



Civil Resolution Tribunal

Date Issued: September 1, 2020

File: SC-2020-003867

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Baumann v. Phil Ballam Plumbing & Heating Ltd.*, 2020 BCCRT 967

BETWEEN:

ZITA BAUMANN

APPLICANT

AND:

PHIL BALLAM PLUMBING & HEATING LTD.

RESPONDENT

AND:

ZITA BAUMANN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about plumbing services. The applicant and respondent by counterclaim, Zita Baumann, says she hired the respondent and applicant by counterclaim, Phil Ballam Plumbing & Heating Ltd. (PBPH), to replace a hot water tank, replace hoses on her washer and dryer, and clear a bathroom sink in her rental property. She says PBPH performed additional work she did not request and without her permission and invoiced her for it. She also says PBPH overcharged for the work done. She seeks an order that PBPH accept \$1,300 as full payment of its invoice, by which I infer that she seeks and order that PBPH's invoice be reduced to \$1,300 for materials and labour.
2. PBPH denies that it performed work without Ms. Baumann's consent, either direct or implied. It also denies it overcharged. In its counterclaim, PBPH seeks payment of \$2,238 for its full invoice.
3. Ms. Baumann is self-represented. PBPH is represented by an employee, PW.

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. 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.

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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is to what extent PBPH is entitled to the amount of its invoice.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Ms. Baumann bears the burden of proving her claims on a balance of probabilities. PBPH carries the same burden on its counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. Ms. Baumann initially contacted PBPH on April 27, 2020 to replace the hot water tank in the attic of her rental property. The parties agree that PBPH's worker went to Ms. Baumann's house the same day and informed Ms. Baumann that she needed a special hot water tank due to the size of the attic's opening. PBPH also says it estimated it would take 2 to 3 workers to move and install the hot water tank. The parties also agree that Ms. Baumann inquired about replacing the hoses on her stacked washer and dryer as well.
11. Ms. Baumann says she called and emailed PBPH several times for an estimate. In an April 30, 2020 email to PBPH, Ms. Baumann stated that she understood the hourly labour rate was \$106 per worker and it would take 2 to 3 workers one hour to complete the job. She also mentioned the hose replacement. She stated that she

expected the cost to be approximately \$1,300 and asked PBPH to let her know if this was incorrect. In response, PBPH emailed that the cost of the hot water tank was \$685 plus tax and that it would see her on Monday.

12. Ms. Baumann says PBPH agreed to \$1,300 for the hot water tank and hose replacement since it did not correct her April 30 email. PBPH denies that it agreed to this amount and says its office administrator, TP, spoke to Ms. Baumann several times and informed her repeatedly that PBPH could not provide a quote for the hot water tank due to its challenging location. PBPH says after receiving Ms. Baumann's April 30 email, TP again told her that PBPH could not provide a quote. It says it sent the April 30 email to Ms. Baumann because when Ms. Baumann spoke with TP, she asked TP to provide the cost of just the hot water tank. Ms. Baumann denies PBPH refused to provide a quote. She says she would not have proceeded with the job without one. She also says she had received a quote from another company, although she did not provide a copy.
13. TP's alleged statements to Ms. Baumann are hearsay. While the CRT is permitted to accept hearsay evidence, I place no weight on PBPH's hearsay evidence about what TP said, given there is no explanation before me about why PBPH did not obtain a statement from its employee. Also, PBPH did not provide any notes or emails confirming TP's conversations with Ms. Baumann.
14. Faced with conflicting evidence from the parties about whether a quote was provided, it is impossible to know what truly happened. As noted above, the burden is on Ms. Baumann to prove on a balance of probabilities that she received a quote from PBPH. I find she has not met that burden on this issue.
15. As for the April 30 email exchange, I find Ms. Baumann has failed to show, on a balance of probabilities that the parties had agreed to \$1,300 for replacing the hot water tank and the hoses. The party relying on a contract must prove on a balance of probabilities the terms of the contract that he or she seeks to enforce. Generally, silence does not amount to acceptance of an offer. Acceptance must be certain and unambiguous (see *Private Career Training Institutions Agency v. Prana Yoga*

Teacher College Inc., 2013 BCSC 17 at paragraph 48). I find PBPH did not indicate it was willing to perform the work for \$1,300 and so there was no agreement between the parties about Ms. Baumann's April 30 emailed estimate.

