CENTRE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about new carpet and flooring installation. The applicant, Sean Thoma, hired the respondent, Ashton's Floor Covering Centre Ltd. (Ashton's), to do the work. Mr. Thoma says that there is a balance owing of \$1,994.89 to Ashton's, of which \$910 is for unapproved extra work. He seeks a declaration that he is only liable for half this amount, being \$455.

2. Ashton's agrees that the balance owing is \$1,994.89. However, it disagrees that Mr. Thoma is entitled to any reduction. Ashton's did not file a counterclaim.
3. Mr. Thoma represents himself. An employee or principal represents Ashton's.
4. For the reasons that follow, I refuse to resolve Mr. Thoma's 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.
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.
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.
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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. With certain limited exceptions that do not apply here, CRTA section 118 does not give the CRT jurisdiction to grant injunctive relief. Injunctive relief is an order to do something or stop doing something.
10. As discussed below, I find a primary issue in this dispute is whether the CRT has jurisdiction over this claim. I did not ask the parties for specific submissions on this

issue because I find the nature of Mr. Thoma's claim is clear and unambiguous in the circumstances. I find that asking the parties for further submissions would have delayed the resolution of this dispute without any benefit and would be counter to the CRT's mandate that includes resolving dispute in a manner that is speedy and economical under CRTA section 2(2).

ISSUE

11. The first issue I must consider is whether the CRT has jurisdiction over this dispute.

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Mr. Thoma 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.

13. As I am refusing to resolve this dispute, I will discuss the undisputed background very briefly. Mr. Thoma hired Ashton's to install carpets and vinyl plank flooring for both halves of a duplex. The parties agreed that Mr. Thoma would be responsible for prep work.

14. Ashton's completed the work in October and November 2022. The parties agree that Mr. Thoma only partially paid the amount owing, and that the balance owing is currently \$1,994.89. Of that amount, Mr. Thoma says that Ashton's unjustifiably charged \$910 extra for prep work. He seeks a declaration that he should only be liable for half this amount, or \$455. Ashton's disagrees and says Mr. Thoma insufficiently prepared the area ahead of installation, forcing it to incur extra costs.

Does the CRT have jurisdiction over this dispute?

15. As noted above, CRTA section 118 says that for small claims matters, the CRT has jurisdiction over claims for debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, and relief from

opposing claims to personal property. Apart from these specific provisions, CRT has no jurisdiction in small claims disputes to grant injunctive or declaratory relief. See, for example, my non-binding decision in *Motiuk v. Hall*, 2023 BCCRT 744.

16. Mr. Thoma essentially seeks a declaration that the amount owing to Ashton's is \$1,539.89, rather than \$1,994.89. I say this because, as noted, he says he should only be responsible for half of the \$910 charged for unapproved extra work. I find this is a claim for declaratory relief that is outside my jurisdiction to order. Declaratory relief is a declaration about the parties' rights, without any other consequence, such as an order for payment.
17. To the extent that Mr. Thoma seeks an order that compels Ashton's to accept \$1,539.89 as payment, I find this would be a claim for injunctive relief. I find this is also outside the CRT's jurisdiction under CRTA section 118.
18. Finally, Mr. Thoma did not seek an order for damages or other remedies within the CRT's jurisdiction. As noted earlier, Ashton's did not file a counterclaim. I must therefore refuse to resolve Mr. Thoma's claim and this dispute under CRTA section 10(1). For clarity, I make no finding about Ashton's alleged entitlement to payment of the outstanding \$1,994.89. Nothing in this decision prevents Ashton's from making a claim for payment against Mr. Thoma, subject to any applicable limitation period.
19. 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. Thoma was not successful, I make no order for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

DECISION

20. I refuse to resolve Mr. Thoma's claim and this dispute under CRTA section 10(1).

David Jiang, Tribunal Member