



Civil Resolution Tribunal

Date Issued: June 28, 2024

File: SC-2023-002656

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Skemer v. Stephenson*, 2024 BCCRT 619

B E T W E E N :

CHAUNTAL SKEMER

APPLICANT

A N D :

COREY JAMES STEPHENSON and NOVOCASTRIAN
CONSTRUCTION LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. Chauntal Skemer says she hired Corey James Stephenson and Novocastrian Construction Ltd. (Novocastrian) to build and install new cabinets in her home. Ms. Skemer says the respondents made the cabinets out of old and damaged material, contrary to their agreement. She also says the respondents incorrectly installed the

cabinets and damaged her walls. Ms. Skemer collectively claims reimbursement of \$3,500 for her deposit and wall repair costs.

2. The respondents dispute Ms. Skemer's claims. They say the cabinet material was new, and Ms. Skemer agreed to remove some drywall to accommodate the cabinet installation.
3. Ms. Skemer is self-represented. Mr. Stephenson represents both himself and Novocastrian.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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

8. The issue in this dispute is whether either of the respondents must reimburse Ms. Skemer the claimed \$3,500 for her deposit and wall repair costs.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Skemer must prove her 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.

Mr. Stephenson's liability

10. At the outset, I note that Ms. Skemer has claimed against both Mr. Stephenson and Novocastrian. The evidence shows Ms. Skemer contracted with Novocastrian for the cabinets, not with Mr. Stephenson personally. Mr. Stephenson is Novocastrian's director. At law, directors, officers and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation. See *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. Ms. Skemer did not allege that Mr. Stephenson personally committed a wrongful act independent of Novocastrian. So, I dismiss Skemer's claims against Mr. Stephenson in his personal capacity.

Must Novocastrian reimburse Ms. Skemer the claimed \$3,500 for her deposit and wall repair costs?

11. Ms. Skemer contracted with Novocastrian to supply and install custom cabinetry in her home. The parties did not have a written contract. However, I find Novocastrian's quote reflects the terms of the parties' contract. The quote indicates Novocastrian would build and install new cabinetry for \$3,100, including a base cabinet with drawers, an upper cabinet with doors, and two pantry cabinets. It also indicates the cabinet boxes would be constructed using melamine, and the doors would be made of "hdf" and ready for paint.

12. Ms. Skemer undisputedly made 2 payments towards the \$3,100 quote price for the cabinets. The quote shows a \$1,260 payment on January 26, 2023. Ms. Skemer paid a further \$995 on February 10, 2023 for the second pantry cabinet. In total, she paid \$2,255.
13. As noted, Ms. Skemer says Novocastrian used old and damaged material for the cabinet boxes contrary to the parties' agreement, and also damaged her wall when installing them. I will deal with both issues below.

Cabinet materials

14. First, Ms. Skemer says the installed cabinet boxes were not built with new material and were of poor quality. She says the outer edging was of poor quality and appeared "chewed out" in several places, and the cabinet boxes appeared too damaged to be new material. Novocastrian denies using old material, and says new material was purchased specifically for this job.
15. Ms. Skemer provided several photographs of the installed cabinet boxes. I find the photographs show the cabinet boxes were obviously of poor quality. There is visible damage to the cabinet boxes, including chips, scratches and dents along much of the cabinet box edging, along with peeling and what appears to be chewed or otherwise damaged edges.
16. Construction contracts such as this one contain implied terms about the quality of work and materials. See *Morgan and Gaiga v. Pacific Coast Floor Covering Inc.*, 2018 BCPC 236. I find that it was an implied term of the parties' contract that the materials be of reasonable quality, the work performed in a good and professional manner, and that the finished work be fit for its intended purpose. I find Novocastrian breached this implied term by installing cabinet boxes that it built using material that is obviously damaged and in poor condition. Regardless of whether the material was new or used, I find doing so amounts to a fundamental breach. Ms. Skemer was deprived of substantially the whole benefit of the contract, being installed cabinets of reasonable

quality that she had already paid \$2,255 for. See *Bhullar v. Dhanani*, 2008 BCSC 1202 at paragraph 27.

17. Damages for breach of contract are generally intended to put the innocent party in the position they would have been in if the contract had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319. However, in the case of a fundamental breach, the innocent party may claim damages based on their out-of-pocket losses, rather than the ordinary measure of expected performance, particularly where the innocent party received no substantial benefit under the contract and the breach is substantial. See *Bhullar* at paragraphs 41 to 45.
18. Here, Ms. Skemer did not receive the cabinets she contracted for, despite having paid \$2,255 towards their cost. Ms. Skemer says she had another contractor remove the cabinet boxes, but she did not say whether she incurred any costs in doing so. So, I find the appropriate remedy is to order Novocastrian to refund Ms. Skemer the \$2,255 she paid for the cabinets.
19. I note Novocastrian says Mr. Stephenson attended at Ms. Skemer's property but was not allowed inside to collect the cabinet boxes and Novocastrian's tools. However, I find text messages between the parties show that Ms. Skemer gave Novocastrian the opportunity to collect its tools and materials and also offered to drop them off. In response, Novocastrian refused to attend unless Ms. Skemer provided an itemized list of the tools still at her home. However, Novocastrian does not allege that Ms. Skemer still has any of its tools or materials in any event, nor ask for their return. So, I have not addressed this issue further.

Cabinet installation

20. Ms. Skemer also says Novocastrian installed the cabinets incorrectly, and damaged her wall by removing some drywall behind the cabinet installation area. She claims \$1,575 for the drywall repair costs. Ms. Skemer provided photographs that show portions of drywall partially removed on the wall area where the cabinet boxes were installed.

21. Novocastrian disputes this. It says the wall behind the cabinets was bowed and it suggested removing some drywall behind the cabinets to aid installation, which Ms. Skemer agreed to. Ms. Skemer denies agreeing to any drywall removal.
22. 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. See *Bergen v. Guliker*, 2015 BCCA 283. I find that expert evidence is necessary to prove that Novocastrian's installation fell below the required professional standard. Here, there is none. So, I find Ms. Skemer has not proved that Novocastrian acted unreasonably in removing some drywall when installing the cabinets, or that doing so fell below a professional standard. I dismiss this aspect of Ms. Skemer's claims.

Interest, CRT fees and expenses

23. The *Court Order Interest Act* applies to the CRT. Ms. Skemer is entitled to pre-judgment interest on the \$2,255 damages award from the dates she paid the deposit amounts to the date of this decision. This equals \$155.17.
24. 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. Ms. Skemer was partially successful, so I find she is entitled to reimbursement of \$87.50 in CRT fees. Ms. Skemer did not claim any dispute-related expenses. Novocastrian claimed \$160 for "RCMP testimony" as dispute-related expense. However, it did not provide any RCMP testimony in evidence, or any evidence to show it incurred \$160 to do so. So, I find this claimed dispute-related expense unproven.

ORDERS

25. Within 30 days of the date of this order, I order Novocastrian to pay Ms. Skemer a total of \$2,497.67, broken down as follows:

- a. \$2,255 in damages,
- b. \$155.17 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

26. Ms. Skemer is entitled to post-judgment interest, as applicable.

27. I dismiss Ms. Skemer's claims against Mr. Stephenson.

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.

Leah Volkers, Tribunal Member