



Civil Resolution Tribunal

Date Issued: November 14, 2023

File: SC-2022-007162

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bodine v. Lasca Natural Trading Company dba Lasca Construction & Design, 2023 BCCRT 982*

B E T W E E N :

NATALIE BODINE

APPLICANT

A N D :

LASCA NATURAL TRADING COMPANY (Doing Business As LASCA CONSTRUCTION & DESIGN) and FLEX DEXX CONTRACTING LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about deficient tile work. The applicant, Natalie Bodine, undisputedly hired the respondent partnership, Lasca Natural Trading Company (doing business as Lasca Construction & Design) (Lasca), for her kitchen renovation. Ms. Bodine says

Lasca hired the other respondent, Flex Dexx Contracting Ltd. (Flex), to install backsplash tiles during her kitchen renovation. Ms. Bodine says Flex's tile installation was deficient. Flex undisputedly refunded Ms. Bodine \$1,200. Ms. Bodine says Lasca confirmed it would replace the deficient tile but failed to do so. Ms. Bodine claims \$3,008.70 in damages for the additional costs to replace the deficient tile work, after accounting for the \$1,200 refund.

2. Lasca disputes Ms. Bodine's claims and takes no responsibility for Flex's work. Lasca says Flex was hired directly by Ms. Bodine for the tile work. Lasca says it only recommended Flex to Ms. Bodine, and says it explained to Ms. Bodine that Flex is an independent contractor that does not work for Lasca.
3. Flex did not file a Dispute Response and is therefore technically in default.
4. Ms. Bodine is self-represented. Lasca is represented by one of its partners, Tracy Sun.

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.
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.
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.

ISSUE

9. The issue in this dispute is to what extent, if any, either Lasca or Flex are responsible to pay Ms. Bodine the claimed \$3,008.70 in damages to redo the tile work.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, Ms. Bodine, as the applicant, must prove her claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.

Contract for tile work

11. As noted, Lasca says it only recommended Flex to Ms. Bodine after Ms. Bodine cancelled her own tiler. Lasca argues that Ms. Bodine contracted directly with Flex and so Lasca is not responsible for any of Flex's deficient work. As discussed below, I find this allegation is contradicted by the documentary evidence.
12. There is no written contract in evidence. However, text messages between Ms. Bodine and Lasca show that Ms. Bodine told Lasca she had cancelled her tiler, and asked if Lasca could arrange for its tiler to install the backsplash. Later messages show that Ms. Bodine dealt with Lasca to arrange the tile work, and did not deal with Flex directly. Lasca says it did this as a favour to Ms. Bodine, and says Ms. Bodine understood the contract was between herself and Flex. However, the evidence does

not show this was communicated to Ms. Bodine before the tile work was arranged, or that Ms. Bodine contracted directly with Flex.

13. Flex's February 12, 2021 invoice totaling \$13,337.64 for the tile installation was addressed to Lasca. Flex provided the invoice to Lasca, not to Ms. Bodine. Lasca emailed the invoice to Ms. Bodine for payment and e-transfer confirmations show Ms. Bodine paid Lasca for the tile work, and that Lasca paid Flex.
14. I note that in April 2022 text messages between Ms. Bodine and Lasca after the tile work was completed, Lasca told Ms. Bodine that Flex was an independent contractor and did not work for Lasca, and Ms. Bodine said she understood. However, this occurred after Flex completed the tile installation, and does not show that Ms. Bodine was aware of this beforehand. In any event, I find this evidence does not show that Ms. Bodine contracted with Flex for the tile installation. Rather, I find the above documentary evidence shows Lasca hired Flex to complete the tile installation work. In making this finding, I place significant weight on Flex providing its invoice directly to Lasca. Overall, on balance, I find that Ms. Bodine likely contracted with Lasca for the kitchen renovation including the tile work, and that Lasca subcontracted with Flex to complete the tile installation itself.

Flex's liability

15. As mentioned above, Flex did not file a Dispute Response. I find that Flex was likely served with the Dispute Notice mailed to it by the CRT under CRT rule 2.2, and failed to file a Dispute Response as required under CRT rule 3.1. This means that Flex is in default under the CRT's rules, which require respondents to file a Dispute Response. In general, when a respondent is in default, the CRT will assume liability against them. However, this is not automatic, and in the circumstances here I decline to find Flex liable despite its default status.
16. As noted, I have found Ms. Bodine's contract was with Lasca, not with Flex. The evidence does not support a finding that Ms. Bodine contracted directly with Flex. On that basis, I find Flex is not responsible for Ms. Bodine's claimed damages, and I

dismiss Ms. Bodine's claims against Flex. Lasca did not file a third party claim against Flex. Therefore, I have not considered whether Flex is liable to reimburse Lasca for its deficient work.

Deficiencies

17. At law a contractor is required to perform its work to a reasonable standard. See *Lund v. Appleford Building Company Ltd. et al.*, 2017 BCPC 91 at paragraph 124. The law does not require perfection. Generally, expert evidence is required to prove whether a professional's work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry, which I find includes tile work. Exceptions to this general rule are when the work is obviously substandard, or the deficiencies relate to something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.
18. Photos of the backsplash tile work show that the tiles were misaligned and not centered behind the stove or sink faucet, with thin strips of cut tiles on each side of the backsplash area behind the stove. The photos also show thick and uneven grout lines, some gaps in the grout, a chipped tile by an electrical outlet, and a cracked tile.
19. I find that the photographs show obvious deficiencies that can be discerned even by the untrained observer. As a result, I find that I do not require expert evidence to find that Flex's tile work was deficient in the circumstances. Further, in a text message to Ms. Bodine responding to a photograph of Flex's tile work behind the stove area, Lasca itself said the tile should be ripped out and re-done. So, I find Lasca does not dispute that the tile work was deficient.
20. Contractors are generally entitled to a reasonable opportunity to address deficiencies. If the owner does not give that opportunity, they are generally not entitled to claim damages for having deficiencies repaired by someone else. See *Lind v. Storey*, 2021 BCPC 2.

