



Civil Resolution Tribunal

Date Issued: December 14, 2023

File: SC-2023-000184

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Inner-City Flooring Sales & Installation Inc. v. Bacic*, 2023 BCCRT 1096

B E T W E E N :

INNER-CITY FLOORING SALES & INSTALLATION INC.

APPLICANT

A N D :

DAVID BACIC and JEN BACIC

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about flooring and stair installation.
2. David Bacic and Jen Bacic hired Inner-City Flooring Sales & Installation Inc. (Inner City) to install vinyl plank flooring and stairs in their home. Inner City says the Bacics

refused to pay them in full for the work performed. It claims \$1,465.63 for its unpaid final invoice.

3. The Bacics have already paid Inner City \$13,523.05 for the flooring and stair installation work. However, they say Inner City's work was deficient, and it did not fix the deficiencies despite being given the opportunity to do so. So, the Bacics say they do not owe Inner City anything more.
4. Inner City's owner represents it. David Bacic represents the Bacics.

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. 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.

ISSUES

9. The issues in this dispute are:
 - a. Is Inner City entitled to the claimed \$1,465.63 for unpaid flooring and stair installation work?
 - b. If so, are the Bacics entitled to a set-off for any proven deficiencies?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicants, the Bacics must prove their 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 I find necessary to explain my decision.

Background and Inner City's claimed amount

11. I begin with the undisputed background. In November 2022, the Bacics hired Inner City to install vinyl plank flooring throughout their home. Inner City initially provided the Bacics with a \$17,877.67 estimate for the work dated October 28, 2022, of which the Bacics paid \$10,780. I find the estimate formed the basis of the parties' contract. Inner City later revised the cost down to \$14,303.05, as the Bacics had arranged for some preparatory work to be done separately in advance. Around December 1, 2022, the Bacics paid Inner City another \$2,743.05, leaving \$780 outstanding.
12. On December 21, Inner City's CEO John Patrick Biddlecombe texted Mr. Bacic requesting payment of the final invoice amount of \$1,151.68. Neither party explains the difference between this figure and the \$780 figure, and the Bacics do not specifically challenge the higher amount. Text messages between John Patrick Biddlecombe and Mr. Bacic suggest the parties agreed to Inner City also installing shoe moulding around the Bacics' kitchen cabinets at a rate of \$11.98 a foot. So, I infer the \$1,151.68 final invoice amount includes installation of shoe moulding as agreed by the parties.

13. Inner City claims \$1,465.63 for the unpaid work, but provided no evidence to support the \$313.95 difference between that amount and the final invoice amount. The Bacics dispute the \$1,465.63 figure, and I find there is nothing to prove Inner City is entitled to anything more than the \$1,151.68 final invoice amount.
14. Inner City says it finished the installation around December 13, 2022. The Bacics say there were 3 serious issues that show Inner City did not complete the work. Two of the issues concerned nosings on the top stair of the staircase and on the stair leading into the sunken living room. The Bacics say the stair nosings were not properly installed because the pieces used were not straight and the gaps between them were too large. The third issue was that the installer undisputedly placed flooring over the hatch to the crawl space in which the Bacics' emergency water shut off and HVAC unit were located, making them inaccessible.
15. Generally, contractors are entitled to payment upon substantial completion of a project. If a customer believes there are deficiencies in the contractor's work, the customer may bring a claim for damages. However, the customer must still pay the contractor's invoice subject to any deduction for deficient work (see *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403).
16. While the Bacics say Inner City's work was incomplete, from the photographs of the flooring and stairs in evidence, I find the installation is largely done. So, I find Inner City substantially completed the work the parties contracted for, and is entitled to payment of the outstanding \$1,151.68, subject to any deduction for proven deficiencies.

Alleged deficiencies

17. As noted, the Bacics say Inner City improperly installed stair nosings and covered their floor access to their emergency water shut off and HVAC unit. They also say there were various other minor deficiencies. The Bacics say it will cost between \$2,000 and \$2,500 to fix the serious issues. Since the Bacics did not file a

counterclaim, I infer they ask that I set off the cost of remedying proven deficiencies against any amount I award Inner City.

