Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McAfee v. Columbia Valley H.V.A.C. Ltd. et al.*, 2018 BCCRT 911

B E T W E E N :

Dean McAfee

APPLICANT

A N D :

Columbia Valley H.V.A.C. Ltd., Daniel Mackenzie, and Olivia Jopp

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Susan MacFarlane

INTRODUCTION

1. Dean McAfee (applicant) wanted to upgrade his home heating. He spoke with the respondent Daniel Mackenzie, president of the respondent Columbia H.V.A.C. Ltd. (Columbia). They agreed to terms, including the final price and the scope of the

work. The applicant paid a deposit. The applicant was not satisfied with the work, which was not completed. The applicant claims $4,232.69 for a partial refund of payments he made, plus compensation for defects.

2. The applicant has named Columbia as a party to this dispute. He has also named individual officers of Columbia: Daniel Mackenzie (Columbia's president), and Olivia Jopp (Columbia's secretary). Columbia is represented by its president. The other parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.

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 tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

    a. order a party to do or stop doing something;

b. order a party to pay money;

c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. There are 3 main issues in this dispute.

    a. Did Columbia do the work as agreed? If not, must Columbia compensate the applicant?

    b. Is the applicant entitled to compensation for defects or loss of warranty?

    c. Are Daniel Mackenzie and Olivia Jopp potentially liable as respondents?

EVIDENCE

What Happened

8. On December 13, 2017, the applicant contacted Columbia about installing a new heat pump. They agreed to install a new furnace. Columbia said that prices were about to increase, so the equipment should be purchased soon. The applicant promised to pay a deposit.

9. On December 14, 2017, Daniel Mackenzie of Columbia sent an e-mail to the applicant from an e-mail address containing the company's name, "columbiavalleyhvac." The e-mail confirmed rough details of their agreement. Later he confirmed by text to the applicant that he had purchased all the necessary equipment.

10. On December 15, 2017, Columbia issued an invoice to the applicant:

    a. The invoice describes work to be performed: supply and install a furnace, an evaporator coil, a heat pump, venting and ducts. It also lists obtaining a gas-fitting permit, doing electrical work, and removing the existing system.

b. The final price agreed to was $10,439.15. Columbia credits the applicant with a deposit of $5,219.58. The balance ($5,219.57) was due when installation was completed.

11. The applicant tried to schedule installation. He sent e-mail and also called Columbia. Columbia mentioned needing to schedule a gas-fitter to attend.

12. The furnace was installed on January 19, 2018. No heat pump was installed. The applicant wanted to install a heat recovery ventilator (HRV), at an extra cost. Columbia drafted a new invoice for $1,228.22 to supply the HRV, and asked for a new deposit. On January 19, 2018, the applicant paid Columbia $2,833.69.

13. In February the applicant grew concerned. Columbia was not scheduling the follow-up installations and was not responding by phone or e-mail. On at least February 5 and February 12, 2018 the applicant asked Columbia for a refund.

14. On February 15, 2018 the applicant sent e-mail to Columbia, canvassing the (by then) long history of unreturned messages and failed attempts to schedule work. The applicant listed the troubles he would have in retaining another contractor to duplicate the work, and said twice that it was not too late. He also asked for a refund by the end of the next day so they could “step back from the ledge.”

15. Columbia contacted the applicant within the hour, suggesting an installation date the following week. The applicant agreed, suggesting Monday or Tuesday.

16. The parties agree that there was no further installation. From the original agreement, only a furnace was installed. The parties agree that the evaporator coil was not new, contrary to their agreement. It was re-used from the old furnace.

17. They do not agree as to whether the applicant cancelled the work.

18. On April 14, 2018, Columbia sent e-mail to the applicant saying that the applicant had cancelled the installation, so Columbia had returned equipment it had ordered. Columbia said that when it received a refund, the refund would be passed on to the applicant.

19. Also on April 16, 2018, Columbia admitted that it had not installed a heat pump, HRV, or a new coil. Columbia said that it would check with its suppliers about when a refund would be coming. As of May 4, 2018 Columbia had received no refund for the equipment.

20. On April 16, the applicant obtained quotes from another installer. The quotes cover parts of the same work and same equipment that Columbia agreed in December 2017 to provide, including:

    a. $4,022.85 (plus tax) for the furnace (adapting the original coil).

Position of the Parties

21. The applicant says he did not get what he paid for. He says he paid for a new furnace, coil and heat pump.

22. He claims that Columbia did not get a proper gas-fitting permit and did not have a certified gas fitter do the work.

23. The applicant asks for tribunal fees and other expenses, plus $4,232.69 for these claims:

    a. $2,833.69 for money paid on deposit for equipment that was never installed;

    b. $500.00 for a warranty owed on work already performed;

    c. $899.00 for a deficiency in the work for re-using an old furnace coil.

