Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *A.S.A.P. Ventures Ltd. v. Houlding*, 2024 BCCRT 402

B E T W E E N :

A.S.A.P. VENTURES LTD.

APPLICANT

A N D :

JULIAN HOULDING

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Megan Stewart

INTRODUCTION

1. This dispute is about payment for fridge repair work and a credit card company arbitration fee.

2. The respondent, Julian Houlding, hired the applicant, A.S.A.P. Ventures Ltd., to repair his fridge, which was making a buzzing noise. The applicant replaced and installed

certain parts, and charged the respondent $967.73. The respondent paid by credit card, but later had the charges reversed. The applicant claims $1,467.73, for the repair work and for a $500 arbitration fee the credit card company charged it. The applicant is represented by its owner, Trevor Gains.

3. The respondent disputes the applicant's claim. He says the applicant did not resolve the problem. Specifically, he says the applicant failed to honour its warranties, wrongly diagnosed the buzzing noise as normal, fixed problems the parties never discussed, and fraudulently charged his credit card for the repair work, which is why he had the credit card charges reversed. The respondent 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 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 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 in the interests of justice.

6. Section 42 of the CRTA says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUES

7. The issues in this dispute are:
    a. Is the applicant entitled to $967.73 for the fridge repair work?
    b. Is the applicant entitled to $500 for the credit card company's arbitration fee?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but only refer to the information necessary to explain my decision. The applicant did not provide final reply submissions, despite the opportunity to do so.

Background

9. The following background is undisputed. Around December 21, 2021, the respondent contacted the applicant about his fridge making an intermittent buzzing noise. The applicant's technician attended the respondent's home on January 12, 2022, but they were unable to diagnose a problem, as the fridge was not buzzing at the time. The respondent then made a video recording of the noise and sent it to the applicant. The applicant determined the fridge likely needed a sealed system repair, and sent the respondent a $883.73 repair estimate.

10. The respondent accepted the estimate several months later, and on May 5, 2022 Mr. Gains (who is also undisputedly a technician) attended the respondent's home to perform the sealed system repair. This included replacing the compressor and installing a dryer. The applicant then charged the respondent's credit card, which it had on file from the initial visit.

11. On May 16, 2022, the respondent wrote to the applicant to advise the repair had not resolved the buzzing. He provided new video recordings, but Mr. Gains said these were normal compressor noises. Mr. Gains suggested the respondent contact Frigidaire, the fridge's manufacturer. The respondent disagreed with this approach,

and asked Mr. Gains to return to his home to reassess the fridge. Mr. Gains declined to do so. The respondent then had the repair cost charged to his credit card reversed.

Is the applicant entitled to $967.73 for the fridge repair work?

12. The applicant says it is entitled to payment for its fridge repair work for 2 reasons. First, it says based on the buzzing, it told the respondent it could not guarantee a sealed system repair would fix the noise, but this was "the only viable option". Second, the applicant says in any case, the noise in the video recordings the respondent sent it after Mr. Gains performed the sealed system repair is different to the buzzing in the earlier recording. In correspondence with the respondent, Mr. Gains said this later buzzing was "normal". So, I find the applicant is suggesting the sealed system repair fixed the problem the respondent hired it to fix.

13. I begin with the applicant's position that it fixed the problem. The applicant says it emailed the respondent's fridge recordings after the sealed system repair to technicians at Frigidaire, and they agreed the noise was "normal operation". However, the applicant did not provide documentary evidence, like an emailed response from Frigidaire, to support this hearsay evidence, or explain why it did not do so. When a party fails to provide relevant evidence with no explanation, the CRT may draw an adverse inference. An adverse inference is when the CRT assumes a party did not provide relevant evidence because it would have been damaging to their case. I find an adverse inference is appropriate here. That is, I find Frigidaire's response likely did not support the applicant's position that the later noise was normal.

14. I compared the before and after video recordings of the buzzing. While the before recording is louder than the after recording, I find that does not prove the applicant fixed the buzzing the respondent hired it to fix. Other than the difference in volume, the noises are very similar, if not the same. The respondent asked the applicant to fix the noise, by which I find he meant stop it. He did not ask the applicant to make the noise quieter.

