



Civil Resolution Tribunal

Date Issued: March 14, 2024

File: SC-2023-002980

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Groppini v. Mahan Counter Top Ltd.*, 2024 BCCRT 261

BETWEEN:

DAN GROPPINI

APPLICANT

AND:

MAHAN COUNTER TOP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Dan Groppini hired Mahan Counter Top Ltd. (Mahan) to do part of a kitchen renovation. Mahan installed a stone backsplash, countertop, and island countertop.

2. Mr. Groppini was satisfied with most of the work, but unhappy with the slope of the island countertop. The island countertop had “waterfall” sides where the countertop material appears to continue down the sides to the floor, although it is actually three separate slabs joined together.
3. Mr. Groppini says Mahan cut the left side slab incorrectly but proceeded to install it, resulting in a sloped countertop. At his request, Mahan returned to fix the problem. Mr. Groppini did not like Mahan’s repair, which involved using filler material under the back of the left side. He wants \$4,000 to replace the left side slab. Mr. Groppini represents himself.
4. Mahan says the countertop was not level because Mr. Groppini’s cabinets and floors were not level. It says Mr. Groppini paid in full for the job, indicating he was 100% satisfied. Mahan is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says 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 court.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether Mahan's kitchen island work was deficient, and if so, what compensation is appropriate.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Groppini must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. There is no written contract in evidence, but it is undisputed that Mr. Groppini hired Mahan to install a stone backsplash, countertop, and island countertop with waterfall sides. Mahan finished the work on October 12, 2021. It is undisputed that Mr. Groppini paid in full that day, although it is not entirely clear how much he paid.
12. On October 14, 2021, Mr. Groppini texted Mahan photos of the island countertop showing that the left side (when viewed from the kitchen) sloped down from front to back by 9/16 of an inch. On November 9, Mahan returned to address the slope. Mr. Groppini says Mahan's installer felt that the only option was to raise the left edge of the countertop at its backside (facing the living room) and add a filler at the bottom of the side slab.
13. Mahan proceeded with this fix, with Mr. Groppini's approval. It appears that the slope has been corrected, but Mr. Groppini now says the filler is unsightly. He says he tried to live with it, but he cannot.

14. Mahan argues that Mr. Groppini's full payment indicates he was satisfied with the work. To the extent that Mahan argues that full payment prevents a customer from making a future deficiency claim, I am not aware of such a legal principle and Mahan offers no authority in support.
15. When a customer alleges that a contractor's work was below a reasonably competent standard, they must prove the deficiencies (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287). Generally, an allegation that a professional's work was below a reasonable standard must be proven with expert evidence. The two 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). Mr. Groppini did not provide any expert evidence, so I infer he argues the defect was obvious or non-technical.
16. The first issue is whether the slope was a defect. Mahan does not dispute Mr. Groppini's evidence that items rolled off the countertop. I find it is obvious and therefore does not require expert evidence, that a kitchen island's countertop slope should not be so significant that items roll off of it. Further, Mahan does not argue that the 9/16-inch slope was within industry-standard tolerance.
17. The second issue is whether Mahan's slope correction resulted in work that was still deficient. The photos show that the filler material Mahan used under the back of the side slab to level the back of the countertop does not match the rest of the side piece. It has a dull, concrete-like appearance that contrasts with the reflective stone and is visible from the living room. It is 9/16 of an inch tall. Overall, I find the side slab is still deficient. I say this because I find it looks bad enough that an ordinary person in Mr. Groppini's position would not be expected to accept it. Although Mahan says wood trim could cover it up, it provided no evidence about what this might look like, and that is not what Mr. Groppini contracted for.
18. I will next address Mahan's argument that the countertop's slope was due to Mr. Groppini's floor and cabinets not being level. I find this argument unpersuasive for several reasons. First, I find from Mr. Groppini's video evidence that his cabinet boxes

are level from front to back, and out by only 1/16 of an inch from left to right. Second, Mahan acknowledges that before fabricating the slabs, it measured Mr. Groppini's cabinets and floor. So, Mahan was aware of the slope but did not advise Mr. Groppini that it could not adjust for the slope when cutting the slab to create a level island countertop.

19. Further, I agree with Mr. Groppini that the countertop's deficient slope is likely the result of Mahan's reversing the measurements on the left side slab, such that its front end was longer than its back end, instead of the reverse. Mahan did not substantively address Mr. Groppini's argument here, which he supported with measurements and video and photo evidence. I will not describe the evidence in detail because my conclusion that Mahan's work was deficient remains the same with or without it.
20. A contractor is generally entitled to a reasonable opportunity to address a deficiency before the customer can have someone else fix it and claim damages (see *Lind v. Storey*, 2021 BCPC 2, at paragraphs 89-91). Mahan says it offered to replace the side slab if Mr. Groppini paid for cutting and reinstalling costs. I find Mr. Groppini was not obligated to accept Mahan's offer that would have required him to pay twice for the same work. I find Mahan had the opportunity to fix the side slab, so Mr. Groppini may claim damages based on the cost of having another contractor fix it.
21. As noted, Mr. Groppini claimed \$4,000. Mahan says this is too high. On November 8, 2023, Mr. Groppini obtained an estimate from Houstone Enterprises Ltd. to provide a quartz mitered waterfall edge for \$4,924.50. Mahan says Houstone's estimate is for the entire island countertop. I find it is not, given it provides a 37-inch by 36 7/17-inch measurement, which is roughly the side slab's dimensions.
22. Mahan says the Houstone stone quartz model number is not the same pattern or slab supplier that Mahan used, and the cost should be under \$200. However, Mahan did not provide the model number, supplier, or any cost evidence for the slab it originally installed. I find Mahan's assertion that the Houstone estimate is too high unproven.

23. On balance, the Houstone estimate is the best evidence of the cost to remedy the deficiency in Mahan's work. I order Mahan to pay Mr. Groppini \$4,000, because that is the amount he claimed.
24. The *Court Order Interest Act* applies to the CRT. However, there is no evidence that Mr. Groppini has paid any money to repair the island to date, so I order no interest.
25. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Groppini was successful, so I find he is entitled to reimbursement of \$175 in paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

26. Within 21 days of the date of this order, I order Mahan to pay Mr. Groppini a total of \$4,175, broken down as \$4,000 in damages and \$175 in CRT fees.
27. Mr. Groppini is entitled to post-judgment interest, as applicable.
28. 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.

Micah Carmody, Tribunal Member