18. Text messages between Mr. Bacic and John Patrick Biddlecombe show Inner City offered to come back to fix certain deficiencies on December 21, 2022, after John Patrick Biddlecombe reviewed the work with Mr. Bacic in person. From the context, I find the offer included fixing the two stair nosings and the access hatch. In submissions, Inner City appears to take a somewhat different position about whether the stair nosing installation was deficient. In particular, Inner City disputes the installation was improperly done because it says an inspection report the Bacics submitted was not prepared by a certified flooring inspection representative.
19. I agree the inspection report submitted by the Bacics is not expert opinion evidence. The report did not include the writer Eric Sherritt's qualifications, such as their education, training or experience in floor or stair installation work, as required by CRT rule 8.3(2). Nor did it indicate that Eric Sherritt, whose title is sales representative, otherwise has specialized knowledge of floor and stair installation.
20. Expert evidence is typically 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 floor and stair installation. The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).
21. Here, I find expert evidence is not required for the following reasons.
22. First, the access hatch. Inner City does not dispute its installer covered the hatch when they installed the flooring, making the emergency water shut off and HVAC unit inaccessible. I find this is an obvious deficiency in the work.
23. Next, the stair nosings. Despite what Inner City says in submissions, I find its offer to return to fix the deficiencies is compelling evidence that some of its work needed additional attention to meet a reasonable standard. In response to Inner City's offer

to return on December 21, Mr. Bacic said that was not a good day as the Bacics had company. Mr. Bacic proposed waiting until the new year. On January 6, 2023, Inner City's installer arrived at the Bacics' home to fix the deficiencies. It is undisputed the Bacics were unhappy with the way the installer was attempting to fix the stair nosings by nailing into the flooring. Mr. Bacic submitted copies of the flooring installation instructions and the manufacturer's warranty. These documents said that the flooring was not to be nailed down, and that the warranty was subject to the flooring being installed according to the instructions. Mr. Bacic went to Inner City's store to discuss his concerns, where the conversation with John Patrick Biddlecombe escalated, resulting in John Patrick Biddlecombe calling the police. Ultimately, the installer left the Bacics' home without completing the fixes.

24. Contractors are usually entitled to a reasonable opportunity to address deficiencies. If the owner does not offer that opportunity, they are generally not entitled to claim damages for having deficiencies repaired by someone else (see *Lind v. Storey*, 2021 BCPC 2).
25. I find the Bacics gave Inner City a reasonable opportunity to fix the deficiencies on January 6, 2023. Based on the flooring installation instructions and the manufacturer's warranty, which I find the installer would or should have known about, I find it obvious that the installer's approach to remedying the stair nosings by nailing down the flooring was incorrect. So, I find Inner City failed to take advantage of the opportunity to properly fix the deficiencies. I find the fact that Mr. Bacic later confronted John Patrick Biddlecombe and the parties' relationship broke down does not change Inner City's failure to capitalize on the chance to fix the deficiencies correctly in the first place. In these circumstances, I find the Bacics are entitled to deductions from the final invoice amount to pay someone else to fix the deficiencies.
26. The Bacics submitted a March 24, 2023 invoice for \$325 from Chay Beriault Custom Building & Installations Painting & Home Repairs to fix the access hatch. I find the Bacics are entitled to reimbursement of this invoice amount.

27. As noted above, the Bacics say they were quoted between \$2,000 and \$2,500 to fix both the nosings and the access hatch. The Bacics say these quotes were verbal, and they did not submit documentary evidence showing the cost to fix the nosings alone. So, based on the photographs in evidence and on a judgment basis, I allow \$500 for the stair nosings.
28. Deducting the \$325 for the access hatch and the \$500 for the stair nosings from the \$1,151.68 final invoice amount leaves a balance of \$326.68 in Inner City's favour. So, I find the Bacics are responsible, jointly and severally, to pay Inner City \$326.68.
29. The *Court Order Interest Act* (COIA) applies to the CRT. Inner City is entitled to pre-judgment interest on the \$326.68 debt award from December 21, 2022, the date Inner City requested payment of the final invoice, to the date of this decision. This equals \$14.77.
30. 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 Inner City was partially successful, I find it is entitled to reimbursement of half its paid CRT fees, which is \$62.50. Inner City did not claim dispute-related expenses, so I order none.

ORDERS

31. Within 30 days of the date of this order, I order the Bacics, jointly and severally, to pay Inner City a total of \$403.95, broken down as follows:
 - a. \$326.68 in debt,
 - b. \$14.77 in pre-judgment interest under the COIA, and
 - c. \$62.50 in CRT fees.
32. Inner City is entitled to post-judgment interest, as applicable.

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.

Megan Stewart, Tribunal Member