15. For the reasons above, I find the applicant did not resolve the buzzing in the respondent's fridge.

16. Next, I turn to the applicant's argument that it did not guarantee a sealed system repair would fix the noise. The respondent says Mr. Gains told him he was "absolutely sure it was the compressor". As noted above, the sealed system repair included replacing the compressor. The respondent also points to the applicant's parts and labour guarantees as evidence that the applicant promised to fix the buzzing.

17. In support of its position, the applicant submitted the repair estimate's cover email to the respondent. The email included a link to the applicant's terms and conditions, which the applicant relies on as proof it does not guarantee all repairs. However, I find the terms and conditions submitted in evidence are not the same ones the respondent was invited to click on in the estimate's cover email. This is because they refer to a 24% annual service charge on overdue accounts that the applicant says was introduced in January 2023, well after the respondent challenged the credit card charge. So, I give the terms and conditions submitted no weight.

18. The email also included a 90-day manufacturer's parts warranty. It is undisputed that in addition to the manufacturer's parts warranty, the applicant provided a 60-day labour guarantee, as set out on its website. I find neither the manufacturer's parts warranty nor the labour guarantee were promises the applicant would fix the buzzing. Instead, I find they were promises about the parts and service the applicant provided for the sealed system repair, independent of whether the repair resolved the buzzing.

19. So, I find the applicant did not guarantee the sealed system repair would stop the buzzing.

20. But, that does not end the matter. Even if the applicant did not guarantee a solution to the buzzing, there is still the question of whether the work it did to diagnose and address the problem met the required standard for fridge repair.

21. In general, expert evidence is required to prove a professional's work was deficient or that it fell below a reasonably competent standard. The exceptions are where the

work is obviously substandard, or the deficiency relates to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).

22. Here, I find there is no need for expert evidence for the following reasons. The applicant's work came with a 60-day labour guarantee. Yet, the applicant refused to return to the respondent's house to re-check the fridge after the respondent provided it with video evidence of what I have found was the same or a very similar noise. And, as noted above, I have drawn an adverse inference from the applicant's failure to submit documentary evidence of Frigidaire's alleged agreement that the later noise was normal. I find the standard of a reasonably competent fridge repair service provider includes, at a minimum, reassessing the problem within the window of its labour guarantee where the customer has provided evidence that the problem persists. So, I find it is obvious that the applicant's work to address the buzzing was substandard. To be clear, I am not making this finding on the basis that the applicant failed to resolve the buzzing. I am making this finding on the basis that the applicant failed to take the steps required of a reasonably competent fridge repair service provider to properly address the very problem it was asked to fix.

23. In these circumstances, I find the applicant is not entitled to payment for its substandard work. I dismiss its claim for the fridge repair work. As I have dismissed the applicant's claim for the reasons above, and the respondent did not file a counterclaim, I find I do not need to address the respondent's arguments that the applicant fixed problems the parties never discussed, and that it fraudulently charged his credit card for the repair work.

Is the applicant entitled to $500 for the credit card company's arbitration fee?

24. Since I have dismissed the applicant's claim for payment of the fridge repair work, it follows that I must also dismiss its claim for the credit card company's arbitration fee.

25. Even if I had allowed the applicant's claim for the fridge repair work, I would have found it was not entitled to reimbursement for the credit card company's $500 arbitration fee, for the following reason.

26. In *New Country Appliances Inc v. GREWAL*, 2018 BCCRT 651, a non-binding but persuasive CRT decision, the tribunal member found the respondent was not responsible for credit card arbitration fees after reversing charges they had made to the applicant. The tribunal member found the credit card arbitration fee was charged to the applicant under the terms of the applicant's agreement with the credit card company. There was no information before the tribunal member about that agreement, and the respondent was not a party to it. Rather, the agreement was between the applicant and the credit card company, and the applicant had agreed to the terms in order to accept credit card payments.

27. Here, the applicant's agreement with the credit card company for accepting credit card payments is not before me, and the respondent is undisputedly not a party to it. So, I would have found there was no basis to hold the respondent responsible for any payments the applicant owed the credit card company under the agreement.

28. 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 applicant was unsuccessful, so I dismiss its claim for CRT fees. The respondent did not pay any fees, and neither party claimed dispute-related expenses.

ORDER

29. I dismiss the applicant's claims and this dispute.

Megan Stewart, Tribunal Member