



Civil Resolution Tribunal

Date Issued: September 17, 2020

File: SC-2020-004059

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Cole*, 2020 BCCRT 1047

B E T W E E N :

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

APPLICANT

A N D :

FRANK COLE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a claim about a plumbing invoice.

2. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), claims the respondent, Frank Cole, owes it \$166.53 plus contractual interest for plumbing services it performed in April 2019.
3. Mr. Cole denies the claim. He says that Aslan breached the contract by taking too long to perform the job and that it overcharged him.
4. Aslan is represented by a company officer or employee. Mr. Cole 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 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.
6. 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.
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. 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

9. The issue in this dispute is to what extent, if any, Mr. Cole owes Aslan the claimed \$166.53 plus interest for plumbing services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this the applicant Aslan must prove its claims on a balance of probabilities. I have read all the evidence but refer only to evidence I find relevant to provide context for my decision.
11. On April 6, 2019, the parties entered into a contract for Aslan to air pressurize Mr. Cole's water tank. The parties' signed work order and work authorization in evidence show that the parties agreed to a labour rate of \$147 per hour, plus extra for materials, mileage, travel time, and other items not relevant here. The work authorization states that Mr. Cole agreed to pay for time in performing the work from the time when the technician left the shop until their return to the shop, including any shop time, mobilization, demobilization, and necessary trips to obtain materials.
12. I find it was an implied term of the parties' contract that Aslan would perform the job competently.
13. There is no dispute that Aslan performed the services on April 6, 2019. Its labour included draining the water tank, adding air to the tank, removing and cleaning the filter, and turning the pump on and off.
14. The invoice in evidence shows that Aslan invoiced Mr. Cole a total of \$502.48. The invoiced charges show \$441 for labour (3 hours at \$147 per hour), \$27.55 for mileage (29 km at \$0.95 per km), \$10 for materials, and \$23.91 in GST. Mr. Cole disputed that he owed the total invoiced amount and paid Aslan \$335.95 by cheque dated April 29, 2019.
15. Mr. Cole says that Aslan breached the contract "by negligence" in taking too long to drain the tank. He says the Aslan technician used a bucket to drain the tank and

should have used a pressurized garden hose. Mr. Cole says that in the last 40 years other technicians performed the same service in less than 1 hour by using a garden hose. Aslan says the technician's own hose did not reach the drain in Mr. Cole's basement and its technician used his "due diligence" by removing the water with a bucket. Aslan says that Mr. Cole did not offer his own garden hose to its technician until after the job was done.

16. The burden to prove breach of contract for defective or substandard work is on the party who alleges the breach: see *Lund v. Appleford Building Company Ltd. Et al*, 2017 BCPC 91 at paragraph 124. Here I find the burden is on Mr. Cole.
17. Where the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of professional competence: see *Bergen v. Guliker*, 2015 BCCA 283. I find that a plumber's competence is outside the scope of common understanding. So, I find expert evidence is necessary and there is none here. There are also no statements or invoices from Mr. Cole's past technicians to support his assertions that other technicians used a hose to drain the water tank and took less time. I find that Mr. Cole has not proven that Aslan breached the contract by incompetence or by taking too long to perform the work.
18. I turn now to the \$502.48 invoice. I find on the evidence before me that Aslan's technician did not work the full 3 hours as billed. Based on Aslan's "Trackem" electronic GPS tracking sheet in evidence, I find its technician worked about 2.5 hours on the job. Specifically, the log states that its technician arrived at Aslan's shop at 1:58 pm from another location within the city. The tracking sheet shows that the technician was at the shop from 1:58 until 2:13, at which point the technician traveled to Mr. Cole's home. I find the technician arrived at Mr. Cole's home at 2:29, left at 4:12 pm, and was "in transit" until 4:24 pm.
19. Aslan does not explain why it charged Mr. Cole for 3 labour hours when its technician only worked about 2.5 hours. I infer that Aslan likely charged Mr. Cole for its technician's travel time from the other location and then rounded the labour

hours up to the nearest hour. It is undisputed that this other location was a personal residence.

20. I find that the signed work authorization permitted Aslan to charge Mr. Cole for its technician's travel time to and from its "shop". I find that Aslan was not permitted to charge the extra travel time from a personal residence.
21. Considering the specificity of the work authorization, I find its terms would have stated if any portion of labour was to be rounded up to the nearest hour. The work authorization states that Mr. Cole must to pay a minimum of 2 hours. Beyond that it says nothing about rounding up or payment for partial hours. I find that some reasonable rounding is implied but I find that Aslan has not proven that it was entitled to round up the labour hours by ½ hour as it did here.
22. I find on the GPS tracking sheet and work authorization, that Aslan was entitled to charge Mr. Cole a total of 2.5 hours. This equals \$385.88 (2.50 x \$147 = \$367.50, plus 18.38 GST).
23. Based on the GPS tracking sheet, I find that Aslan overcharged Mr. Cole for mileage. I find Aslan charged Mr. Cole an extra 4.6 km for travel from the personal residence to its shop. I agree with Mr. Cole that Aslan was not entitled to charge for this extra distance. I find that Aslan was only entitled to a total of 18.5 km for mileage. Aslan does not say how it determined the \$0.95 per km rate and the work authorization does not state the mileage rate. I find this rate is unsupported by the evidence and well over the 2019 Revenue Canada Rate of \$0.55 per km for vehicle expenses. On a judgement basis, I find Aslan was entitled to charge 18.5 km at \$0.55 per km. This equals \$10.69 (18.5 x 0.55 = \$10.18, plus \$0.51 GST).
24. As mentioned above, Aslan also charged Mr. Cole for materials. Mr. Cole says that Aslan did not use materials for the job. There are no specific materials listed on the invoice or described on the work order. As Aslan did not provide any information to support its material charge, I find that Aslan is not entitled to payment for materials.

25. I find that Mr. Cole owed Aslan a total of \$396.57 for the job. Since Mr. Cole already paid Aslan \$335.95, I find that Mr. Cole now owes a total of \$60.62 plus applicable interest.
26. In the Dispute Notice, Aslan claims contractual interest from May 3, 2019. I find the parties agreed to 19.6% annual interest on overdue accounts. I find that Mr. Cole owes Aslan a total of \$16.41 in interest on the \$60.62 debt, calculated from May 3, 2019 to the date of this decision.
27. 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 find that Aslan was partially successful on its claim and will allow \$62.50, which is half its tribunal fees. Aslan claimed no dispute-related expenses. Mr. Cole paid no CRT fees and claimed no dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order Mr. Cole to pay Aslan a total of \$139.53 broken down as follows:
 - a. \$60.62 in debt for the plumbing work,
 - b. \$16.41 in contractual interest at 19.6% annually, and
 - c. \$62.50 in CRT fees.
29. Aslan is entitled to post-judgment interest, as applicable.
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. 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.

31. 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.

Trisha Apland, Tribunal Member