Civil Resolution Tribunal

Date Issued: April 29, 2024

Files: SC-2023-003506
and SC-CC-2023-011308

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alexander dba Cassidy Woodcraft & Design v. Kool*, 2024 BCCRT 406

B E T W E E N :

JORDAN CASSIDY ALEXANDER (Doing Business as CASSIDY WOODCRAFT & DESIGN)

APPLICANT

A N D :

DAVID KOOL and TAMARA OLATE

RESPONDENTS

A N D :

JORDAN CASSIDY ALEXANDER (Doing Business as CASSIDY WOODCRAFT & DESIGN)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. These 2 linked disputes are about a kitchen renovation that I find are a claim and counterclaim. So, I have considered the evidence and submissions in both disputes as a whole and issued 1 decision.

2. Jordan Cassidy Alexander (Doing Business as Cassidy Woodcraft & Design) says David Kool and Tamara Olate hired him to supply and install new cabinets and manage the sourcing and installation of quartz countertops for their kitchen. Mr. Alexander says he finished the cabinet work, and the countertops are ready to be installed but the respondents have not paid him in full. The respondents have undisputedly already paid Mr. Alexander $14,569.80 for the cabinets and $3,340.39 for the countertops. In dispute SC-2023-003506, Mr. Alexander says the respondents still owe him $4,142.45 for the cabinets and $1,431.60 for the countertops, but he limits his claim to $5,000, the Civil Resolution Tribunal's (CRT) monetary limit for small claims disputes. Mr. Alexander represents himself.

3. The respondents do not dispute that they agreed to pay a total of $18,712.25 for the cabinets and $4,771.99 for the countertops. However, they say that Mr. Alexander improperly demanded that they pay for the countertops in full before installation, despite their prior agreement to pay the final $1,431.60 after installation. Since Mr. Alexander has not arranged for the countertops to be installed, the respondents argue he has not finished the job and they should have to pay him nothing further for the countertops or the cabinets. So, in dispute SC-CC-2023-011308, Mr. Kool seeks a $3,444.09 refund for the $3,340.39 countertop deposit he paid to Mr. Alexander, plus a $103.70 "processing fee". Mr. Kool represents both respondents.

JURISDICTION AND PROCEDURE

4. These are the CRT's 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and that an oral hearing is not necessary.

6. 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 court.

7. Where permitted by CRTA section 118, in resolving these disputes 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.

Preliminary Issue

8. When responding to Mr. Kool's counterclaim, Mr. Alexander noted that the Dispute Notice for the counterclaim and for his claim incorrectly noted his name as "Jordan Cassidy" instead of "Jordan Cassidy Alexander". Mr. Alexander asked CRT staff to correct his name. CRT staff contacted Mr. Kool to confirm that he agreed to correcting Mr. Alexander's name in the 2 Dispute Notices. However, Mr. Kool did not respond. Based on the evidence before me, I accept that Mr. Alexander's name is Jordan Cassidy Alexander. I note Mr. Kool also refers to Mr. Alexander as "Jordan Alexander" in his written submissions. Given the above and the CRT's mandate which includes efficiency and proportionality, I find it appropriate to exercise my discretion under CRTA section 61 to amend the style of cause to correct Mr. Alexander's name.

ISSUES

9. The issues in these disputes are:

a. Must the respondents pay Mr. Alexander the remaining $4,142.45 for the cabinets?

b. Must the respondents pay Mr. Alexander the remaining $1,431.60 for the countertops or is Mr. Kool entitled to a refund for the $3,340.39 countertop deposit and the $103.70 processing fee?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Alexander must prove his claims on a balance of probabilities. Mr. Kool must prove his counterclaim to the same standard. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

11. It is undisputed that in September 2022, the respondents hired Mr. Alexander to supply and install new kitchen cabinets in their home. The parties had a written contract, which I note was only signed by Mr. Kool. However, the contract said Mr. Alexander was doing the work for both respondents. So, given this, and since they do not dispute it, I find both respondents were party to the contract and Mr. Kool signed the contract on his on behalf and as agent for his spouse, Tamara Olate. In the contract, the respondents agreed to pay Mr. Alexander $18,212.25 (tax inclusive) for the cabinets. The signed written contract said 60% would be due on signing the agreement, 30% due on core project delivery, and the final 10% due on project completion. However, it is undisputed that the parties ultimately agreed that after the initial 60% payment, a further 20% would be due on core project delivery and the remaining 20% on project completion.

