



# Civil Resolution Tribunal

Date Issued: February 16, 2024

File: SC-2023-003214

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seleznev v. Val-U-Flooring Ltd.*, 2024 BCCRT 152

BETWEEN:

MAXIM SELEZNEV and MARIA SELEZNEVA

**APPLICANTS**

AND:

VAL-U-FLOORING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about a contract for flooring and finishing.
2. The applicants, Maxim (Tara) Seleznev and Maria Selezneva hired the respondent, Val-U-Flooring Ltd., to install vinyl plank flooring, transitions, baseboards, and custom

stair nosing. The parties agreed on price and determined a payment schedule, where the applicants would pay the final 20% once the respondent completed the project.

3. The applicants say the respondent breached the parties' contract by not completing the transitions or baseboard, prematurely charging the final 20%, and by providing deficient stair nosing work. They claim \$3,260, the amount of the 20% payment.
4. The respondent says some of the incomplete work was not its responsibility. It also says the applicants' dog damaged some stairs' nosings. It asks me to dismiss the applicants' claim.
5. Tara Seleznev represents the applicants. An employee or director, Abee Haw, represents the respondent.<sup>1</sup>
6. For the reasons that follow, I allow the applicants' claim, in part.

## **JURISDICTION AND PROCEDURE**

7. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.
8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.

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<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. While Abee Haw provided his preferred pronouns, he did not provide a title, so I refer to him by his full name throughout this decision, meaning no disrespect.

9. CRTA section 42 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.
10. Where permitted by CRTA section 118, 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**

11. The issue in this dispute is whether the respondent breached the parties' contract, and if so, the applicants' remedy.

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicants must prove their 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. While it provided a Dispute Response setting out its basic position, the respondent did not provide any other written submissions or evidence in this proceeding.
13. As noted above, the applicants hired the respondent to install vinyl plank flooring. On November 8, 2022, the applicants and Abee Haw began negotiating terms by text message. Abee Haw provided an initial pre-tax price of \$15,641, including \$8,266 for material, \$3,600 for installation, \$1,875 for baseboard, and \$1,900 for custom stair nosing.
14. On November 10, 2022, Abee Haw prepared an invoice for the applicants for the installation of vinyl plank flooring in the applicants' home and removal and disposal of previous flooring. I find the invoice is the parties' contract and refer to it as the contract throughout this decision. The contract sets out what rooms the respondent

would floor, including the stairs. It contains a term that says the total price does not include anything not listed in the contract.

15. Despite the contract's term limiting the scope of work, Abee Haw texted the applicants on the same day to confirm it included baseboard, consistent with the parties' earlier text messages. I note neither party addressed the scope of the baseboard work.
16. The contract also explicitly says it does not include the cost of levelling floors prior to installing the vinyl plank. I find it does not require expert evidence to understand that to have level, vinyl plank flooring, the subfloor must itself be level and free of hollows and dips. The evidence shows the parties addressed levelling in separate arrangements.
17. The contract sets the pre-tax price for work and materials at \$15,550, which is \$91 cheaper than the original quote. Neither party explains which project or projects the respondent discounted. The contract also requires the applicants to pay \$777.50 in GST.
18. The contract contains a term that the applicants would pay in 3 installments: an upfront 50% deposit, 30% on receipt of merchandise, and 20% once the respondent finished the job. The applicants provided their credit card information to the respondent and made the first two payments.
19. The respondent did the installation in December 2022. On December 26, the applicants texted Abee Haw to ask why the respondent had charged their credit card for the final 20%. Their text message says the stairs and "connectors" (transitions) were not complete. Abee Haw responded, saying a fellow employee thought the job was finished.
20. On January 2, 2023, the applicants followed up with Abee Haw. Abee Haw said he believed the job was done, except for one transition piece. The applicants disagreed, saying the stair nosings had protruding nails, the nosings' covers were peeling, the respondent had not installed transitions, and that there was no baseboard (transition)

around the fireplace. Abee Haw promised to look after the applicants' concerns and sent a representative to their house that evening.

21. In their texts, the applicants also raised an issue with a 'hollow' underneath some of the flooring. However, as noted above, the evidence shows this is part of a separate contract for levelling the floor. The respondent says the applicants asked for a partial levelling, to save money, and that it advised the applicants their floor would not be 100% level as a result. The applicants do not address this argument. Since the remedy the applicants claim in this dispute arises from the contract that explicitly excluded levelling, I have not considered the hollow in making my decision.
22. The following day, the applicants followed up with Abee Haw to determine if he had spoken to his representative following their visit to the applicants. Abee Haw said the issue with the nosings' nails had never happened before and that he was "working on some other nosing."
23. Despite saying it would, the respondent never addressed the missing transitions or deficient nosing. Evidence shows the parties attempted to work out a resolution for the issues arising from both the original contract and the levelling but were unable to do so.
24. The applicants argue that the respondent did not complete all the agreed-upon work and that some of its work was deficient. They also allege the respondent took the final payment before the job was complete. All 3 of the applicants' arguments are about breach of contract.