16. On May 4, 2020 Ms. Baumann contacted PBPH and asked for the master bathroom sink to also be cleared when the hot water tank was replaced. She says she also told PBPH to contact her before doing any additional work.
17. The parties agree PBPH replaced the hot water tank, added an expansion tank, installed a "kitchen machine", and serviced a total of 3 sinks. Neither party explained what a kitchen machine was. PBPH says it added an expansion tank to the hot water tank because it was required under the 2018 plumbing code section 2.6.1.11. However, since PBPH offered to remove the expansion tank after Ms. Baumann objected to the invoice, I do not accept that it was mandatory to install one. PBPH also says it cleared the 2 additional sinks because while the plumber was clearing the bathroom sink, the tenant asked him to clean the kitchen sink drain as well. It denies that Ms. Baumann asked to be contacted before performing extra work. PBPH did not explain why it installed a kitchen machine.
18. In its May 5 invoice, PBPH charged Ms. Baumann \$1,042 for labour, \$1,069.42 for materials, and \$20 for a sink machine, plus GST, for a total of \$2,238. According to the invoice, PBPH performed the following tasks:
 - a. Supplied and installed a 40 gallon hot water tank in the attic and removed trim at the attic access, and moved the old hot water tank,
 - b. Replaced hot and cold water pipes to the hot water tank,
 - c. Extended the "bx" cable to the hot water tank,
 - d. Added an expansion tank to the hot water tank,
 - e. Replaced the auto washer hoses,
 - f. Cleared 2 basins and the kitchen sink drain.

19. PBPH did not provide a breakdown of how much time was spent on each task.

Did PBPH perform work without Ms. Baumann's permission?

20. Section 12 of the *Business Practices and Consumer Protection Act* (BPCPA) states that a consumer has no legal obligation in respect of unsolicited services unless or until the consumer acknowledges, in writing, his or her intention to accept those services. Unsolicited services are defined as services provided to a consumer who did not request them. Under section 12 also reverses the onus of proof where it is alleged that the goods or services were unsolicited. This means that PBPH bears the burden of proof.

21. PBPH did not provide any evidence that Ms. Baumann asked it to install the expansion tank or a kitchen machine, or service 2 additional sinks. I find that Ms. Baumann did not provide written acknowledgement that she intended to accept those services, as referred to in section 12 of the BPCPA. As stated above, I find that PBPH provided unsolicited services to Ms. Baumann by doing so. I also find it was unreasonable for PBPH to perform work requested by the tenant without first confirming it with Ms. Baumann.

22. How much should PBPH have charged? In a May 7 email PBPH stated it charged \$1,042 for a total of 12 hours for labour (7 hours for the plumbers and 5 hours for an apprentice). The May 7 email also stated that PBPH charged \$675 for the hot water tank, \$77.47 for the expansion tank, \$188.98 for “piping, fittings and wiring”, and \$58 for hoses. As noted above, PBPH did not provide a breakdown of how much time was spent on each task or the cost of materials for each task in its email.

23. PBPH says it took 3 plumbers 4 hours to replace the hot water tank and washer and dryer hoses. Considering that PBPH also installed the expansion tank and the location of both appliances, on a judgement basis I reduce this to 3 hours for 3 workers. Also on a judgement basis, I find it took 1 worker 1 hour to clear the drain for 1 sink. Since PBPH charged different hourly rates for its plumbers and the

apprentice, I find on average PBPH charged \$86.83 per hour per worker for labour. I find PBPH is entitled to receive \$1,879.79, including GST, broken down as follows:

- a. \$868.30 plus GST for labour,
- b. \$675 plus GST for the hot water tank,
- c. \$188.98 plus GST for piping, fittings, and wiring,
- d. \$58 plus GST for braided hoses, and
- e. \$89.51 for GST.

24. From this I subtract Ms. Baumann's \$1,300 payment made to PBPH and I order Ms. Baumann to pay the balance of \$579.79. I also dismiss Ms. Baumann's claims.

25. PBPH claims interest at the rate of 1% per month. I have no evidence before me that the parties agreed to any contractual interest rate, and so I do not allow it. However, the *Court Order Interest Act* applies to the CRT. I find PBPH is entitled to pre-judgement interest on the amount owing from May 5, 2020, the date of its invoice to the date of this decision. This equals \$2.21.

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find PBPH is entitled to reimbursement of \$125 in CRT fees. It did not claim dispute related expenses. I dismiss Ms. Baumann's claims for CRT fees.

ORDERS

27. Within 14 days of the date of this order, I order Zita Baumann to pay Phil Ballam Plumbing & Heating Ltd. a total of \$707, broken down as follows:

- a. \$579.79 as debt,
- b. \$2.21 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125 in CRT fees.

28. PBPH is entitled to post-judgment interest, as applicable.
29. Ms. Baumann's claims are dismissed.
30. 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.
31. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
32. 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.

Rama Sood, Tribunal Member