24. Columbia says the applicant cancelled the heat-pump installation before it was performed. Columbia says that when the applicant cancelled his order, Columbia returned the equipment to the supplier. Columbia says it will refund the applicant when it gets a refund.

25. The applicant says Columbia reports that its suppliers are deducting restocking fees from refunds owing. I have no evidence of that before me.

26. Columbia denies there was either any warranty or any defect with the furnace that was installed.

27. The applicant has not made direct claims against the named parties, Danny Mackenzie and Olivia Jopp. Those respondents say the matter does not affect them.

ANALYSIS

The Parties' Agreement

28. I find that the parties agreed on these basic terms:

    a. In December they agreed that Columbia would install new equipment (furnace, evaporator coil and heat pump). The full price was $10,439.15.

    b. In January they agreed that Columbia would install a new HRV. The equipment price was $1,228.22.

29. I find that it was never agreed that Columbia or its president need be licensed as a gas-fitter. Columbia made it clear that they were scheduling time with a gas-fitter to attend.

30. The parties agree that Columbia did not complete the agreed installation, and that the applicant is owed some money as a refund. Although they do not agree on exactly when their agreement was cancelled or how, I find that February 15, 2018 is the date when the parties were both clear that if it did not go ahead a refund was due promptly. I take February 15, 2018 as the date of cancellation when a refund became due.

31. I find that the applicant provided a reasonable quote from another supplier: $4,022.85 (plus tax) = $4,223.99. This quote is for installing the same furnace and adapting an original coil.

32. Other services the applicant paid for were not provided. Hence I find it is reasonable to deduct $4,223.99 from the amounts the applicant paid on deposit:

    a. $5,219.58 + $2,833.69 = $8,053.27 paid

    b. $8,053.27 - $4,223.99 = $3,829.28 refund

33. I find that the applicant is owed $3,829.28 from Columbia. This represents money paid on deposit for equipment that was never installed.

Warranty and Defects

34. The applicant claims $500.00 to compensate him for loss of the value of an implied warranty. The applicant has provided a sales brochure from another furnace supplier saying that this particular furnace is under a one-year warranty as to labour. The applicant also claims $899.00 for a defective furnace coil. He says he paid for a new coil.

35. The applicant has not provided any evidence that the furnace, or the re-used coil, has failed to work or been unfit for its intended purpose. I decline to make an award relating to defects or warranty.

36. The applicant bargained for a new coil, which he did not receive. I include the value of that loss in the general calculation of what he paid for, less what he received. I dismiss the applicant's claim for $500.00 for an implied warranty.

Proper Parties

37. An incorporated company is separate from its shareholders: *Salomon v. Salomon & Co. Ltd*. [1895-9] All E.R. 33 (H.L.). A company's officers will not be liable if they act on behalf of the company and not in ways that would be separately wrongful *XY, LLC v. Zhu*, 2013 BCCA 352.

38. The bargain between the parties was struck in a conversation that was confirmed in e-mail dated December 14, 2017. Columbia's president used the corporate name in

his e-mail signature. It was further detailed in writing dated December 15, 2017. Then a further agreement was made January 19, 2018. Both those written agreements are between Columbia and the applicant. Columbia is identified as "Ltd.," so the applicant knew that he was dealing with a limited company. The agreements do not name, nor are they signed by, either Columbia's president or Columbia's secretary.

39. I find that the applicant was always dealing with a limited company. Columbia used its company name on correspondence and invoices. The applicant did his own company search of officer names, so he knew that Columbia was a corporate entity.

40. I find that neither Columbia's president nor Columbia's secretary are proper parties to this dispute. I dismiss the claims against them.

Other Claims

41. The applicant spent money on postage for tribunal documents. He has provided a receipt for $35.54, which I find is a reasonable dispute-related expense.

42. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of $125.00 in tribunal fees and $35.54 in dispute-related expenses, for a total of $160.54.

ORDERS

43. Within 30 days of the date of this order, I order the respondent Columbia to pay the applicant a total of $4,033.74, broken down as follows:

    a. $3,829.28 for money paid for equipment that was never installed;

    b. $43.92 in pre-judgment interest under the *Court Order Interest Act*, calculated from February 15, 2018, and

c. $160.54 (for $125.00 in tribunal fees and $35.54 in dispute-related expenses).

44. I dismiss the applicant's claims against Mr. Mackenzie and Ms. Jopp. The applicant's remaining claims are dismissed.

45. The applicant is entitled to post-judgment interest, as applicable.

46. 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.

47. 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.

Susan MacFarlane, Tribunal Member