



Civil Resolution Tribunal

Date Issued: February 22, 2024

File: SC-2022-008575

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gem Quality Homes Ltd. v. 1210589 B.C. Ltd. dba CK Design*, 2024
BCCRT 168

B E T W E E N :

GEM QUALITY HOMES LTD.

APPLICANT

A N D :

1210589 B.C. LTD. DBA CK Design

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about kitchen and washroom renovations.
2. Gem Quality Homes Ltd. (Gem) says it hired 1210589 B.C. Ltd. dba CK Design (CKD) to supply and install kitchen and bathroom fixtures like countertops, shelves, and

cabinets. Gem says CKD's work was unsatisfactory, delayed, and that CKD damaged cabinets and countertops. Gem says it gave CKD an opportunity to fix its work, but CKD did not do so. Gem ultimately hired a third party, RR, which it says fixed the alleged deficiencies. Gem claims \$3,675.11 for breach of contract.

3. CKD says it was completing its obligations under the parties' contract when Gem gave it a cease-and-desist letter, stopping CKD's work. CKD says if given the chance, it would have been able to complete all remaining work, and address all the alleged deficiencies, in one day. CKD also says Gem has not proved what portion of RR's work was for CKD's alleged deficiencies. CKD says it is not responsible for any damage to cabinets and countertops. It asks me to dismiss Gem's claim.
4. The applicant is represented by an employee. The respondent is represented by a director, Allan Strauss.¹
5. For the reasons that follow, I dismiss the applicant's claim.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. Some of the evidence in this dispute amounts to a "it said, it said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be

¹ 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. Allan Strauss did not provide their title or pronouns, so I refer to them by their full name and with gender neutral pronouns throughout this decision, intending no disrespect.

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 that an oral hearing is not necessary. I also note that 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.

8. 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.
9. 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

10. The issue in this dispute is whether CKD breached the parties' contract, or was negligent in its kitchen and bathroom renovations, and if so, whether it must pay Gem damages.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Gem, as applicant, must prove its 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. Despite having the opportunity to do so, CKD did not provide any documentary evidence.

12. The parties' submissions and evidence do not provide many key details about their arrangement. There is no evidence of any written communication between the parties that sets out key terms of their contract, such as price, date, or scope of work. While contracts do not have to be written to be enforceable, it is often harder to prove breach of contract without written terms.
13. That said, the parties agree Gem hired CKD to work on kitchen and bathroom fixtures for Gem's third-party client. I also find there was an implied term that CKD would do its renovation work to a professional standard. While neither party says when Gem hired CKD, or when CKD performed its work, Gem says it became aware of its claim in October 2021.
14. Given that I dismiss Gem's claims, I do not need to determine precisely when CKD was hired or worked, but I infer that Gem hired CKD in or around October 2021.
15. In submissions, each party listed the projects they understood were CKD's responsibility.
16. The parties agree CKD was responsible for supplying and installing laminate countertops in the kitchen and 3 bathrooms, as well as vanities in 3 bathrooms. Gem says CKD was also responsible for supplying and installing kitchen cabinets, a kitchen island, and floating shelves. CKD says it was only responsible for refacing the kitchen cabinets, not supplying or installing them and, I infer, says it was not responsible for any other projects.
17. Despite listing an array of projects, Gem's evidence and submissions are limited to allegations that CKD was responsible for delay, damage to one countertop, and issues with kitchen and vanity cabinets. While Gem says it prepared a copy of a deficiency list and sent it to CKD, it did not provide the list in evidence. There is only a thumbnail-sized photograph attached as a preview in an email, and I cannot read any information on it.
18. So, my analysis and decision are limited to the three issues I identify above. I address them separately below.

Delay

19. First, Gem claims \$918.90 for extra trips it says its trade workers had to make as a direct result of CKD's delays.
20. In support, Gem provided an invoice from a third-party plumber. The invoice includes a charge for \$918.90 for plumbing materials. Hand-written on the invoice in the same general area as the materials charge are the words "Extra trips [plumber] had to make" and "No Charge." Contrary to Gem's submission, I find the plumber's invoice proves Gem did not incur any additional charges for its plumber. I also do not see any reason to link the \$918.90 materials charge with the claimed \$918.90 for delay.
21. Furthermore, other than in general terms, Gem does not explain how CKD's delays required the plumber to make extra trips. Gem makes bare assertions that CKD had changing timelines but provides no detail. It does not set out whether CKD agreed to a contractual timeline or, if it did, how long it was delayed. CKD expressly denies that it delayed any of Gem's trades.
22. So, I find Gem has not proven this portion of its claim, and I dismiss it.

