



Civil Resolution Tribunal

Date Issued: June 30, 2020

File: SC-2019-007022

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ange's Plumbing Ltd v. Longsky Investment Ltd. dba New Mandarin Seafood Restaurant*, 2020 BCCRT 721

BETWEEN:

ANGE'S PLUMBING LTD

APPLICANT

AND:

LONGSKY INVESTMENT LTD. DBA NEW MANDARIN SEAFOOD RESTAURANT and Dennis Shiu

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about plumbing installation services.

2. The applicant, Ange's Plumbing Ltd (APL), says it remains unpaid for hot water system repair work done for the respondent, Longsky Investment Ltd. dba New Mandarin Seafood Restaurant (Longsky). APL says it installed a hot water system according to specifications provided by the respondent mechanical engineer, Dennis Shiu, but that they were improper specifications requiring additional work to be done at Longsky's request to get the hot water working. APL seeks \$3,443.51, the amount it says is owed for the additional work.
3. Longsky and Mr. Shiu say APL incorrectly installed the wrong pump for the hot water system, which led to APL having to return to replace the pump. They say it was APL's own fault it had to return to do repairs, and therefore APL is not owed any money. Additionally, Mr. Shiu says his contract is only with Longsky, not with APL, and so he says he is not a proper party to the dispute.
4. APL and Longsky are represented by their respective owners. Mr. Shiu is self-represented.

JURISDICTION AND PROCEDURE

5. 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 Tribunal Act* (CRTA). The CRT'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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most

likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT'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 British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. In resolving this dispute the CRT may make one or more of the following orders, where permitted by 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.

ISSUE

9. The issue in this dispute is whether APL is owed \$3,443.51 for outstanding plumbing repair work.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant APL bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. It is undisputed that APL performed plumbing services for a new restaurant Longsky was opening, including the installation of a hot water system. As noted above, Mr. Shiu was the mechanical engineer hired by Longsky to review the work done.
12. APL says that its work was completed by April 5, 2019, but that two weeks later it was contacted by Longsky and informed the restaurant had no hot water. APL returned to site on May 14, 15 and 19, 2019, and says after it did an investigation and spoke to the equipment manufacturer, it determined the system was piped in correctly, but the incorrect pump was specified, as it was too small for the system. APL says it changed the pump to a larger one, and the hot water system was fixed. It now seeks payment of \$3,443.51, for its labour and materials to fix the system.
13. In contrast, Longsky and Mr. Shiu say APL was to install a Grundfos UP 15-18B5 pump and one instant hot water tank, as shown on the drawings which are in evidence. Longsky and Mr. Shiu say that the purpose of having both a pump and an instant hot water tank is so that the system is redundant and can continue operating in case one of the parts was to go down. Instead, they say APL installed two Armstrong Astro 220SSU pumps, which only provide 30% capacity of the specified Grundfos pump. When the hot water system did not work, Longsky says APL returned and replaced one of the two Armstrong pumps with a Grundfos UPS 26-99SFC, which is being used for both hot water circulation and for instant hot water. Longsky says that because one Grundfos pump is being used for both circulation and instant hot water, it loses the built-in redundancy and if something happens to the Grundfos pump, the restaurant's whole hot water supply will stop. It says APL should be responsible for their own expenses it incurred for replacing the pump because it is the one who originally installed the wrong pump.
14. APL did not dispute Longsky's submission that the wrong pump was initially installed. Instead, APL says that the Grundfos UP 15-18B5 pump was incorrectly specified, but does not say what pump it originally installed.

15. Given the evidence, it is unclear to me whether APL installed the specified pump but that that pump was incorrectly specified, or if APL installed an incorrect pump. I am unable to determine whether the additional work performed by APL was a result of its own error, or something else. As noted above, the burden is on APL to prove it is entitled to payment of its invoice. On balance, I find APL has not done so. Therefore, I dismiss APL's claims. As a result, I find I do not need to determine whether Mr. Shiu was properly named as a respondent.
16. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As APL was not successful, I find that it is not entitled to reimbursement of its paid tribunal fees. No dispute-related expenses were claimed.

ORDER

17. I order APL's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair