



# Civil Resolution Tribunal

Date Issued: April 15, 2024

File: SC-2023-009634

Type: Small Claims

## Civil Resolution Tribunal

Indexed as: *Smart and Efficient Home Solutions Ltd. v. Bajkor*, 2024 BCCRT 351

BETWEEN:

SMART AND EFFICIENT HOME SOLUTIONS LTD. And FEELING  
STONE INC.

**APPLICANTS**

AND:

MICHAEL EDWARD BAJKOR

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. The respondent, Michael Edward Bajkor, hired the applicant, Smart and Efficient Home Solutions Ltd. (SEHS), to install residential stone kitchen countertops. SEHS subcontracted the countertops' fabrication and installation to the other applicant, Feeling Stone Inc. The applicants say the respondent failed to pay the balance of

SEHS's invoice, plus trip fees for additional visits. They claim \$3,012.90. The applicants are each represented by their owner.

2. The respondent says the quality of workmanship was unacceptable and had to be repaired by others. I infer they argue they should not have to pay anything further. The respondent represents themselves.

## **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). Section 2 of the CRTA 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. Section 39 of the CRTA says that 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.
5. Section 42 of the CRTA says that 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 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**

7. The issue in this dispute is whether the respondent owes the applicants \$3,012.90 for countertop fabrication, installation, and additional trip fees.

## EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision. The respondent did not provide any documentary evidence or submissions apart from those in the Dispute Response, despite the opportunity to do so.
9. On March 10, 2023, SEHS provided the respondent with an estimate of \$2,832.90 for the kitchen countertop installation. The same day, the respondent paid a \$1,500 deposit.
10. Feeling Stone installed the countertop on April 6, 2023. The applicants say after the countertop was installed, the respondent failed to pay the final balance of \$1,332.90. They claim that amount. The applicants also say they are entitled to an additional \$1,680 for 4 trips they made out to the respondent’s home to deal with complaints the respondent had about the installation.
11. First, the agreement was undisputedly between SEHS and the respondent. Feeling Stone is not a party to that contract, and any subcontract between it and SEHS is not the subject of this dispute. The legal doctrine of privity of contract means that a contract cannot give rights or impose obligations on anyone who is not a party to it. I find Feeling Stone has no standing to bring a contractual claim against the respondent. As the applicants do not provide any other basis for Feeling Stone’s claim, I dismiss it.
12. Is SEHS entitled to payment for the remainder of its invoice? There is no dispute that the countertop was installed for the respondent. In the Dispute Response filed at the outset of this proceeding, the respondent said the applicants’ “quality of workmanship was unacceptable” and had to be repaired by others. As the party alleging deficient work, the respondent has the burden of proving any deficiencies (see: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). As noted above, the

respondent did not provide any documentary evidence or submissions after apart from the Dispute Response, meaning they have not provided any evidence or submissions about what was allegedly deficient, or how much the alleged deficiencies cost to remedy. I find the respondent has not proven the work was deficient. So, I find SEHS is entitled to the \$1,332.90 balance for the countertop installation.

13. SEHS also claims various amounts for scheduled trips to the respondent's home to check the alleged deficiencies, as follows:

- a. April 10, 2023: Attended to check the template - \$300 + GST
- b. April 27, 2023: Attended the site at the respondent's request, but the respondent did not show up - \$100 + GST
- c. May 11, 2023: Attended the site at the respondent's request, but the respondent did not show up - \$100 + GST
- d. June 23, 2023: Attended the site at the respondent's request, but the respondent did not show up - \$100 + GST

14. The applicants' invoice states "Additional charges will be incurred for return trips". This term was written on both SEHS's initial estimate and on the deposit invoice. The respondent does not deny receiving and reading these documents. I find that by asking SEHS to attend the site after receiving these invoices, the respondent implicitly agreed they would pay for those trips. However, there is no evidence the parties agreed to a specific amount for return trips. In the absence of an agreement on the cost for extra trips, on a judgment basis, I find SEHS is entitled to \$100 for each return trip it made after the countertop was installed. This totals \$400.

15. SEHS is entitled to pre-judgment interest under the *Court Order Interest Act*. This equals \$67.36 on the \$1,332.90 invoice balance, calculated from April 6, 2023, plus \$18.54 on the \$400, calculated on \$100 from the date of each return trip. This totals \$85.90.

16. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As SEHS was generally successful, the respondent must reimburse it \$175 in paid tribunal fees. No dispute-related expenses were claimed.

## ORDERS

17. Within 21 days of the date of this decision, I order the respondent to pay SEHS a total of \$1,993.80, broken down as follows:
- a. \$1,732.90 in debt and damages,
  - b. \$85.90 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in tribunal fees.
18. SEHS is also entitled to post-judgment interest, as applicable.
19. Feeling Stone's claim is dismissed.
20. 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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Andrea Ritchie, Vice Chair