



Civil Resolution Tribunal

Date Issued: July 24, 2020

File: SC-2020-003690

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Lewko*, 2020 BCCRT 823

B E T W E E N :

ASLAN ELECTRICAL, PLUMBING, GASFITTING, REFRIGERATION &
SHEETMETAL SERVICES LTD.

APPLICANT

A N D :

SEAN LEWKO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for plumbing services. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), claims \$757.05, which it says the respondent, Sean Lewko, owes for drain augering services.
2. Mr. Lewko says Aslan's work was deficient and did not resolve the blockage. Mr. Lewko also says Aslan dirtied his home while doing the drain work. Mr. Lewko says his regular plumber later successfully augered the drain and so he should not have to pay for Aslan's unsuccessful work.
3. Aslan is represented by an employee and Mr. Lewko is self-represented.

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 Tribunal 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 tribunal considers appropriate.

ISSUE

8. Did Aslan provide reasonably professional plumbing services, and if so, to what extent is it entitled to payment of the claimed \$757.05 invoice?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Aslan bears the burden of proof, on a balance of probabilities. However, as discussed below, Mr. Lewko bears the burden of proving Aslan's work was deficient. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. Aslan claims \$757.05 for its June 30, 2019 invoice, which sets out \$20 for "shop supplies" and 3 hours of time at \$196 per hour, \$98 for "drainage machine", and tax, for a total of \$757.05. Mr. Lewko and NE (who I infer is Mr. Lewko's partner and is listed on the Work Order as the person who ordered the service) have not paid anything towards the invoice.
11. The evidence before me shows Aslan was called on Sunday June 30, 2019 to provide emergency drain-clearing services in Mr. Lewko's home. Nothing turns on the fact NE may have initially called Aslan, since Mr. Lewko signed Aslan's "Work Authorization Form". In that form, Mr. Lewko acknowledged multiple visits might be required and that he agreed to pay for time and materials used, including travel time. As it was evening, the form shows Aslan charged \$196 per hour, with a 2-hour minimum. The form also specifies a 19.6% contractual interest rate for late payments.

12. Mr. Lewko says he signed the Work Authorization Form under duress. Duress is a defence to the enforceability of a contract. To establish the defence of duress, Mr. Lewko must show Aslan exerted pressure to such a degree that his true consent did not exist. There must be an improper element to the pressure that can be described as “unfair, excessive or coercive” (*Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442 at paragraphs 52 to 54). The factors the courts (and the CRT) weigh include:
- a. Did the person object,
 - b. Did the person have an alternative course available, such as an adequate legal remedy,
 - c. Did the person receive independent advice, and
 - d. Did the person take steps to avoid the contract?
13. I find the fact that Mr. Lewko may have felt some pressure to get his drain cleared does not mean he was under duress in the legal sense. Apart from Mr. Lewko’s submission, there is no evidence before me he objected to Aslan’s terms at the time he signed the form. I do not find it unfair for Aslan to require its customer to agree to pay for its time and materials before starting work. I find Mr. Lewko could have refused Aslan’s services and waited until the next morning or looked for alternative emergency services, if he did not want to agree to Aslan’s terms. I find there was no duress.
14. So, since Mr. Lewko signed the Work Authorization Form, I find he is responsible to pay for Aslan’s services that were professionally done.
15. Aslan’s Work Order described the work done as “pull toilet auger 75’ obstruction” and that it recommended a camera snake, with further augering “sidewalk”. Aslan’s invoice similarly describes how it augered out to 75 feet and was unable to clear the line, and that the property line was at 55 feet and “blockage on city side”.

16. I turn then to Mr. Lewko's argument that Aslan's work was deficient. As set out in *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124, the burden of providing deficiencies is on the person alleging them, which here is Mr. Lewko. In particular, Mr. Lewko says that Aslan's technician JM dirtied his home, did not use the augering equipment properly, and inaccurately told him that the drain was on the "city's side" and so nothing could be done. Mr. Lewko argues Aslan essentially provided no service.
17. First, Mr. Lewko provided no supporting evidence about the alleged mess created by JM, such as photographs. I find the "mess" allegations unproven and I place no weight on them in deciding whether Aslan is entitled to payment.
18. Second, the parties disagree about whether Mr. Lewko agreed to have Aslan return or not after JM determined he could not clear the blockage in the late evening of June 30. I find nothing turns on this, as the issue is whether Aslan's efforts were deficient.
19. Mr. Lewko says after Aslan left he called the city and that it sent employees on Monday, July 1, 2019 to "clear their lines several times" based on Aslan's "inaccurate diagnostic". Bearing in mind July 1 is a statutory holiday, on Tuesday July 2, 2019, Mr. Lewko arranged for his regular plumber Aberdeen Plumbing & Heating Services Ltd. (Aberdeen), who was unavailable on the evening of June 30. Mr. Lewko submits that Aberdeen cleared the drain in "under 45 minutes".
20. Mr. Lewko submitted Aberdeen's July 2, 2019 invoice for \$362.25, which indicated 2 hours of labour plus supplies and tax. It is unclear to what extent, if any, this included travel time. Aberdeen's invoice's work description noted a camera was put down the drain, "went through toilet flange went to city sewer" and at 80 feet from the flange found a block of grease, which it released with the auger. However, notably, there is no criticism or any comment on Aslan's work. While Mr. Lewko submitted a copy of a drain cleaning machine's manual, there is no evidence before me that Mr. Lewko is a qualified plumber. I find there is also nothing apparent from the manual and the other evidence before me to show Aslan's work was deficient.

21. I find the question of whether Aslan's plumbing work was deficient requires expert evidence, as whether the blockage ought to have been removed by Aslan is outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). Mr. Lewko did not submit any expert evidence critical of Aslan's work. He also did not submit any evidence proving the city cleared their line several times on July 1, 2019. However, if the city did so that does not assist Mr. Lewko's position that Aslan's work was deficient. If anything, it shows that there may have been something on the city's side. Further, Aberdeen's invoice shows its auger went 80 feet to the city sewer, which was about 5 feet past Aslan's augering work, and Mr. Lewko did not contest the property line was at 55 feet.
22. Without expert opinion, I am unable to conclude that Aslan should have reached the 80 foot blockage on the evening of June 30, 2019 or that its billed time was unreasonably spent trying unsuccessfully to reach the blockage.
23. I turn then to the amount of Aslan's invoice. Aslan provided a GPS record to show JM's travel time and time at Mr. Lewko's home in support of its claim it reasonably spent 3 hours on June 30, 2019 between 8:49 p.m. and 11:56 p.m. I find there is nothing in evidence to show that this time spent is excessive, bearing in mind Aberdeen spent 2 hours to clear the blockage on July 2 and Aslan's billable time included JM's travel time. Mr. Lewko agreed to pay for Aslan's time and materials, even though it is undisputed Aslan was not able to clear the blockage. In support of this conclusion is the fact that the Work Authorization Form signed by Mr. Lewko expressly says that multiple visits may be required.
24. On balance, I find Aslan is entitled to payment of its \$757.05 invoice. As noted above, Aslan is entitled to 19.56% annual contractual interest, from June 30, 2019. This equals \$158.22.
25. Under section 49 of the CRTA and CRT rule 9.5, a successful party is generally entitled to the recovery of their tribunal fees. I see no reason to deviate from that here. I find Aslan is entitled to reimbursement of the \$125 it paid in CRT fees. No dispute-related expenses were claimed.

ORDERS

26. Within 30 days of this decision, I order Mr. Lewko to pay Aslan a total of \$1,040.27, broken down as follows:
- a. \$757.05 in debt,
 - b. \$158.22 in 19.56% annual contractual interest, and
 - c. \$125 in CRT fees.
27. Aslan is entitled to post-judgment interest, as applicable.
28. 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 period to file a Notice of Objection to a small claims dispute.

29. 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 BC Provincial Court.

Shelley Lopez, Vice Chair