



Civil Resolution Tribunal

Date Issued: June 10, 2020

File: SC-2019-007750

Type: Small Claims

Civil Resolution CRT

Indexed as: *Competition HVAC Inc. v. Prima Plumbing Ltd.*, 2020 BCCRT 642

B E T W E E N :

COMPETITION HVAC INC.

APPLICANT

A N D :

PRIMA PLUMBING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for HVAC services. The respondent, Prima Plumbing Ltd. (Prima Plumbing), hired the applicant, Competition HVAC Inc. (Competition HVAC), as a subcontractor to perform certain furnace and heat pump services,

between January 2018 and January 2019. Competition HVAC claims \$4,212.55, which it says is the total outstanding balance on 15 invoices.

2. Prima Plumbing disputes the majority of the claimed invoices, and says Competition HVAC's work was deficient. Prima Plumbing says that by agreement the cost of deficiencies was deducted from the submitted invoices. However, Prima Plumbing admits that about \$1,000 to \$2,000 remains payable to Competition HVAC.
3. Competition HVAC is represented by an employee. Prima Plumbing is represented by its owner and president, Frank Crescenzo.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution CRT Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. The CRT 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 CRT 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 CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are to what extent, if any, a) are there proven deficiencies in the applicant Competition HVAC's work, and b) is Competition HVAC entitled to payment of its outstanding invoices?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, an applicant bears the burden of proof, on a balance of probabilities. I have only referred to the evidence and submissions as necessary to give context to my decision.
10. As noted above, Competition HVAC worked as a sub-contractor for Prima Plumbing between January 2018 and January 2019. Competition HVAC's "standard labour rate" was \$70 per hour plus parts. Prima Plumbing does not object to the hourly rate, but says that for certain invoices, discussed below, Competition HVAC spent too much time. In this dispute, Competition HVAC claims for payment of 15 invoices, which total \$4,212.55.

Undisputed invoices

11. As referenced above, Prima Plumbing admitted in its Dispute Response that it still owed Competition HVAC "approximately \$1,000 to \$2,000", which amount had "not been finalized and paid", due to illness.
12. In its evidence, Prima Plumbing says work for 4 invoices (#1451, #1937, #2000, and #2083) was done satisfactorily, and that it only withheld payment pending the resolution of all of the outstanding claimed invoices. These invoices total \$661.50, and I order Prima Plumbing to pay Competition HVAC this amount.

Disputed invoices

13. Generally, Prima Plumbing argues that Competition HVAC's remaining 11 invoices are either inflated in terms of the number of hours reasonably billable or that Competition HVAC failed to diagnose and fix a problem on the first trip and so its

added trips should not be billable. Plus, Prima Plumbing says that for 3 of the 11 invoices Competition HVAC verbally agreed to credit them, on the basis the customers were unhappy with the work and Prima Plumbing allegedly had to send in another technician to complete the work.

14. First, Competition HVAC denies it offered a credit on any invoices. Prima Plumbing offered no contemporaneous business record of the alleged phone call and there is no evidence before me that Prima Plumbing challenged any of Competition HVAC's invoices before this CRT dispute began. I find Prima Plumbing has not proved Competition HVAC offered the alleged credits.
15. Second, the burden of proving a deficiency is on the party alleging it, which in this case is the respondent Prima Plumbing (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). Whether Competition HVAC's work was deficient or not requires expert evidence, because I find it is a technical matter outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). I find this need for expert evidence applies both to the quality of the work and the amount of time or visits in which the jobs should reasonably have been done. Yet, Prima Plumbing provided no objective expert evidence.
16. In particular, while I accept Mr. Crescenzo's qualifications as a certified gas fitter, I place little weight on his opinions about the quality of Competition HVAC's work or the reasonableness of its billings. I say this because Mr. Crescenzo is clearly an interested party, as he is Prima Plumbing's owner. There is also no explanation before me as to why Prima Plumbing did not obtain an expert opinion about Competition HVAC's work.
17. Third, Prima Plumbing submitted some invoices from other technicians who attended after Competition HVAC, although did not do so for all customers where Prima Plumbing says it had to send in another technician to complete Competition HVAC's work. In any event, based on the evidence before me none of those other technicians were critical of Competition HVAC's work, nor did they address the

reasonable amount of time a job should take or in how many visits to the customer's home.

18. I find that Prima Plumbing has not proved deficiencies in Competition HVAC's work, and this applies to the amount of time spent, the number of visits for a particular problem, and the quality of the work. Competition HVAC provided specific explanations about the time spent on the various jobs, which I find I do not need to detail here. I find the fact that a customer may be dissatisfied with their bill is not, on its own, a justification for Prima Plumbing to refuse to pay Competition HVAC for its work. I note there is nothing in Competition HVAC's invoices that on their face appears obviously unreasonable.
19. On June 3, July 2, and August 16, 2019, Competition HVAC emailed Prima Plumbing requesting payment of the above invoices. Prima Plumbing did not respond and there is no evidence before me that Prima Plumbing objected to any of the invoices or Competition HVAC's quality of work before this CRT proceeding started in November 2019. I find that if Competition HVAC's work had been as problematic as Prima Plumbing alleges, Prima Plumbing would likely have said something about it to Competition HVAC before this CRT dispute started. Instead, Prima Plumbing continued to offer Competition HVAC jobs after the allegedly deficient jobs had been attended by another technician. I find this supports a conclusion that Competition HVAC's work was not defective.
20. I find Competition HVAC is entitled to payment of the disputed invoices, which total \$3,551.05.

Conclusion, CRT fees and dispute-related expenses

21. In summary, I find that Competition HVAC is entitled to payment of the claimed \$4,212.55.
22. Competition HVAC does not claim contractual interest in this dispute. However, the *Court Order Interest Act* (COIA) applies to the CRT. Bearing in mind the CRT's mandate that includes proportionality, I find Competition HVAC is entitled to pre-

judgment interest under the COIA on the \$4,212.55 from July 26, 2018. I use this as a mid-range invoice due date I consider reasonable in all the circumstances, based on the 15 invoices between January 2018 and January 2019. This interest equals \$145.21.

23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their tribunal fees. I see no reason to deviate from that practice here. Competition HVAC is successful and so I find it is entitled to reimbursement of its \$175 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

24. Within 21 days of this decision, I order Prima Plumbing to pay Competition HVAC a total of \$4,532.76, broken down as follows:
 - a. \$4,212.55 in debt,
 - b. \$145.21 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
25. Competition HVAC is entitled to post-judgment interest, as applicable.
26. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to

consider waiving, suspending or extending the mandatory time to file a notice of objection to a small claims dispute.

27. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair