



# Civil Resolution Tribunal

Date Issued: February 14, 2024

File: SC-2022-006305

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leischner v. Hughes*, 2024 BCCRT 150

B E T W E E N :

LARRY NORMAN LEISCHNER and CHRISTINE MARY LEISCHNER

**APPLICANTS**

A N D :

KYLE HUGHES

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about payment for countertops.
2. Larry Norman Leischner and Christine Mary Leischner hired Kyle Hughes to supply and install their kitchen countertops. The Leischners say Mr. Hughes overcharged them for the countertops, and that his work was deficient. They claim \$3,167.48 for

the amount they say they were overcharged, and for the cost of remedying the defects. Mr. Leischner represents the Leischners.

3. Mr. Hughes denies the Leischners' claims. He says Ms. Leischner ultimately chose a more expensive product than the one he had originally quoted, so the final price was higher, which he explained would be the case. Mr. Hughes also says the Leischners did not express concerns about the quality of his work until well after he completed the job, and after he had installed a second set of countertops for them. Mr. Hughes is self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.
5. 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. Some of the evidence in this dispute amounts to a "they said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 an oral hearing is not necessary. I also note in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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 a court of law.
7. As a preliminary issue, I note that in their evidence, the Leischners refer to hiring Island Quartz for the countertop work. There is no evidence before me that Island Quartz is an incorporated company separate from Mr. Hughes. Since Mr. Hughes does not argue that he is not the proper respondent, I assume for the purposes of this dispute that Mr. Hughes does business as Island Quartz as a sole proprietor.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Mr. Hughes overcharge the Leischners for the countertops?
  - b. Was Mr. Hughes' work deficient?
  - c. If yes to either of these, are the Leischners entitled to their claimed damages?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the Leischners, as applicants, must prove their claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to the information I find relevant to explain my decision.
10. The following background is undisputed. The Leischners hired Mr. Hughes to supply and install their kitchen countertops in April 2021. On April 19, 2021, Mr. Hughes quoted the Leischners a "friends & family price" of \$3,611 for the work. The Leischners then paid Mr. Hughes a \$2,500 deposit. Mr. Hughes completed the job, and invoiced the Leischners \$6,201 on June 9, 2021. Taking into account the deposit and a \$701 discount, this left a balance of \$3,000, which the Leischners paid.

11. In addition to the Leischners' kitchen countertops, Mr. Hughes also supplied and installed their downstairs tenant's countertops. Mr. Hughes entered into a separate agreement with the tenant, who paid a deposit but then moved out. It is undisputed the Leischners paid Mr. Hughes the outstanding amount for the downstairs countertops, and he completed that job.

### ***Alleged overcharge***

12. The Leischners say Mr. Hughes overcharged them \$2,590 for their kitchen countertops. They calculate this as the difference between the \$6,201 invoiced amount and the \$3,611 quote. However, I find this is not correct. The Leischners only paid \$5,500 for the countertops because, as noted above, Mr. Hughes gave them a \$701 discount. Both parties acknowledge this in their submissions and evidence. So, I find the alleged overcharge is only \$1,889 (\$5,500 - \$3,611). However, given my decision below, nothing turns on this.
13. The parties disagree about whether Ms. Leischner ultimately chose a more expensive product, which Mr. Hughes says was the reason for the increase in the final price. The parties did not have a written contract. However, I find the April 19, 2021 quote formed the basis of their agreement for the supply and installation of the kitchen countertops. Unfortunately, that quote does not provide any details about the product to be installed.
14. Even so, I find Mr. Hughes did not overcharge the Leischners for the countertops, as alleged. My reasons follow.
15. Facebook messages in evidence between Mr. Hughes and Ms. Leischner show Mr. Hughes received the \$3,000 balance owing for the kitchen countertops on June 10, 2021. There is no evidence the Leischners raised the higher price at that time. Then, in September 2021, Ms. Leischner sent Mr. Hughes another message asking for the brand of a particular product. She did not raise the issue of the alleged overcharge at that time either. It is only in an April 8, 2022 email from Mr. Leischner that he said he was unhappy that the Leischners had paid more for the countertops than Mr. Hughes

had originally quoted. While that email indicates the parties had previous communications about the Leischners' dissatisfaction, none of those communications are in evidence.

16. Mr. Hughes responded in an April 24, 2022 letter. He explained that regardless of the initial quote, Ms. Leischner had later picked a more expensive quartz for the countertops. There is no documentary evidence to support this apart from the June 9, 2021 invoice. However, there is also no evidence the Leischners challenged Mr. Hughes' position until they made their submissions in this dispute.
17. I find that if the Leischners had not chosen a more expensive product than was originally quoted, they would likely have raised the higher price with Mr. Hughes as soon as Mr. Hughes gave them the June 9, 2021 invoice. At the very least, I would have expected them to pay the invoice under protest. However, they raised no concerns about the price when they paid Mr. Hughes, or when they contacted him again several months later. They did not dispute Mr. Hughes' assertion about the more expensive quartz at all until approximately 2 years after he finished the job. In these circumstances, I find Mr. Hughes likely based the friends and family price on a less expensive product, and that in the end, the Leischners decided to proceed with a premium product, which accounted for the higher invoiced amount.
18. On balance, I find Mr. Hughes was entitled to the \$5,500 payment he received from the Leischners for the countertop work, subject to any proven deficiencies.

### ***Alleged deficiencies***

19. The Leischners also say Mr. Hughes' work was deficient, in that Mr. Hughes left the sinks in both the kitchen and the downstairs countertops unsecured. They say they had to hire a plumber to properly brace the downstairs undermount sink to prevent it from falling through the countertop. They claim \$577.48 for the plumber's invoice.
20. Generally, an allegation that a professional's work was below a reasonably competent standard must be proven with expert evidence. This is because the standard expected of professionals in a particular industry is usually outside an ordinary

person's common knowledge. 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).

21. It is undisputed that Mr. Hughes or his helper fitted the sinks into the countertops and caulked them. However, there is no documentary evidence Mr. Hughes agreed to fully install and plumb the sinks as part of the countertop installation, and Mr. Hughes denies he did. I note that in submissions, the Leischners acknowledge Mr. Hughes is not a plumber. Further, they say they have built a home from the ground up, renovated 4 others, and moved a sixth onto a vacant lot. Given the Leischners' experience in home building and home renovation, and the fact that they knew Mr. Hughes was not a plumber, I find it likely the parties agreed to no more than Mr. Hughes fitting and caulking the sinks. It follows that the Leischners would have had to hire a plumber anyway to fully install and plumb the sinks, including bracing them.
22. Turning to Mr. Hughes' fitting and caulking work, the Leischners did not provide photographs or videos of the allegedly unsecured sinks. So, I find there is no basis for me to conclude that Mr. Hughes' work was obviously substandard. In addition, the Leischners did not provide expert evidence showing that any of Mr. Hughes' work fell below industry standard, which I find is necessary to prove the alleged deficiencies, especially in the absence of photo or video evidence. The Leischners' plumber's invoice says they needed to fasten the downstairs sink with brackets to provide sufficient support. However, as I have already found the parties did not agree to Mr. Hughes' fully installing and plumbing the sinks, I find this is not evidence of any deficiency in the work he was hired to do.
23. Finally, the Leischners mention that Mr. Hughes "chopped up" their under-sink cabinets when he modified the cabinets' doors to fit new sinks. However, the Leischners do not claim anything for this alleged deficiency, nor did they provide documentary evidence of it or of the cost to remedy it.
24. Based on the above, I find the Leischners have not proven Mr. Hughes' work was deficient. I dismiss their claim for reimbursement of the plumber's invoice.

25. 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. The Leischners were unsuccessful, so I dismiss their claim for CRT fees. Mr. Hughes was successful but did not pay any fees. None of the parties claimed dispute-related expenses.

## **ORDER**

26. I dismiss the Leischners' claims and this dispute.

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Megan Stewart, Tribunal Member