



Civil Resolution Tribunal

Date Issued: March 5, 2020

File: SC-2019-006683

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hilltop Plumbing and Heating (2016) Ltd. v. Pinkney*, 2020 BCCRT 258

B E T W E E N :

HILLTOP PLUMBING AND HEATING (2016) LTD. and CRESCENT
BEACH ELECTRIC LTD.

APPLICANTS

A N D :

CAROLYN PINKNEY and BILLBOARD WORLDWIDE PROMOTIONS
LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a plumbing and electrical services agreement. The applicants, Hilltop Plumbing and Heating (2016) Ltd. (Hilltop Plumbing) and Crescent Beach

Electric Ltd. (Crescent Electric), say the respondents, Carolyn Pinkney (Ms. Pinkney) and Billboard Worldwide Promotions Ltd. (Billboard), failed to pay for plumbing and electrical services the applicants performed at the respondents' request. The applicants are companies who work on projects together. Hilltop Plumbing requests \$3,042.01 as payment for their plumbing services and parts. Crescent Electric requests \$1,027.48 for its electrical services and parts. The applicants total claim is \$4,069.49. The applicants are represented by the director of Hilltop Plumbing, DL.

2. Ms. Pinkney, Billboard's director, says that the applicants did not provide their services in a proper manner, that they overcharged, and that they did not provide an agreed upon discount for promotional sunglasses Billboard provided to Hilltop. Ms. Pinkney also says that she should not be a party in her personal capacity as she entered the agreement on Billboard's behalf. Ms. Pinkney represents herself and Billboard.
3. Billboard's submissions are the same as Ms. Pinkney's although Billboard did not make submissions about whether Ms. Pinkney should be a party in her personal capacity.

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 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "it said, they said" scenario with both sides calling into

question the credibility of the other. In the circumstances of this dispute, 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
8. Billboard filed a counterclaim against the applicants for the value of the promotional sunglasses but then withdrew the counterclaim. Accordingly, I will not address the counterclaim in this decision.

ISSUES

9. The issues in this dispute are:
 - a. What were the terms of the parties' plumbing and electrical agreement and did any of the parties breach them?
 - b. If any of the parties breached the agreement, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicants must prove their claim. They bear the burden of proof on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. Ms. Pinkney submits that she should not be named in her personal capacity. The applicants did not provide submissions specifically disputing this although the evidence shows that the plumbing and electrical work was done at Ms. Pinkney's home. There was no formal contract signed. It is unclear on the evidence if Billboard does some work out of Ms. Pinkney's home. The applicants agreed to send the invoices to Billboard. Further, as explained below, part of the reason the applicants began to do work for Billboard was in exchange for promotional sunglasses that Billboard provided to Hilltop Plumbing. Therefore, I find the evidence does not establish that it was Ms. Pinkney in her personal capacity that entered into the contract for plumbing and electrical services. Therefore, she is not liable in her personal capacity and I dismiss the claims against her.

What were the terms of the parties' plumbing and electrical agreement and did any of the parties breach them?

12. It is undisputed that Billboard entered into an agreement for Hilltop Plumbing and Crescent Electric to provide plumbing and electrical services. Hilltop Plumbing and Crescent Electric did work at Ms. Pinkney's home on 6 occasions from June through August 2018.
13. I first note that the agreement was based on the applicants providing some of the services as payment for promotional sunglasses provided by Billboard. Billboard said that Hilltop had not credited the \$2,598.40 value of the sunglasses as a set-off against the plumbing and electrical services. To the extent the respondents say they

do not have to pay because the agreed promotional discount was not applied, I do not agree. The evidence shows that discount was applied.

