



Civil Resolution Tribunal

Date Issued: February 26, 2020

File: SC-2019-005027

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mazzei Electric Ltd. v. Ororke*, 2020 BCCRT 219

B E T W E E N :

MAZZEI ELECTRIC LTD.

APPLICANT

A N D :

LORI ORORKE

RESPONDENT

A N D :

Troy Lywood

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Mazzei Electric Ltd. (Mazzei), says the respondent, Lori Ororke, owes \$2,502.84 under 2 invoices for electrical work. Mazzei claims for the invoiced amounts. Ms. Ororke disagrees she is liable and says Mazzei must obtain payment from the third party respondent, Troy Lywood.
2. In Ms. Ororke's third party claim against Mr. Lywood, Ms. Ororke claims \$3,502.84. She says Mr. Lywood is the general contractor and should have paid Mazzei the claimed \$2,502.84 as a subtrade. She also seeks an additional \$1,000.00 for wasted time, though she says Mazzei should pay this amount, rather than Mr. Lywood. Ms. Ororke did not file a counterclaim against Mazzei.
3. Mr. Lywood disagrees with Ms. Ororke's claims. He chose not to provide evidence or arguments.
4. Ms. Ororke named herself and Mr. Lywood twice as parties in the third party claim. I find that nothing turns on this and exercise my discretion under section 61 of the *Civil Resolution Tribunal Act (CRTA)* to amend the style of cause, as above.
5. Mazzei is represented by an employee or principal. Ms. Ororke and Mr. Lywood are self-represented.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.
8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are as follows:
 - a. To what extent, if any, must Ms. Ororke pay Mazzei \$2,502.84 for the 2 invoices for electrical work?
 - b. To what extent, if any, must Mr. Lywood pay those amounts to Ms. Ororke?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mazzei bears the burden of proof on a balance of probabilities. Ms. Ororke must prove her third party claim against Mr. Lywood to the same standard. I have read all of parties' evidence and submissions, but only refer to what is necessary to explain my decision.

Issue #1. To what extent, if any, must Ms. Ororke pay Mazzei \$2,502.84 for the 2 invoices for electrical work?

12. On July 4, 2018, Mazzei provided a \$3,375.05 quote for electrical work. Ms. Ororke says this quote was sent to her rather than Mr. Lywood. She says her copy of the quote differs from Mazzei's. In any event, I find that both copies of the quote are addressed to Ms. Ororke and do not mention Mr. Lywood.
13. It is undisputed that Mazzei began its work in July 2018 and invoiced Ms. Ororke \$2,625.00. The parties agree Ms. Ororke paid this invoice herself on October 2, 2018. Ms. Ororke submits Mr. Lywood subsequently advised she should have paid it to him instead, so that Mr. Lywood could pay Mazzei. I will comment on this below.
14. Mazzei did additional work under an August 7, 2018 extra work order. Mazzei and Mr. Lywood signed the extra work order. Mazzei provided a phone log of a related August 10, 2018 service call. According to the log, Ms. Ororke called to have the work done. Ms. Ororke is listed in the document as the main contact and customer. The extra work was approved on site by Ms. Ororke and by the "GC", who I infer is Mr. Lywood. Mazzei returned once again to do further work in September 2018. A phone log entry dated September 11, 2018 shows Ms. Ororke made the call to have extra electrical work done. Ms. Ororke is again listed as the main contact and customer.
15. Ms. Ororke denies making the calls, but I prefer Mazzei's evidence as it is supported by documentation.
16. Mazzei subsequently issued 3 invoices. Each invoice is made out to Ms. Ororke, as follows:
 - a. \$918.80 on August 31, 2018 for the balance of work done in July 2018,
 - b. \$915.41 on August 31, 2018 for the extra work done in August 2018, and
 - c. \$1,587.43 on September 20, 2018 for extra work done in September 2018.
17. I find that Mr. Lywood paid the August 31, 2018 invoice for \$918.80. He also sent an electronic payment for \$650.00 on January 3, 2019 but did not provide the correct

password for Mazzei to complete the transfer. I find that the 2 invoices for extra work in August and September 2018 remain unpaid. These total the claimed amount of $(\$915.41 + \$1,587.43 =) \$2,502.84$.

