



# Civil Resolution Tribunal

Date Issued: March 4, 2024

File: SC-2023-000464

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Arn v. 1210589 B.C. Ltd.*, 2024 BCCRT 217

BETWEEN:

GREGORY ARN

**APPLICANT**

AND:

1210589 B.C. LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. Gregory Arn hired 1210589 B.C. Ltd. to supply and install cabinets and a laminate countertop. 1210589 B.C. Ltd. uses the business name CK Design Kitchen & Bath Cabinetry. So, I will refer to 1210589 B.C. Ltd. as CK Design in this decision. Mr. Arn says that CK Design installed the wrong cabinet doors, drawers, and countertop. He also says CK Design's installation work was substandard. Mr. Arn claims \$2,800 to

fix the allegedly poorly installed cabinets and to order and install the correct style of cabinet doors, drawers, and countertop. Mr. Arn represents himself.

2. CK Design denies it supplied the wrong items or that its installation work was substandard. I infer CK Design argues it owes Mr. Arn nothing. CK Design is represented by a director.

## **JURISDICTION AND PROCEDURE**

3. 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). 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.
4. CRTA section 39 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 and that an oral hearing is not necessary.
5. 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 court.
6. 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.
7. In the Dispute Notice, Mr. Arn appears to seek an alternative order that CK Design order the correct doors, drawers, and countertop and properly install them. I find this requested remedy is for "injunctive relief", meaning for orders that a person (or company) do or stop doing something. With limited exceptions that do not apply here, injunctive orders are outside the CRT's small claims jurisdiction. So, I decline to consider this requested order.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did CK Design supply and install the wrong items?
  - b. Was CK Design's installation work substandard?
  - c. What remedies, if any, are appropriate?

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Mr. Arn must prove his claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. In June 2021, Mr. Arn hired CK Design to supply and install a vanity with a new countertop in his bathroom, along with cabinets in the bathroom and for a hallway pantry. CK Design provided a June 22, 2021 estimate setting out the specifications and price for the work. This estimate became the parties' contract. Mr. Arn undisputedly paid CK Design \$6,153.75 in total for the contracted work.
11. Mr. Arn says that CK Design provided the wrong countertop and the wrong style of doors and drawers for the cabinets. He further says the sizing for the cabinets in the bathroom and hallway pantry was not to the agreed upon specifications. In addition, Mr. Arn says that CK Design installed an extension for the bathroom cabinet that was made of hardboard instead of melamine. Finally, Mr. Arn alleges various deficiencies in CK Design's installation work, which I discuss in more detail below.

### ***Did CK Design supply the wrong items?***

12. The parties' contract specified that CK Design would supply and install a Wilsonart laminate countertop with the colour being "customer choice". CK Design says it matched the countertop sample that Mr. Arn gave it when selecting the countertop

for Mr. Arn's bathroom. However, I find the evidence shows that the countertop CK Design installed was not an exact match to the sample Mr. Arn provided. Mr. Arn says, and I accept, that he wanted the bathroom countertop to match what he has in his kitchen. While the installed countertop looks somewhat similar, I find it is clearly not an exact match. Since the contract specified the countertop colour would be Mr. Arn's choice and not simply a "best match" to the sample Mr. Arn provided, I find CK Design should have confirmed the final countertop with Mr. Arn before installing it. There is no evidence that it did. I find CK Design breached the parties' contract by installing the wrong countertop colour as a result.

13. Mr. Arn also says that CK Design supplied and installed the wrong style of cabinet doors and drawers. He says that he asked CK Design to install doors and drawers that matched what he already had in his kitchen, and that he even provided a sample for CK Design to use to find a match.
14. The contract says that the cabinet doors and drawers would be "Royal 200 (Thermofoil MDF)" in a frosty white colour, with an "E11" edge profile, meaning a straight edge with a 1/8-inch radius corner. Unlike the description for the countertop, the contract does not say "customer choice". I find the parties agreed that CK Design would install doors and drawers that were Royal 200 style. On the evidence before me, I am not satisfied that the doors and drawers CK Design installed are different than those specified in the contract. So, I find it unproven that CK Design breached the contract by installing the wrong style of doors and drawers.
15. Mr. Arn further says that CK design installed an extension over the bathroom cabinet made of hardboard instead of melamine. Mr. Arn says hardboard is not appropriate for use in a bathroom because of moisture and that the white hardboard colour does not match the white melamine cabinets CK Design installed. CK design does not dispute that it installed a hardboard extension instead of a melamine extension. I find the parties' contract specified that the extension was to be white melamine. So, I find CK Design breached the contract by installing a cabinet extension in the bathroom that was made of hardboard.

16. Next, Mr. Arn says that CK Design failed to cover the edges in the vanity drawer with melamine, leaving an unfinished look. A photograph in evidence shows the unfinished drawer edges. The parties' contract specified that all exposed edges on the cabinetry would be smooth. However, from the photograph, I am unable to find that the edges Mr. Arn complains about are exposed edges. So, I find this breach unproven.
17. Finally, Mr. Arn says that all the cabinets CK Design supplied were too deep. In particular, he says that the contract specified the cabinets would be 22.5 inches deep, but the cabinets CK design provided were 24 inches deep. Mr. Arn says that CK Design adjusted the vanity so that the countertop would fit on top, but that it did not adjust the adjacent bathroom cabinet, leaving that cabinet to stick out more than the vanity, which he says is unsightly.
18. Based on photographs in evidence, I find the bathroom cabinet CK Design installed is 24 inches deep instead of the 22.5 inches specified in the parties' contract. So, I find CK Design breached the parties' contract by supplying a bathroom cabinet with dimensions different than what the parties agreed to.
19. Before addressing the appropriate remedies for the contractual breaches Mr. Arn has proven, I will address the alleged deficiencies in CK Design's installation work.