14. I note that Billboard sent Hilltop Plumbing an email in August 2018 and said that it wanted the invoices to be billed to Billboard. The original invoices are not on file, but Hilltop Plumbing changed the billing information to Billboard and sent new copies of the invoices. Hilltop Plumbing also indicated that some of the invoices were for Crescent Electric as it provided the electrical services. Therefore, all parties accepted that Hilltop Plumbing would send Billboard invoices for plumbing and electrical services provided by Hilltop Plumbing and Crescent Electric.
15. The invoices set out the hourly rate for labour and then itemized the amount for parts. The invoices indicated that the hourly rate for the first hour was between \$110 and \$179, depending on the service, and then on average \$55 for additional half hours. Hilltop Plumbing's invoices totaled \$3,275.11. Crescent Electric's totaled \$1,027.48. Billboard did not take issue with the invoices. I find that the invoices set out the work to be done and the price. The invoices were sent to Ms. Pinkney and then again to Billboard. At no point while Hilltop Plumbing and Crescent Electric were performing the work did Billboard say that it did not agree to the hourly rate or the amount it was being charged for parts.
16. On September 4, 2018, Billboard sent an email saying it would send out payment for the invoices. By October 2018 the invoices were still not paid. Billboard asked for more specific information about how much time was spent on labour. Hilltop Plumbing provided Billboard a more detailed bill showing exactly how much time Hilltop Plumbing's employees spent on the projects. In November 2018 Billboard said it would pay 50% but the other half was still in dispute. Billboard did not specifically address the \$1,027.48 invoices from Crescent Electric.
17. Hilltop Plumbing subsequently reduced their invoices and with the deductions the total came to the \$3,042.01. This is the amount Hilltop Plumbing says is still outstanding for the plumbing services.

18. Billboard does not dispute that it received the plumbing and electric services. As noted above, it argues that the applicants did not provide their services in a good and workmanlike manner. Billboard does not say that any of the work is defective, it just argues it was charged too much.
19. The only evidence Billboard provided to prove that it was charged too much is handwritten notations on the invoices by B. B did not explain his qualifications and in fact asked that his name not be used and did not provide his last name. He also recommended Billboard check B's quotes for parts against those from Home Depot. B's evidence is based on what he normally charges which is \$89.00 per hour. B also said he marks up his parts by 25%. He then made notes on the invoices and indicated what he would have charged.
20. I place no reliance on B's opinion. He has not provided expert evidence and has not even identified who he is or his qualifications. Billboard provided no other evidence to show it was overcharged for the hourly rate, parts, or that the hours were inflated, or why it should not have to pay the invoices.
21. Billboard suggested that the applicants also breached the *Business Practices and Consumer Protection Act* because it overcharged it and the contract was unconscionable. Because I have found that the evidence does not show that Billboard was overcharged, I do not accept Billboard's submission on this point. Further, the tribunal cannot grant remedies for unconscionable acts.
22. Based on the evidence, I find that Billboard entered into an agreement with Hilltop Plumbing and Crescent Electric to provide the plumbing and electrical services set out in the invoices at the price for labour and parts set out in those invoices. Billboard has offered no explanation as to why it is not responsible for these costs aside from its opinion that it was charged too much.
23. Billboard does not specify how the work was defective in any way. I note that where defective work is alleged, the burden of proof is on the party asserting the defects. So, the respondent must prove on a balance of probabilities that the applicants

breached their agreement by failing to complete the work properly: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. I find that the applicants provided the services and there is no suggestion their work was actually defective. Accordingly, I find that Billboard owes Hilltop Plumbing \$3042.01 and Crescent Electric \$1027.48 for a total of \$4,069.49.

24. The applicants are also entitled to interest on the amount owing under the *Court Order Interest Act* (COIA) as of February 2, 2019, which is the date the applicants sent out the reduced invoices. This equals \$86.53.

TRIBUNAL FEES AND EXPENSES

25. 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. As the applicants were successful in their claim, they are entitled to have their \$150 tribunal fees reimbursed. There was no claim for expenses.

ORDERS

26. Within 30 days of this decision, I order the respondent Billboard to pay the applicants a total of \$4,306.02 broken down as follows:

- a. \$4,069.49 in debt,
- b. \$86.53 in pre-judgement interest under the COIA, and
- c. \$150.00 in tribunal fees.

27. The applicants are also entitled to post-judgement interest under the COIA.

28. I dismiss the claims against Ms. Pinkney.

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 passes. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Member

Kathleen Mell, Tribunal