



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tsai et al v. Synergy Plumbing & Heating Ltd.*, 2018 BCCRT 337

B E T W E E N :

Yu Tsai and Guiyun Li

APPLICANTS

A N D :

Synergy Plumbing & Heating Ltd.

RESPONDENT

A N D :

Yu Tsai and Guiyun Li

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The respondent Synergy Plumbing & Heating Ltd. (Synergy) did some repair work on a noisy boiler owned by the applicants, Yu Tsai and Guiyun Li (collectively, the applicants). The applicants say Synergy altered the boiler system by adding “extra useless connect joints and pips”, which the applicants say did not get rid of the noise and made the boiler “more complex and vulnerable to other problems”.
2. The applicants want a refund of the \$226.11 they paid Synergy, plus \$1,351.41 being the reduced amount of Synergy’s re invoice #13478-01R. In addition, the applicants want \$1,037.12 for 3 days of lost wages while waiting for Synergy to fix the boiler. Further, the applicants seek \$2,385.36 for over 100 hours of time spent e-mailing Synergy about the problem and for time spent filing a complaint with the Better Business Bureau.
3. In its counterclaim, Synergy claims payment in full of its original invoice #13478-01, namely \$1,574.54. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, and I note that neither party requested an oral hearing.

6. The tribunal 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. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issue in this dispute are: a) did Synergy breach its boiler repair contract with the applicants, b) if so, to what extent are the applicants entitled to their claimed remedies, and c) to what extent is Synergy entitled to payment of its invoice #13478-01 in the original amount of \$1,574.54?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means in their claim, the applicants must prove their claimed damages. In its counterclaim, Synergy must prove it is entitled to payment of its invoice. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. At the outset, I note the applicants' submissions were in large part focussed upon the allegation that Synergy engaged in misleading or deceptive business practices, because the applicants were not satisfied and because they continued to hear noise from their boiler. As discussed further below, I find the evidence simply does not support such an allegation and I dismiss it.
11. I turn then to the relevant chronology. On December 1, 2015, Mr. Tsai contacted Synergy about his noisy heating system. Synergy did a service call the next day, and submitted its invoice for \$1,036.15 on December 22, 2015, which Mr. Tsai paid on January 22, 2016. This work involved replacing a pump and other "minor

upgrades” to the applicants’ heating system. Synergy denies ever promising the applicants that its work would eliminate the noise.

12. About 13 months later, on February 7, 2017, Mr. Tsai contacted Synergy to say his heating system had been making loud noises recently, “from time to time”, as if someone was kicking on the pipe and the pipe was shaking. Synergy did a service call on February 10, 2017, and submitted its invoice #13334-01 that day for \$226.11, which Mr. Tsai paid on March 27, 2017.
13. The \$226.11 invoice #13334-01 states that the technician arrived on site and found air in the system “(poly b direct connect to boiler)”, and that the technician bled air to 5 zones and cleaned all burners and replaced the thermocouple. The invoice states that the technician tested and found the boiler operating properly and quiet. The invoice states Mr. Tsai was “to monitor air in system”. The invoice noted that the technician recommended doing regular maintenance on the system and to install 1-1/4” Spirovent on the supply piping for the boiler.
14. On February 13, 2017, Mr. Tsai emailed Synergy that the noise was back, and questioned whether one of the zones missed being flushed. The next day Synergy responded that it had flushed all 5 zones and asked whether Mr. Tsai had considered the Spirovent they had previously discussed. On February 17, 2017, Synergy wrote the following about the Spirovent, and on February 18, 2017 Mr. Tsai agreed to have it installed “next time”:

... the 1/8” auto air vent that is currently installed is not adequate for removing the air from your system. This issue of poly-b piping without an oxygen barrier in your system is still present, and will continue to be into the future. An 1-1/4” Spirovent vent **will greatly improve** your ability to remove air from your system (automatically). **Manually flushing may be required again in the future**, but the **Spirovent install is your best course of action**. We have had success with similar jobs in the past with this recommendation.

[reproduced as written, except where noted; bold emphasis added]