12. The evidence shows Mr. Kool sent Mr. Alexander the initial 60% payment totaling $10,927.35 on September 13, 2022. Then, on September 14, Mr. Alexander asked Mr. Kool if he had made arrangements for the quartz countertops. Mr. Kool replied that he had not yet called the countertop company, Colonial Countertops Ltd. (Colonial) as he was too busy. Mr. Alexander told Mr. Kool that the respondents could either purchase the countertops from Colonial at the retail price, or Mr. Alexander

could manage the countertop sourcing, purchasing, and Colonial's installation for the respondents. As compensation, Mr. Alexander said he would charge Mr. Kool the same retail price and keep the difference between that price and the discounted price Colonial would give to him. The parties undisputedly agreed, and Mr. Alexander sourced the countertops as proposed. The evidence shows that Colonial required Mr. Alexander to pay an initial 70% deposit. So, on September 19, Mr. Alexander issued the respondents an invoice for a 70% deposit totaling $3,340.39. Based on this invoice, I find the respondents agreed to pay Mr. Alexander a total of $4,771.99 for the countertops, including his time for managing the countertop related work.

13. The evidence shows Mr. Kool paid the $3,340.39 deposit on September 28 and the next 20% payment for the cabinets (totaling $3,642.45) on December 8. Mr. Alexander began the cabinet installation work, which he completed by mid-December. At this time, the countertops had not yet been installed by Colonial.

14. In a December 14 text message, after completing the cabinet installation, Mr. Alexander told Mr. Kool that he would send his final kitchen build invoice out shortly and said that when the time comes, the remaining 30% for the countertops would be due "after it's done". The following day, Mr. Alexander informed Mr. Kool that the countertops would be installed between January 4 and 6. Mr. Alexander then asked if he should roll his final invoice and the last countertop bill together to "make it simpler" and Mr. Kool agreed. It is clear from the evidence before me that Mr. Alexander and Mr. Kool interpreted this agreement to roll the invoices together differently. To Mr. Alexander, this meant he would issue a final invoice for all outstanding amounts immediately, with payment due right away. Mr. Kool, on the other hand, understood this meant that he could wait to pay the final amounts until after the countertops were installed.

15. Based on Mr. Alexander's understanding, on December 16, he sent Mr. Kool a $5,574.05 invoice for the final amounts owing for the cabinets and countertops. The invoice noted that the respondents owed $3,642.45 for the cabinets, plus $500 for 5 extra island drawers, and $1,431.60 for the countertops. The respondents do not

dispute that they agreed to the $500 for the extra island drawers. However, they undisputedly have not paid Mr. Alexander anything further.

16. Text messages and emails in evidence show the misunderstanding between Mr. Alexander and Mr. Kool led to some heated conversations, resulting in the two ultimately doubting that the other would satisfy their remaining contractual obligations. As a result, Mr. Kool took the position that he would not pay Mr. Alexander anything further until the countertops were at his home, and Mr. Alexander refused to allow Colonial to deliver and install the countertops unless he first received payment in full.