### ***Incomplete Work***

25. First, I address the incomplete work. Text messages show the respondent admitted it did not install at least one transition piece. While the contract does not specifically address transitions, given the respondent's admission, I find the respondent included transitions within the cost of installing flooring.

26. Photographs show 3 completed transitions and 4 incomplete transitions. While the applicants do not explicitly say so, I infer the photographs account for all transitions for which the respondent was responsible. One of the incomplete transitions is around a fireplace. The respondent says the applicants were planning to do more work around the fireplace, so asked it not to install that transition. However, the respondent provided no evidence to support that allegation, and the applicants refer to it as incomplete. The respondent did not address the other 3 incomplete transitions at all. So, I find the applicants have proven the respondent breached the contract by not installing 4 transitions.
27. Another photograph shows missing baseboard around a newel post. The newel post has a notable gap between it and the new flooring, and scratches on the edge of the new flooring that would typically be covered by baseboard. The respondent does not address this issue. So, I find the applicants have proven the respondent breached the contract by not installing this baseboard.
28. Photographs also show a tiled hall area with two different kinds of baseboard. The applicants say the respondent replaced baseboard on one side of the room, but not on the other. The respondent says the parties' contract did not include the tiled hallway. While the contract does include a reference to a hallway, from context, it is a location where the respondent is installing new flooring. Since this hallway is tiled, I find it must be a different hallway not explicitly named in the parties' contract.
29. While I find the respondents did replace some baseboard in the tiled hallway, the photos show the baseboard was part of an unbroken continuation from a room with newly installed flooring. Once the baseboard reached a break in the tiled hallway – in this case, a door – the respondent stopped. I find this is a reasonable interpretation of the parties' contract. If the applicants intended to get new baseboard throughout areas of their house without new flooring, I would expect the contract to list those rooms.
30. While I acknowledge the parties added baseboard to the contract by text message, without more clarity about the extent of the respondent's obligation, the applicants

have not proven they are entitled to it. So, I dismiss this aspect of the applicants' claim.

### ***Deficient Work***

31. Next, I address the applicants' allegation of the respondent's deficient work installing the stair nosing. Where a party alleges breach of contract for deficient work, the burden of proof is on the party making the allegation.<sup>2</sup> Here, the applicants must show the respondent's nosing installation was deficient.
32. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency. Other times, a breach of the standard may be so obvious that it does not require expert evidence.<sup>3</sup>
33. Here, the respondent acknowledged the issue with the nails had never happened before and that it would look into other nosing. The applicants also provided undisputed evidence that the nails were catching their socks and feet, and that the nosings' cover was peeling. Finally, they provided a photograph showing one place where the respondent did not install the nosing flush to the baseboard. So, I find expert evidence is not necessary to find the nosing's installation was below the required professional standard.
34. While the respondent alleges the applicants' dog damaged two of the nosings, it did not provide any evidence to support this allegation, so I find it unproven.

### ***Early Payment***

35. Finally, the applicants argue the respondent was not entitled to the final 20% payment until the job was finished. I disagree. I find the contract's total price establishes the respondent's entitlement to payment. I find the term about payment installments is about the timing of the applicant's payments, not the respondent's entitlement.

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<sup>2</sup> See: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287.

<sup>3</sup> See: *Bergen v. Guliker*, 2015 BCCA 283.

36. So, I find the respondent is entitled to the total payment for the contract, subject to any damages arising from its contractual breaches. I address those damages below.

### **Remedy**

37. The usual remedy for breach of contract is damages. In this case, damages are the cost required to complete the incomplete work and fix the deficient work. However, the applicants did not provide any cost estimates to install or repair the transitions, baseboard, and nosing. In the circumstances, I must make an estimate from the available evidence.

38. There is no evidence about what portion of the cost for flooring installation is for procuring, customizing, and installing transitions. While there is evidence about the baseboards' total cost, the missing portion of baseboard for which I am awarding damages is so small that the total cost is of no practical help. On a judgement basis, I award \$500 for the 4 incomplete transitions and baseboard around the newel post.

39. The original quote for the custom stair nosing was \$1,900. The applicants undisputedly have at least some benefit from the installed custom nosings. However, I accept the nosings will at least need repair, and Abee Haw's text message suggests they may need replacement. So, on a judgement basis, I award \$1,000 in damages for the nosing.

### **Conclusion**

40. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$1,500 in damages from December 26, 2022, the final payment's date, to the date of this decision. This equals \$80.99.

41. Under CRTA section 49 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. I find the applicants were partially successful, receiving approximately half of their claimed remedy. So, I find it appropriate for the respondent to reimburse them for \$87.50,



which is half of their paid CRT fees. The applicants do not claim any disputed-related expenses, so I do not order any.

## **ORDERS**

42. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of \$1,668.49, broken down as follows:
  - a. \$1,500 in damages,
  - b. \$80.99 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$87.50 in CRT fees.
43. The applicants are entitled to post-judgment interest, as applicable.
44. I dismiss the applicants' remaining claims.
45. Under CRTA section 58.1, 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.

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Christopher C. Rivers, Tribunal Member