Damage to Countertop

23. Gem provided a photograph of a vanity countertop's damaged edge. The countertop has laminate banding running along its face, forming a right-angle with the counter's surface. A 2-3 inch long section of that banding is torn, cut, or otherwise scuffed at its top edge, where it meets the countertop. While Gem did not provide any submissions about the countertop, the photograph's file name implies CKD damaged it during installation. I infer Gem is arguing CKD breached an implied contractual term to professionally install countertops, or in the alternative, that CKD negligently damaged the countertop.
24. CKD expressly denies damaging the countertop's edge. Allan Strauss says they directly oversaw the countertop's installation, and that it was not damaged at that

time. While Allan Strauss says it looks like the damage was from a circular saw, which his trade does not use, I find this is speculative, and give that submission no weight.

25. To succeed in a claim for either breach of contract or negligence, Gem must prove CKD was responsible for the damage. I find it has not done so. Gem does not explain how or when it discovered the damage, or how or why it determined CKD was responsible for it.
26. I am left only with each party's bare assertion about responsibility for the damage, so there is an evidentiary tie. As the burden is on Gem to prove its claims, I find it has not done so, and dismiss this part of its claim.

Kitchen and Vanity Cabinets

27. As noted above, the parties disagree about what CKD was contracted to do. Gem says CKD was responsible for supplying and installing kitchen cabinets, while CKD says it was responsible for refacing them. The parties agree CKD was responsible for the bathroom vanities, which include cabinets.
28. Gem provided photographs and videos showing obvious, but minor, issues with the cabinets.
- A vanity cabinet door would not close when gently swung, but remained open at roughly a 45-degree angle;
 - A center-hinged corner cabinet door in the kitchen rubbed against the counter's underside, requiring gentle force to fully close;
 - An upper cabinet door was slightly misaligned and would not close when gently swung;
 - One cabinet had two uncovered drill holes.
29. CKD says these required minor adjustments that it estimates it would have been able to provide in one day's work. So, I accept it acknowledges the cabinets were not installed to professional standard, in apparent breach of the parties' contract.

30. Gem hired a third-party company, RR, to repair CKD's work. RR provided an invoice for \$2,756.21, which included charges for material, doors, drawers, hardware, and labour. Gem claims the cost of RR's invoice in this dispute.
31. Generally, a customer must give a contractor a reasonable opportunity to address any deficiencies in the contractor's work, or the customer is not entitled to claim damages for having the work fixed.² While there are exceptions in the case of urgent repairs or for fundamental breach of contract, neither apply here.
32. The parties disagree over whether CKD was given the opportunity to address these issues. Gem says it asked CKD to remedy the deficiencies, but CKD declined to do so. CKD says it wished to address the deficiencies but was served with a cease-and-desist letter before it was able to do so.
33. Nether party provided any evidence to support their assertions. While Gem undisputedly sent an email with a deficiency list to CKD on December 28, 2021, in the same email, it noted a third-party company, RR, had already been doing repairs. So, I find Gem can not depend on this email as evidence it gave CKD an opportunity to fix the deficiencies.
34. Since CKD expressly denies being given an opportunity to repair any deficiencies, and Gem has not proven it gave CKD that chance, I find Gem is not entitled to claim damages for the deficiencies' repair.
35. Even if Gem had proven CKD had the opportunity to address the deficiencies, I still would not have allowed its claim for the full amount of RR's invoice. There is no explanation from RR about the extent of the work they did or why it required 15 hours of labour and over \$1,800 in materials to fix what were seemingly minor issues. If it required as much work as the invoice indicated, I would expect a detailed explanation of what work RR did, including whether or not it fixed the counter, and a detailed breakdown of the materials' costs.

² See, eg: *Lind v. Storey*, 2021 BCPC 2, at paragraph 91.

Conclusion

36. So, I find Gem has not proven any part of its claim, and I dismiss it.
37. 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 CKD is entitled to reimbursement of \$25 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

38. Within 21 days of the date of this order, I order Gem to pay CKD a total of \$25 for its paid CRT fees.
39. CKD is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
40. I dismiss Gem's claims.
41. Under section 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.

Christopher C. Rivers, Tribunal Member