21. Ms. Bodine says Lasca agreed to order new tiles and replace the deficient tiles. In April 30, 2022 text messages between Ms. Bodine and Lasca, Lasca confirmed that it had ordered tiles and “will got those replaced asap” (reproduced as written). So, I find Lasca initially indicated it would order new tiles and replace the deficient tile work. It is undisputed that Lasca did not fix the deficient tile work, despite being provided the opportunity to do so.
22. In June 9, 2022 emails between Lasca to Ms. Bodine, Ms. Bodine confirmed Flex had refunded her \$1,200. Lasca told Ms. Bodine that she was “only to replace the area at range side”, and said the refund amount was more than enough to pay for the tiles and installation for the stove area. Lasca argues that only the tile work behind the stove needed to be redone, rather than the entire backsplash. Lasca says Ms. Bodine chose to replace the entire backsplash instead of just the stove area. However, Lasca did not provide evidence to support its allegation that the deficiencies could be fixed without re-doing the backsplash as a whole. As noted, the deficiencies include broken and chipped tiles, misaligned and uncentered tiles and thin strips of tile along the edge of the stove backsplash area. Based on the photographs, I find Ms. Bodine likely had to redo the entire backsplash in order to fix the deficiencies. So, I do not accept Lasca’s allegation that only the stove area tile needed to be reinstalled.

Damages

23. The usual remedy for deficiencies is damages, measured by the cost to fix the deficient work. In her Dispute Notice, Ms. Bodine claimed \$3,782.79 in damages. However, in submissions Ms. Bodine reduced her claimed damages to \$3,008.70, which she says reflects the additional costs she incurred to demolish and re-tile the kitchen backsplash after accounting for the \$1,200 refunded to her.
24. Ms. Bodine says the initial cost for Lasca to complete the tile job was \$2,111.72, including Flex’s \$1,337.64 charge for the installation, plus the cost of tiles and other supplies. Lasca does not dispute this. However, invoices and receipts in evidence show that the initial tiling installation costs, including supplies, totaled \$2,133.11. So,

I find Ms. Bodine likely paid a total of \$2,133.11 for the initial tile backsplash, including the installation itself, plus the tiles and other various supplies.

25. Ms. Bodine says the cost to tear out and re-install the tiles was \$4,208.90, based on the following invoice and receipt:
 - a. A September 22, 2022 invoice from Tile & Stone by Jordan totaling \$3,105 for the tile demolition and re-installation. It charged \$1,450 for the tear out, and \$1,650 for re-boarding and tile backsplash install, plus GST.
 - b. An August 19, 2022 receipt from Nelson Building Centre Limited totaling \$1,103.70 for the replacement tile and various other supplies.
26. The \$1,650 tile installation charge does not appear obviously unreasonable and is close to the \$1,337.64 Flex originally charged for the tile installation work. The \$1,450 tear out charge also does not appear obviously unreasonable. The replacement tile purchased is the same as the original tile, and was charged at a slightly lower cost. The other supplies listed do not appear obviously unreasonable. Lasca also does not allege any of the supplies were unnecessary nor that any of the tile re-installation charges were unreasonable or inflated.
27. Ms. Bodine also provided photographs that show the tile backsplash being ripped out and reinstalled. Based on the photographs and the above invoice and receipt, I find Ms. Bodine has proved she reasonably incurred \$4,208.80 in costs to fix the deficient backsplash tile. After accounting for the \$1,200 she received from Flex, Ms. Bodine's damages total \$3,008.80. So, I find Lasca is responsible to pay Ms. Bodine \$3,008.80 in damages to fix the deficient tile work. As noted above, Lasca did not file a third-party claim against Flex, so I make no findings about whether Lasca is entitled any reimbursement from Flex for Ms. Bodine's proven damages.

Interest, CRT fees and expenses

28. The *Court Order Interest Act* applies to the CRT. I find Ms. Bodine is reasonably entitled to pre-judgment interest on the \$3,008.80 damages award from September

22, 2022, the date of the invoice to redo the tile installation, to the date of this decision. This equals \$136.45.

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. As Ms. Bodine was successful in this dispute, I find she is entitled to reimbursement of \$175 in paid CRT fees.
30. Ms. Bodine also claims reimbursement of \$24.54 in registered mail costs, and provided receipts in support of this claim. So, I find Ms. Bodine is entitled to reimbursement of \$24.54 for dispute-related expenses.
31. Lasca claimed \$940.80 in dispute-related expenses for “correspondence, document preparation and court time”. However, Lasca was unsuccessful in this dispute. So, I dismiss its claim for dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Lasca to pay Ms. Bodine a total of \$3,383.34, broken down as follows:
 - a. \$3,008.80 in damages,
 - b. \$136.45 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$199.54, for \$175 in CRT fees and \$24.54 for dispute-related expenses.
33. Ms. Bodine is entitled to post-judgment interest, as applicable.
34. I dismiss Ms. Bodine’s claims against Flex.

35. 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.

Leah Volkers, Tribunal Member