***Was CK Design's installation work substandard?***

20. As the party alleging deficiencies, Mr. Arn has the burden to prove them (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). 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 cabinetry installation. 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).
21. I address each alleged deficiency below.

22. First, Mr. Arn alleges that CK Design's installation work was generally a "hack job", trying to make the wrong sized cabinets fit into the allocated spaces. He says that CK Design did not measure the hallway cabinet space properly and brought doors that were too high and would hit a nearby smoke detector. So, instead of ordering new doors, CK Design installed the doors lower than initially intended, causing him to lose the 4-inch toe-kick on the bottom and leaving an empty space on top that CK Design did not fill in with a false panel. Based on the specifications in the contract, design renderings of what the finished cabinets were supposed to look like, and photographs of what the completed hallway pantry looks like, I find that CK Design likely incorrectly measured the space for the pantry and then installed the doors lower than initially agreed, without a toe-kick and leaving an unsightly gap at the top.
23. CK Design says that it was Mr. Arn's responsibility to finish the moldings in the hallway area after it installed the pantry. However, I find the gap on top of the hallway pantry is not a gap in the molding but a gap immediately above the cabinetry due to CK Design's incorrect measurements. I find this is an obvious deficiency that CK Design has failed to address.
24. Next, Mr. Arn says the bathroom cabinet is not plumb. In support, Mr. Arn relies on photographs that he took with a level leaning against the cabinet. While I accept the level appears to show some unevenness, without expert evidence, I am unable to find that any unevenness was due to CK Design's installation work. I also find that expert evidence is needed to show that the amount of unevenness the pictures show is not reasonable. As there is no expert evidence before me, I find this deficiency unproven.
25. Finally, Mr. Arn says that 3 of the drawers CK Design installed do not properly close anymore. CK Design admits that at least 1 of the drawers Mr. Arn complains about requires an adjustment. However, it says that given that the drawers were installed over a year ago, any adjustments are Mr. Arn's responsibility. I accept based on photographs in evidence that there are drawers that CK Design installed that do not properly close. However, Mr. Arn has not explained when he first encountered an

issue with the drawers, and it is not obvious that the issue is due to CK Design's installation work, especially given the amount of time that has passed since the drawers were installed. So, without expert evidence showing that the issue with the drawers is due to CK's poor installation work, I find this deficiency unproven.

### ***Remedies***

26. In conclusion, I find that Mr. Arn has proven that CK Design breached the parties' contract by installing the wrong countertop, installing hardboard instead of melamine for the bathroom cabinet extension, and installing a bathroom cabinet that is 1.5 inches too deep. I also find that CK Design's installation work on the hallway pantry was substandard. I turn now to consider the appropriate remedies.
27. The usual remedy for breach of contract is damages. In this case, I find the appropriate damages are the cost required to fix the errors in CK Design's work. Mr. Arn's evidence includes an October 5, 2023 estimate from Valley Wide Carpentry that says it will cost \$8,100 for labour and materials to alter the cabinets and install new doors and drawers in the hallway and bathroom. However, I have found that Mr. Arn has not proven that CK Design installed the wrong doors and drawers. So, I find this estimate provides limited assistance in determining Mr. Arn's damages.
28. The evidence includes a September 12, 2022 estimate from Mega Countertops that says it will cost \$224.22 to supply the correct countertop. This estimate does not appear to include labour costs, which on a judgment basis I find would be around \$100. So, I find Mr. Arn is entitled to \$324.22 for CK Design's failure to supply and install the correct bathroom countertop.
29. There is very little evidence before me about how much it will cost Mr. Arn to fix the remaining proven issues. I find the necessary work will require the bathroom cabinet to be removed in order to take 1.5 inches off the back, and then reinstalled. The hardboard extension will also need to be removed and a melamine extension purchased and installed. Finally, a false panel will need to be purchased and installed on top of the hallway pantry. On a judgment basis, I find it will likely cost \$1,000 to

address these issues. So, in total, I find Mr. Arn is entitled to \$1,324.22 in damages from CK Design.

30. Under the *Court Order Interest Act* (COIA), the CRT must add pre-judgment interest to a pecuniary judgment, meaning a judgment for money. However, COIA section 2(a) says that pre-judgment interest must not be awarded for a pecuniary loss arising after the date of the order. I find that is the case here, because there is no evidence that Mr. Arn has paid anything out of pocket to fix CK Design's work. So, I find Mr. Arn is not entitled to any pre-judgment interest on the \$1,324.22.
31. 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. Since Mr. Arn was partially successful in this dispute, I find he is entitled to \$62.50 for half his paid CRT fees. CK Design was unsuccessful, so I find it is not entitled to reimbursement of its paid CRT fees. Neither party claims any dispute-related expenses, so I award none.

## **ORDERS**

32. Within 14 days of the date of this decision, I order CK Design to pay Mr. Arn \$1,324.22 in damages and \$62.50 in CRT fees, together totaling \$1,386.72.
33. Mr. Arn is entitled to post-judgment interest, as applicable.
34. This is a validated decision and order. 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.

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Nav Shukla, Tribunal Member