



Civil Resolution Tribunal

Date Issued: December 29, 2023

File: SC-2023-000976

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Floorica Construction Ltd. v. The Builders Club Construction Supply Ltd.*,
2023 BCCRT 1140

B E T W E E N :

FLOORICA CONSTRUCTION LTD.

APPLICANT

A N D :

THE BUILDERS CLUB CONSTRUCTION SUPPLY LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about tile samples and flooring.
2. The applicant, Floorica Construction Ltd. (Floorica), made stair nosing for the respondent, The Builders Club Construction Supply Ltd. (Builders Club), but Builders

Club has not paid for it. Floorica says it also provided slab tiles samples to Builders Club out of goodwill, but Builders Club ended the parties' business relationship and only gave Floorica 48 hours to pick up the slab tile samples, or it would throw them away. Floorica collectively claims \$3,066 for the stair nosing and slab tile samples.

3. Builders Club disputes Floorica's claims. It says Floorica provided defective floor nosing, and it is not responsible to pay for it. Builders Club says it asked Floorica to provide 24 hours' notice before picking up the samples, but Floorica has not done so. It says the samples are still available for Floorica to pick up with proper notice.
4. Floorica is represented by its owner, Bassem El-Helou. Builders Club is represented by its owner, Gurinder Badesha.

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, Floorica is entitled to \$3,066 for stair nosing and slab tile samples.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Floorica must prove its 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.

Stair nosing

11. Floorica provided a September 11, 2022 invoice totaling \$861 for the stair nosing.
12. As noted, Builders Club does not dispute that Floorica provided the stair nosing, but says it was defective. Text messages between the parties show that Builders Club told Floorica it would not be paying for the defective stair nosing.
13. It is an implied term of any contract for professional services that the professional will perform to a reasonably competent standard. The law does not require perfection. When a customer alleges that a contractor's work was below this standard, they must prove the deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287, at paragraph 61. Generally, an allegation that a professional's work was below a reasonably competent standard requires expert evidence to prove. This is because the standard expected of professionals in a particular industry is generally outside the common knowledge of ordinary people. The 2 exceptions to this rule are when the deficiency is not technical in nature or where the work is obviously substandard. See

Schellenberg v. Wawanesa Mutual Insurance Company, 2019 BCSC 196, at paragraph 112.

14. As the party alleging the deficiencies, Builders Club has the burden of proving them. Builders Club says Floorica was late providing the stair nosing, and then rushed the job and provided defective flooring. It provided several photos of the stair nosing that shows significant cracks and the stair nosing edges separating.
15. Floorica does not dispute the photos show damage. However, it says there is no evidence to show the stair nosing was deficient when it was picked up. Floorica says it does not know how the stair nosing was damaged. It says Builders Club employees may have dropped or damaged the stair nosing after it was picked up. Floorica also says Builders Club's employees should have checked the stair nosing when it was picked up to ensure it was not defective. However, Floorica did not explain how dropping the stair nosing could cause the damage shown in the photographs. Further, when Builders Club told Floorica it would not pay for the defective stair nosing, Floorica did not allege that Builders' Club damaged the flooring, which I would have expected Floorica to do in the circumstances. So, on balance, I find it unlikely that Builders' Club damaged the stair nosing.
16. 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 Floorica's stair nosing was deficient in the circumstances.
17. In the parties' text messages, Builders Club told Floorica it was going to invoice Floorica for "the production of new stair nosing". Builders Club included a January 28, 2023 invoice to Floorica for stair nosing in evidence. I find this evidence supports a finding that Builders Club likely had to fabricate new stair nosing, and that none of Floorica's provided stair nosing was usable. So, on balance, I find Floorica has not proved it is entitled to any payment for its deficient stair nosing.

Slab tile samples

18. As noted above, Floorica says it provided tile slab samples to Builders Club as a goodwill business gesture. Builders Club agrees, and says the samples were provided at no cost. Floorica says Builders Club ended the parties' business relationship and threatened to throw away the samples if Floorica did not pick them up within 48 hours. Floorica says it is now entitled to payment of \$2,205 for the samples thrown away.
19. For its part, Builders Club says it asked Floorica to provide 24 hours' notice before picking up the samples. Builders Club says Floorica has not done so, but says Floorica can still pick up the samples with proper notice. Floorica did not address this submission in its reply, or say that it tried to provide 24 hours' notice or otherwise attempted to pick up the flooring samples from Builders' Club. Instead, Floorica repeated that it is entitled to payment for the samples that were thrown away.
20. Text messages between the parties on January 28, 2023 show Builders Club told Floorica it could pick up its samples with 48 hours' notice, after which time the samples would be put outside next to Builders Club's garbage bin. The same day, Floorica responded by sending Builders' Club an invoice seeking payment of \$2,205 for the samples, and said it was doing so because Builders Club was refusing to bring back the samples and threatening to throw them away. Builders Club responded and said it was not threatening to throw the samples away. It again asked Floorica to provide 48 hours' notice before picking up the samples, and said if not picked up "after that 48 hrs are done, they will be put outside next to my garbage for collection".
21. I find these text messages show that Builders Club did not threaten to throw away the samples. Instead, I find they show Builders Club asked for notice prior to Floorica picking up the samples, and said it would put the samples outside for pick up if Floorica did not attend at the time provided with 48 hours' notice. The evidence does not show Floorica ever attempted to do so. The evidence also does not show that Builders' Club threw away the samples. Finally, the samples were undisputedly provided as a goodwill business gesture in any event, and there is no evidence to

support a finding that the parties' agreed Builders Club would pay for them if the parties' business relationship ended. Given all the above, I find Floorica has not proved it is entitled to any payment for its samples. I make no order about the samples themselves. I dismiss this aspect of Floorica's claims.

CRT fees and expenses

22. 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 Floorica was unsuccessful, I dismiss its fee claim. Builders Club did not pay any CRT fees and neither party claimed any dispute-related expenses.

ORDER

23. I dismiss Floorica's claims and this dispute.

Leah Volkers, Tribunal Member