15. Next, there was a series of email exchanges in which Mr. Tsai described ongoing noise and Synergy responded promptly to ask about its character and to arrange an on-site visit. Synergy attended at the applicants' home for a 3rd visit on March 31, 2017, after Mr. Tsai authorized Synergy to proceed with the recommended upgrades with his signature on a work order. In particular, the work to be done was described as "install glove valve & spiral vent". The "work completed" indicates that was done over the course of 8 hours, along with installation of a ¾" glove valve (boiler bypass), and bleeding all zones. The work order notes that the technician told Mr. Tsai "there may be some air in system but spiral vent will correct".
16. This is the first focus of the applicants' claim: that with this statement Synergy promised the spiral vent would correct the noise and it did not do so. Synergy denies that this statement can be reasonably interpreted as a promise or guarantee. On balance, I agree with Synergy, given the technician's brief note could not reasonably have been interpreted to override Synergy's more detailed communication on February 17, 2017, as quoted above.
17. On April 4, 10, and 15, 2017, Mr. Tsai emailed Synergy to complaint that the noise was still there, although the frequency of the noise differed on the days.
18. On April 17, 2017, Synergy submitted its invoice #13478-01 for \$1,574.54, which the applicant never paid and which is the amount claimed by Synergy in its counterclaim. On the invoice it was noted: "The spirovent will take time to correct the noise and air issue in the system". On April 18, 2017, Mr. Tsai complained about the amount of Synergy's \$1,574.54 invoice, although he was aware of the time charged by the technician having signed the work order.
19. Synergy says its \$85 per hour rate is relatively low, but in an effort to resolve the matter it agreed to reduce its invoice to \$1,351.41 as set out in invoice #13478-01R. However, Mr. Tsai still refused to pay and demanded that Synergy do more work to eliminate the noise at no cost to him. In this dispute, Synergy claims the full \$1,574.54 original invoice amount.

20. Synergy notes that its terms were “due on receipt” and that interest is accumulating. I note there is no contractual interest rate specified on the invoice or in any of the parties’ earlier communications.
21. The fact that Synergy advertises on its website that it is committed to customer satisfaction does not mean that the applicants must succeed in this dispute because they are dissatisfied. I find it is implicit that the applicants’ dissatisfaction must be unreasonable. I acknowledge the applicants are frustrated that they paid for boiler repair service that did not solve their noise problem, but as I have found above, Synergy did not promise that all noise would be eliminated. Based on the parties’ communications, I find that the applicants have not proved that Synergy failed to reasonably investigate the noisy boiler problem. As discussed below, the fact that the applicants say they found a solution on the internet is not determinative.
22. The second focus of the applicants’ claim is that Mr. Tsai did some internet research himself and found information about removing a spring on a zone valve, which he says worked and has stopped the noise. The applicants essentially submit Synergy charged them for unnecessary work when it should have known to simply remove the spring. Yet, the applicants also submit that Synergy’s work made their heating system worse, although how so is not reasonably clear from their submission.
23. In its submissions, Synergy says that the applicants’ heating system is 25 years old and its “Poly B piping” is no longer permitted by code and which, as noted in the quote above, has properties that allow oxygen into the system. Given the evidence before me, including literature about the poly- b piping and the Spiro-vent, I find it was reasonable for Synergy to conclude that this build-up of air over time was the most likely explanation for noise the applicants heard. I do not accept the applicants’ unsupported submission that the respondent’s work was inappropriately recommended and performed. The applicants are not plumbers. While the applicants say their removal of the spring fixed the noise problem, they

have produced no expert plumbing evidence to suggest Synergy's approach was unreasonable. As noted above, the applicants agreed to Synergy's recommendation and I have found Synergy did not promise or guarantee the noise would be eliminated. Rather, Synergy was clear that it would take time for the Spiro-vent to remove the air in the pipes, and that this would have to be re-done after the pipes were turned back on after the summer season. Contrary to the applicants' submissions, I find that there was nothing misleading in Synergy's communications about its opinion of the applicants' noise problem.

24. Given my conclusions above, I find that Synergy is entitled to payment of its \$1,574.54 invoice. I see no basis to require Synergy to accept its earlier reduced invoice amount, given the matter did not settle and advanced through adjudication. Synergy is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on that sum, from April 17, 2017. As Synergy was successful, I find it is entitled to reimbursement of its \$125 in tribunal fees, in accordance with the Act and the tribunal's rules.
25. At the same time, I find that the applicants' claims must be dismissed. Even if I had found Synergy was not entitled to payment, I would not have allowed the applicants' claims for lost wages or time spent on this dispute. As for the lost wages claim, the applicants have not provided any supporting evidence. Further, as set out in several prior tribunal decisions, claims for "time spent on the dispute" are not consistent with the Act or the tribunal's rules, which generally speaking provide for self-representation. I also would not have ordered the claimed \$1,351.41, since the applicants never paid that invoice. The applicants have not paid anything to any other plumber. Rather, at most, the order would have been that Synergy is not entitled to payment of its invoice and a possible refund of the \$226.11 invoice that was paid. However, as set out above, on balance, I have found in Synergy's favour.

ORDERS

26. Within 14 days of the date of this decision, I order the applicants to pay Synergy a total of \$1,717.66, broken down as follows:
 - a. \$1,574.54 as payment of Synergy's invoice #13478-01,
 - b. \$18.12 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
27. Synergy is also entitled to post-judgment interest, as applicable.
28. I dismiss the applicants' claims.
29. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
30. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair