



Civil Resolution Tribunal

Date Issued: September 19, 2019

File: SC-2019-002361

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ghasemzadehnaghadehi v. Venus Beauty Services Limited dba Laque Nail Bar*, 2019 BCCRT 1105

B E T W E E N :

AMIR GHASEMZADEHNAGHADEHI

APPLICANT

A N D :

VENUS BEAUTY SERVICES LIMITED dba LAQUE NAIL BAR

RESPONDENT

A N D :

AMIR GHASEMZADEHNAGHADEHI

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the removal of and installation of a sink on March 2, 2019. The applicant and respondent by counterclaim is Amir Ghasemzadehnaghadehi. He says the respondent and applicant by counterclaim, Venus Beauty Services Limited doing business as Laque Nail Bar (“Venus”), has not paid a \$434 invoice for the work done. Venus says the sink installation was defective and counterclaims for \$100 in repair expenses.
2. Mr. Ghasemzadehnaghadehi is self-represented. Venus is represented by Faramarz Kheyrahi, who I infer is an employee or principal.

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 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. Here, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is in issue.
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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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 two issues in this dispute:
 - a. Is Mr. Ghasemzadehnaghadehi entitled to payment of \$434 for his outstanding invoice?
 - b. Is Venus entitled to reimbursement of \$100 for repairing Mr. Ghasemzadehnaghadehi's work?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears 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.

Issue #1. Is Mr. Ghasemzadehnaghadehi entitled to payment of \$434 for his outstanding invoice?

9. Mr. Ghasemzadehnaghadehi is a certified plumber. On March 2, 2019, he and his helper, M, removed and installed a new sink for Venus. The parties' agreement was verbal. After the work was done, Mr. Ghasemzadehnaghadehi provided a March 11,

2019 invoice for \$434. Venus has not paid Mr. Ghasemzadehnaghadehi for any of the work.

10. The parties agree that that they had a verbal agreement to install a single sink for \$300. However, they disagree on whether this also included removal of the sink (\$50), transportation of the existing sink cabinet to a new address (\$50), and extra supply costs (\$34). These other expenses total \$134, as documented in the March 2019 invoice.
11. Essentially, Mr. Ghasemzadehnaghadehi claims for extra work that he says is not part of the \$300 verbal quote. As noted in *Sepco Estates Ltd. v. Dy*, 2007 BCSC 1159 at paragraph 72, an “extra” is work that is substantially different from, and wholly outside, the scope of the work contemplated by the contract. Whether an item of work is an extra depends on the contract documents, the nature of the work performed, and the surrounding circumstances. If, under the contract, the item of work is one that the contractor is required to perform it cannot be an extra. This is true even if the contractor failed to realize he would be required to perform such work.
12. Venus submits that Mr. Ghasemzadehnaghadehi’s helper, M, verbally provided the quote of \$300. Venus did not describe any discussions regarding the cost of the extras and says the \$300 was an “all in” amount. Mr. Ghasemzadehnaghadehi provided limited submissions regarding these discussions.
13. Based on *Sepco Estates Ltd.*, I find that the \$300 quote includes the cost of the sink removal, sink installation, and supply costs. I find this to be work that a contractor would be required to perform to install the sink. However, I find the delivery of the old sink cabinet to a new address for \$50 is an extra that is not part of the quote. This is not necessary to the installation of a sink.
14. In summary, I find that Mr. Ghasemzadehnaghadehi is entitled to payment of \$350 for his work. I will now consider Venus’ allegation that Mr. Ghasemzadehnaghadehi’s work was defective.

Issue #2. Is Venus entitled to reimbursement of \$100 for repairing Mr. Ghasemzadehnaghadehi's work?

15. Where defective work is alleged, the ultimate burden of proof is on the party asserting that a breach has occurred. So, Venus must prove on a balance of probabilities that Mr. Ghasemzadehnaghadehi breached the parties' contract: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91.
16. Venus can prove a breach of contract if it establishes that Mr. Ghasemzadehnaghadehi breached the standards expected of a competent plumber. However, if the conduct in question is of a technical or scientific nature or otherwise outside the knowledge and experience of the ordinary person, then expert evidence of the standard of care, its content, and breach, will likely be necessary: *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119.
17. I find that Venus has met its burden of proof and that Mr. Ghasemzadehnaghadehi breached the parties' contract. My reasons follow.
18. The evidence shows that there was a leak where the newly installed sink drain pipe connected with the main drain pipe in the wall, and that this leak occurred almost immediately after the installation. I base this finding on several factors. Venus submits that the sink initially leaked on the night of the installation, as observed by its representative in this dispute, Mr. Kheyrahi. Under Mr. Ghasemzadehnaghadehi's supervision, M stopped the leak by applying silicon, but the leak returned the next morning. These submissions are consistent with the accounts of two other people.
19. The first is ZI, Venus' employee. ZI wrote in a letter that the sink leaked on March 3, 2019, where the silicon was applied.
20. Second, Venus provided a July 10, 2019 letter from SA, the president of the company that provided the new sink. SA wrote that the sink is specialized for washing hair. After Venus called him, he went to see Mr. Ghasemzadehnaghadehi's work. He concluded that it was "immediately obvious" that the plumbing connection

at the leak location was insufficient. ZI used a sink hose connector at the leak location and this stopped the leak. SA visited and fixed the leak on March 3, 2019, as documented in a \$100.75 invoice of the same date.

21. Finally, I find that Mr. Ghasemzadehnaghadehi had the opportunity to come back and verify if the sink leaked but chose not to. On March 3, 2019, Venus called M and advised of the leak. M said the new sink was at fault and did not offer to repair the work. Venus provided phone records consistent with such a call being made. Mr. Ghasemzadehnaghadehi disputes this, but there is little evidence to contradict the evidence and submissions of Venus, ZI, and SA.
22. I also find that I do not need evidence from a plumber to conclude that the work was defective. It is clear that a leak is unacceptable for indoor plumbing work. The fact that SA fixed the leak also shows that the installation work was defective, rather than some other cause.
23. In summary, I find Mr. Ghasemzadehnaghadehi is entitled to payment of \$350. I reduce this amount by the \$100 claimed by Venus for defective work (which I note is slightly less than SA's March 3, 2019 invoice amount), for a total of \$250. Mr. Ghasemzadehnaghadehi is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from March 11, 2019, being the date of the invoice. This equals \$2.58.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

24. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
25. I find that success was divided in this dispute. The parties agree that Mr. Ghasemzadehnaghadehi was owed money and this amount was set off by Venus'

counterclaim. I find each party must bear their own tribunal fees or dispute-related expenses. This includes Mr. Ghasemzadehnaghadehi's claim for service expenses.

ORDERS

26. I order the Venus to pay Mr. Ghasemzadehnaghadehi a total of \$252.58, broken down as follows:
 - a. \$250 in debt, and
 - b. \$2.58 in pre-judgment interest under the COIA, calculated from March 11, 2019.
27. Mr. Ghasemzadehnaghadehi is entitled to post-judgment interest under the COIA.
28. The parties' remaining claims are dismissed.
29. Under section 48 of the CRTA, 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 CRTA, 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.

David Jiang, Tribunal Member