



Civil Resolution Tribunal

Date Issued: August 23, 2018

File: SC-2018-000434

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD v. McLean, 2018 BCCRT 470*

B E T W E E N :

Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal
Services LTD

APPLICANT

A N D :

Richard McLean

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for plumbing services. On September 27, 2017, the applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD, attended the respondent Richard McLean's residence because Mr. McLean called for service for a "sewage pump high alarm". On October 2, 2017, the applicant installed a new (second) pump, and attended again on October 11 and November 2, 2017. This description is not disputed.
2. The respondent says the applicant's workers were incompetent and were negligent in failing to address and coordinate the "synchronization of the dual-pump lift system" at the time of the October 2, 2017 installation. The respondent says had the applicant done that on October 2, the 2 later visits and associated invoices at issue in this dispute would have been unnecessary. The applicant is represented by Amanda Gelter, a principal or an employee, and the respondent is self-represented.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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.
4. 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, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

5. 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.
6. Under the Act and 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.

ISSUE

7. The issue in this dispute is to what extent, if any, the respondent must pay the applicant for plumbing services.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The applicant's first invoice to the respondent, invoice #17J0201E, was for the September and October 2, 2017 attendances. The respondent paid that \$771.98 invoice and it is not at issue in this dispute. However, it is important to note that that invoice described the job as follows (my bold emphasis added):

Sewage lift station

- High level alarm sounding
- check controls and wiring
- one pump shorted out
- Pull second pump
- Clean impellor
- **Re-install pump**

- Install new customer supplied pump
- **Test operation – ok**

10. In this dispute, the applicant claims payment of 2 invoices:

- a. Invoice 17J1145P for \$123.90, which relates to the applicant's attendance on October 11, 2017. This invoice is for: "sewage lift station – check new pump and piping – test operation – ok".
- b. Invoice 17K0202E for \$175.35, which relates to the applicant's attendance on November 2, 2017. This invoice is for "sewage lift station – set up controller to alternate pumps – test operation – ok".

11. The respondent says the second (older) pump's switch had not been turned on as it should have been on October 2017, which the applicant dealt with when it attended on November 2, 2017, because the activation of the second pump was not caught by the applicant's plumber on the second visit post-installation, which was on October 11, 2017. The respondent says this oversight is at the heart of the dispute. The respondent says after receiving the applicant's 3 invoices, he disputed the 2 invoices at issue in this dispute on the basis that those visits were only necessary due to the applicant's incompetence and negligence in failing to active both pumps at the outset.

12. The applicant's position is that its original contract with the respondent, its Work Order Form, clearly lays out more than one visit may be necessary and that by signing the document the respondent is liable for the debt. This is generally true, in that a party is bound by the contract it agrees to.

13. However, it is an implied term of the parties' contract that the work will be done competently. Thus, the central issue in this dispute is whether the October 11 and November 2, 2017 attendances were reasonably necessary, or, whether the work done on those dates should have been properly done at the earlier October 2, 2017 visit.

14. In its reply submission, the applicant simply says that the job required both a plumber and an electrician, and that it had its electrician attend to explain to the respondent how the lift station controls work to ensure there were no more issues (this relates to the November 2, 2017 attendance). The applicant says the system was never installed correctly by the original installer and its electrician ensured that it was fixed.
15. The difficulty for the applicant is that it does not adequately address the central issue: why did the applicant not activate the dual-pump system on October 2, 2017? The applicant does not dispute the respondent's allegation that its technician told the respondent on October 2, 2017 that the dual-pump system was operational, and that in fact it was not operational at that time. Further, the applicant had already attended on September 27, 2017 and knew what was required from that visit.
16. The applicant does not dispute that the activation was simply flipping a switch to turn on the second (older) pump. In its Dispute Notice, the applicant described the November 2, 2017 attendance as "re-assessed lift station", which I find supports the respondent's position that the dual-pump system was not properly activated at the earlier visit on October 2, 2017. The respondent also alleges that he spoke with Mark Williams, the applicant's owner, about the claimed invoices and that Mr. Williams agreed that the 2 service calls post-installation would have been unnecessary had the technicians been thorough the first time. The respondent says Mr. Williams agreed to void the 2 claimed invoices. The applicant did not respond to this evidence.
17. As noted above, the applicant bears the burden of proof and I find it has not proved the attendances on October 11 and November 2, 2017 were reasonably necessary. It follows that the invoices for attendances on those dates are not payable by the respondent. In light of my conclusions above, I find the applicant's claim must be dismissed. As the applicant was unsuccessful, I find it is not entitled to reimbursement of tribunal fees.

ORDER

18. I order that the applicant's claims, and therefore this dispute, are dismissed.

Shelley Lopez, Vice Chair