17. Based on the evidence before me, I find the parties had agreed the respondents would pay the final 20% for the cabinets once the cabinet work was completed. Similarly, I find the parties agreed the respondents would pay the final 30% for the countertops after they were installed. Mr. Alexander essentially argues that by agreeing to roll the two final invoices into one in the December 14 text messages, Mr. Kool agreed to amend the payment terms for the countertops, requiring final payment prior to installation. However, as noted above, Mr. Kool and Mr. Alexander had different ideas of what this would mean for the final payment's timing. So, I find there was not a sufficient "meeting of the minds" between Mr. Kool and Mr. Alexander to say that they agreed to amend the payment terms. As a result, I find the prior payment terms continued to apply. This means the respondents were required to pay the remaining 20% for the cabinets once that work was complete, and the remaining 30% for the countertops once installed.

18. So, since Mr. Alexander undisputedly completed the cabinet installation work, I find he is entitled to the claimed $4,142.45 for that work.

19. This leaves the countertops. The question is whether Mr. Alexander is entitled to the remaining $1,431.60 or whether he must return Mr. Kool's $3,340.39 deposit. Mr. Alexander says that he has paid Colonial for the countertops in full, and Colonial has the countertops ready for installation. He says that he has no desire to interact with

the respondents any further. So, once the respondents pay him in full, he says the respondents can deal with Colonial to arrange for installation.

20. While I find the respondents breached the parties' contract for the cabinets by failing to pay the final 20% after the cabinets were installed, I also I find Mr. Alexander breached the parties' contract for the countertops when he refused to allow Colonial to install the countertops until the respondents first paid him in full for the countertops. I find this was a fundamental breach, as the respondents were deprived of substantially the whole benefit of the contract to them, being the countertops that they had already paid a 70% deposit for (see *Bhullar v. Dhanani*, 2008 BCSC 1202 at paragraph 27).

21. As a result of Mr. Alexander's fundamental breach, I find the respondents are relieved from any further performance of that contract. This means that the respondents are not required to pay Mr. Alexander the remaining $1,431.60 for the countertops. So, I dismiss this part of Mr. Alexander's claim.

22. The remaining question then is whether Mr. Kool is entitled to the $3,340.39 deposit's return due to Mr. Alexander's fundamental breach.

23. 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 and *Karimi v. Gu*, 2016 BCSC 1060 at paragraphs 206 to 211).

24. Here, since Mr. Kool has not yet received the countertops despite having paid 70% of the agreed upon price in late September 2022, I find the appropriate remedy is to order Mr. Alexander to refund Mr. Kool the $3,340.39 countertop deposit.

25. As noted above, Mr. Kool also claims $103.70 for a processing fee. I infer this is a currency conversion fee that PayPal charged him for sending the countertop deposit to Mr. Alexander. Mr. Alexander did not receive this processing fee, nor did he require Mr. Kool to pay him via PayPal. Rather, the evidence shows it was Mr. Kool who preferred to pay Mr. Alexnader by PayPal. So, I find no basis on which to order Mr. Alexander to reimburse Mr. Kool for the $103.70 processing fee and I dismiss this part of his counterclaim.

26. In conclusion, I find the respondents owe Mr. Alexander $4,142.45 for the cabinets, and Mr. Alexander must refund Mr. Kool $3,340.39 for the countertop deposit. After deducting the countertop deposit from the remaining balance for the cabinets, I find the respondents owe Mr. Alexander $802.06.

27. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Alexander is entitled to pre-judgment interest on the $802.06 from December 16, 2022, the date of his final invoice, to the date of this decision. This equals $52.02.

28. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Given the overall outcome here, I find the parties' success was mixed. So, I decline to order reimbursement of CRT fees and expenses.

ORDERS

29. Within 14 days of the date of this decision, I order the respondents, jointly and severally, to pay Mr. Alexander a total of $854.08, broken down as follows:

    a. $802.06 in debt for the unpaid cabinet work, and

    b. $52.02 in pre-judgment interest under the COIA.

30. Mr. Alexander is entitled to post-judgment interest, as applicable.

31. I dismiss the parties' remaining claims.

32. 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.

Nav Shukla, Tribunal Member