18. Ms. Ororke says she hired Mr. Lywood as a general contractor to renovate her basement. She says Mr. Lywood, in turn, hired Mazzei to work on part of the renovations. She also says that after the October 2, 2018 payment to Mazzei, she paid Mr. Lywood and Mr. Lywood in turn was responsible for paying Mazzei. Ms. Ororke says Mazzei should therefore seek payment from Mr. Lywood.
19. For the following reasons, I disagree.
20. I find that that is no contract between Mazzei and Mr. Lywood. No party provided any such contract as evidence and Mazzei denies it exists. Consistent with this, Mazzei provided its initial July 4, 2018 quote to Ms. Ororke. Ms. Ororke paid this invoice herself, as noted earlier. All subsequent invoices were also addressed to Ms. Ororke. Mr. Lywood's signed an August 7, 2018 extra work order. However, Mazzei still sought approval from Ms. Ororke for the extra work, as noted in the August 10, 2018 call log entry. These factors support the conclusion that Ms. Ororke and Mazzei contracted directly with each other.
21. Ms. Ororke says Mr. Lywood advised her to cease making direct payments to Mazzei after October 2018. She says Mr. Lywood said that he would pay Mazzei. However, the common law principle of privity of contract applies to this dispute. This means that a contract cannot give rights or impose obligations on persons who are not parties to the contract. Mazzei is not a party to any agreement between Ms. Ororke and Mr. Lywood. Mazzei does not have to seek payment from Mr. Lywood.
22. I find that, within 14 days of the date of this decision, Ms. Ororke must pay Mazzei for the August and September 2018 invoices for extra work. This equals $\$2,502.84$ in debt.
23. Mazzei claims contractual interest of 26.8%. It says it is entitled to this amount as it appears at the bottom of its invoices. However, the claimed contractual interest is

not mentioned in the initial July 4, 2018 quote or August 7, 2018 extra work order. The evidence does not show that Ms. Ororke agreed to pay contractual interest on late payments. I dismiss the claim for contractual interest.

24. That said, the *Court Order Interest Act* applies to the tribunal. Mazzei is entitled to pre-judgement interest on the sums of \$915.41 and \$1,587.43, calculated from the invoice dates of August 31 and September 20, 2018, respectively. This equals (\$25.11 + \$42.28 =) \$67.39.

Issue #2. To what extent, if any, must Mr. Lywood pay those amounts to Ms. Ororke?

25. Ms. Ororke says Mr. Lywood is responsible for paying Mazzei. She claims \$2,502.84 against Mr. Lywood for sums she provided to Mr. Lywood, to be used to pay Mazzei. Ms. Ororke provided a bank document showing she made the following payments to Mr. Lywood:

- a. \$130.00 on October 31, 2018,
- b. \$918.80 on November 5, 2018 (Mr. Lywood paid Mazzei's August 31, 2018 invoice for the same amount),
- c. \$915.41 on November 21, 2018 (this matches Mazzei's unpaid August 31, 2018 invoice),
- d. \$987.47 on December 14, 2018, and
- e. \$1,500.00 on January 18, 2019 (this is somewhat close to Mazzei's unpaid September 20, 2018 invoice of \$1,587.43.

26. As noted above, Mr. Lywood chose not to provide evidence or arguments. In his Dispute Response Mr. Lywood denied liability without any substantive explanation.

27. I conclude that Ms. Ororke has not met the burden of proof. She did not provide any evidence of her agreement with Mr. Lywood or any correspondence to support her claim. I find the payment history only supports her claim to a limited degree. The

payments made to Mr. Lywood do not completely match the amounts owing to Mazzei. There is no explanation for what each of the payments is for in the document. The payments were also made months after Mazzei issued its invoices. I dismiss Ms. Ororke's claim for \$2,502.84 against Mr. Lywood.

28. Ms. Ororke also claims \$1,000.00 for time spent on this proceeding. The tribunal generally does not award parties compensation for their time spent on dealing with the dispute. This practice is based on the tribunal's rules that legal fees are not usually recoverable, except in extraordinary cases. I find that the same principle should apply here. This was not an extraordinary case calling for expenses for time spent and so I do not award them. Further, Ms. Ororke also expressly claimed compensation from Mazzei, but never counterclaimed against Mazzei. I would decline to award the \$1,000.00 claimed for time spent for this reason as well.
29. In summary, I dismiss Mr. Ororke's claims, including all third party claims against Mr. Lywood.
30. Under section 49 of the CRTA 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 Mazzei is entitled to reimbursement of \$125.00 in tribunal fees from Ms. Ororke.
31. Mazzei says that on March 28, 2019, it sent its unpaid bills to a bailiff for collections. It claims for an invoice of \$864.89, which shows the bailiff attempted collections from May to early July 2019. As noted above, the tribunal does not generally award parties compensation for time spent on a dispute. I find the bailiff invoice resembles such an expense and do not award it for that reason.

ORDERS

32. Within 14 days of the date of this order, I order Ms. Ororke to pay Mazzei a total of \$2,695.23, broken down as follows:

- a. \$2,502.84 in debt,
- b. \$67.39 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125.00 in tribunal fees.

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

34. I dismiss the remaining claims of Mazzei and Ms. Ororke, including all third party claims against Mr. Lywood.

35. 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.

36. 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