



Civil Resolution Tribunal

Date Issued: September 18, 2020

File: SC-2020-004538

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Lemay*, 2020 BCCRT 1056

B E T W E E N :

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

APPLICANT

A N D :

DOREEN LEMAY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shannon Salter, Chair

INTRODUCTION

1. This dispute is about the payment of \$391.95 for plumbing services the applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), says it provided to the respondent, Doreen Lemay.

2. Ms. Lemay says she partially paid for Aslan's services, but does not owe the claimed \$391.95 because Aslan wrongly charged her for labour required to remove a stuck auger from a pipe.
3. Aslan is represented by R.H., its principal or employee. Ms. Lemay 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 some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate, which includes proportionality and the speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 whether Ms. Lemay owes Aslan \$391.95 for the claimed plumbing services.

EVIDENCE AND ANALYSIS

9. 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.
10. It is undisputed that on February 14, 2019, Ms. Lemay signed a work authorization agreeing to pay Aslan to unclog shared kitchen and bathroom plumbing in units 10 and 11 in her motel. In a separate work authorization, Ms. Lemay agreed to pay Aslan for plumbing services for unit 7, however that work is not before me in this dispute.
11. The parties also agree that Aslan's plumber unclogged the plumbing in units 10 and 11, but with considerable time spent removing an auger, which had become stuck. While Aslan's invoice provides no breakdown between time spent unclogging the piping and time spent removing the auger, I find that most of the 5.5 hours billed involved removing the stuck auger. I make this finding based on a work order in evidence that a second plumber billed 45 minutes of labour, which formed part of the 5.5 hours, plus mileage, to help the first plumber "get the auger out." I infer from this that the first plumber had already spent some time attempting to remove the auger himself, but needed help. Further, an email from a tenant in one of the units with clogged pipes stated that the first plumber spent most of the time attempting to remove the auger, rather than unclogging the pipes. This evidence is undisputed.

12. However, the issue before me is whether Ms. Lemay is nevertheless responsible for paying for Aslan's labour in removing the stuck auger.
13. The terms of Aslan's work authorization form are expansive and detailed. In signing the work authorization, Ms. Lemay agreed, among other things, to be personally liable for "[a]ll labor and parts used until such time as the equipment is repaired to my satisfaction or this contract is terminated." Further, she agreed to pay for time and materials to do the work, starting "when Aslan's technician leaves the shop until his return to the shop, and including any shop time, mobilization, demobilization and necessary trips to obtain materials."
14. I find the terms of the signed work authorization include charges for Aslan's time spent dislodging stuck equipment. I make this finding based on the broad language in the work authorization, as well as the reference to liability for time spent on "demobilization", which in my view includes the removal of equipment, including the stuck auger.
15. Ms. Lemay says she did not agree to pay for labour charges resulting from what she considers to be Aslan's plumber's poor judgment. She says she advised the plumber that he should auger the pipes from the wider outdoor main sewer line, as previous plumbers had done, rather than from the narrow pipe under an indoor sink. She says the plumber did not want to do this because it was cold outside. In response, Aslan points out that the clog was in the internal pipes, not the main sewer line. It argues that the plumber's judgment was that the work needed to be done on the inside pipe, and notes that Ms. Lemay is not a plumber. It also argues that stuck augers happen frequently while unclogging pipes, and are not the result of a plumber's negligence.
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. In this case, the burden is on Ms. Lemay.

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. For example, there are no statements from Ms. Lemay's previous plumbers stating that they would have augered the pipes through the main sewer line. I find that Ms. Lemay has not proved that Aslan breached the contract or was negligent by choosing the auger the inside pipe, or by spending several hours removing the stuck auger.
18. I also note that if Ms. Lemay was dissatisfied with the plumber's intended approach and refusal to follow her advice, her option was to terminate Aslan's services at that time, which she did not do.
19. Having found that Aslan's work dislodging the stuck auger was included in the signed work authorization, and that there was no breach of contract, I find that Ms. Lemay is responsible to pay Aslan for its work on units 10 and 11, invoiced on February 14, 2019. Aslan's invoice is \$669.90, and on March 25, 2019 Ms. Lemay paid \$278.25, leaving a \$391.65 balance. I find Lemay owes the \$391.65 balance. As set out in the work authorization, Aslan is entitled to 19.6% contractual interest on the \$391.65 balance, from the February 14, 2019 invoice date to the date of this decision. This equals \$122.25. I note that Aslan's claim was for \$391.95, and I assume the extra \$0.30 is a typographical error.
20. 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. As it was successful in its claim, I find Aslan is entitled to reimbursement of \$125 in CRT fees. No dispute-related expenses were claimed.

ORDERS

21. Within 30 days of the date of this order, I order Ms. Lemay to pay Aslan a total of \$638.90, broken down as follows:
 - a. \$391.65 in debt for plumbing services,
 - b. \$122.25 in contractual interest at 19.6% annually, and
 - c. \$125 in CRT fees.
22. Aslan is entitled to post-judgment interest, as applicable.
23. 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.
24. 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.

Shannon Salter, Chair