



Civil Resolution Tribunal

Date Issued: October 5, 2020

File: SC-2020-003928

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Preferred Restorations Ltd. v. Felker*, 2020 BCCRT 1121

BETWEEN:

PREFERRED RESTORATIONS LTD.

APPLICANT

AND:

ALLAN FELKER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for home repairs. The applicant, Preferred Restorations Ltd. (PRL), claims the respondent, Allan Felker, owes it \$4,438.01 for repairs PRL performed on Mr. Felker's home. PRL also claims \$250 for collections costs.

2. Mr. Felker does not directly deny owing PRL for home repairs, but says PRL agreed it would reduce the amount owing by \$500, to cover the cost of Mr. Felker's insurance deductible. He denies owing the full amount claimed, or any collections costs.
3. PRL is represented by an employee in this dispute. Mr. Felker is self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.

ISSUES

8. The issues in this dispute are:

- a. What amount does Mr. Felker owe PRL for the home repairs?
- b. Is Mr. Felker liable for PRL's collections costs, and if so, how much?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, PRL, as the applicant, must prove its claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

What amount does Mr. Felker owe PRL for the home repairs?

10. The undisputed evidence is that Mr. Felker's home suffered water damage. He made a claim under his home insurance, and was put in touch with PRL for repairs. PRL directly billed the insurer for the repair costs covered by insurance. Mr. Felker's insurance did not cover a \$500 deductible.
11. I find, and the parties do not deny, that PRL does business under the name BC Preferred Restoration. Mr. Felker signed a "Work Authorization Form" with BC Preferred Restoration on August 7, 2019. In it, Mr. Felker agreed to allow PRL into his home to perform repairs. The form also said that if the cost of PRL's repairs was not fully paid by insurance, Mr. Felker would assume sole responsibility for payment.
12. The parties agree that PRL "waived" Mr. Felker's \$500 insurance deductible at the time Mr. Felker signed the form. I infer this means they agreed that PRL would not charge Mr. Felker for the \$500 deductible that was not covered by his insurance.
13. PRL argues in its submissions that crediting Mr. Felker \$500 for the deductible was a "favour." PRL says that Mr. Felker has not shown good faith in their transaction, and should no longer be entitled to this "favour." I disagree that the \$500 credit was a non-binding favour. I find it was an oral term of the parties' contract, as discussed below, and is binding on PRL. Mr. Felker says, and I accept, that the \$500 credit was part of the reason he allowed PRL to do the repair work. Further, I find PRL has

not described the nature of Mr. Felker's alleged bad faith, or submitted evidence supporting any alleged bad faith.

14. Contracts may be written, oral, or a combination of written and oral terms. I find that the Work Authorization Form, and the parties' oral agreement that Mr. Felker would be credited \$500 toward any amount not paid by insurance, was a valid contract. I find that under the terms of that contract, if PRL was unable to obtain full payment for its repairs from the insurer, Mr. Felker was responsible for the unpaid amounts, less the \$500 deductible that PRL agreed to credit Mr. Felker.
15. Mr. Felker received a cheque from his insurer dated December 19, 2019, made out to both him and "BC Preferred Restorations" for \$3,938.01. The evidence confirms he deposited this cheque into his bank account on January 2, 2020. PRL then sent a January 27, 2020 invoice to Mr. Felker, that invoiced the insurer \$4,438.01. I find this amount equals the \$3,938.01 paid by the insurer plus the \$500 deductible. In a March 10, 2020 email, PRL noted that Mr. Felker had received payment from the insurer, and demanded that he pay \$4,438.01.
16. Mr. Felker has not paid PRL. He disagrees that he owes the \$500 deductible amount. However, he does not deny owing the remaining balance of \$3,938.01. On the evidence before me, I find that PRL agreed to credit Mr. Felker \$500 for his deductible. I also find that Mr. Felker is in possession of the insurer's \$3,938.01 payment for PRL's repair work, and the parties do not deny that the repair work was completed.
17. As a result, I find Mr. Felker is entitled to a \$500 credit toward amounts owed to PRL. I find Mr. Felker owes PRL \$3,938.01 for the repair work.

Is Mr. Felker liable for PRL's collections costs?

18. PRL claims \$250 for the cost of collecting the money owed by Mr. Felker. PRL says it spent 12 hours of time at \$25 per hour pursuing the claim, which I note totals \$300. However, PRL did not provide any evidence showing that it actually paid anyone, or owes anyone, an amount for collections activity, such as timesheets,

invoices, or receipts. PRL says the collections activities included demand emails and land title searches, but provided no evidence of the cost of any of those activities. PRL also says the collections activities included preparing this matter for the CRT, but I note that the CRT does not normally compensate parties for their time spent participating in CRT disputes.

19. I find PRL has not met its burden of proving that it incurred any collections costs related to the amount owed by Mr. Felker. I dismiss PRL's claim of \$250 for collections costs.

CRT FEES, EXPENSES, AND INTEREST

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 find PRL was substantially successful in this dispute. Even though PRL is only entitled to the \$3,938.01 Mr. Felker says he owed, Mr. Felker never paid that lesser amount, or reasonably explained why he failed to pay it. So, PRL had to file this CRT dispute to collect what Mr. Felker agreed he owed. I find PRL is entitled to reimbursement of \$175 for CRT fees. As noted above, I find it appropriate to follow the usual CRT practice in this dispute, of not compensating parties for their time spent participating in the CRT process. PRL claims no other dispute-related expenses, so I order no expense reimbursement.
21. Turning to interest, I find that the parties' contract provides for 1.5% monthly interest on unpaid amounts after 30 days. However, no equivalent annual interest rate was given. This means, under section 4 of the federal *Interest Act*, PRL may only get the maximum of 5% per year in contractual interest.
22. As noted, Mr. Felker did not deny owing PRL \$3,938.01, although he denied owing any more than that. Mr. Felker suggests he does not owe any interest, because the \$500 deductible credit dispute was PRL's mistake and they could have cleared things up earlier. However, he does not explain why he withheld the admitted

\$3,938.01 payment from PRL, particularly when he had already deposited the insurer's cheque for that amount into his own account.

23. Mr. Felker also says PRL allegedly delayed completing its restoration work and demanded 2% monthly interest instead of 1.5%, and the delays resulting from those disagreements were not Mr. Felker's fault so he should not owe interest. I find there is no evidence before me showing a demand for 2% monthly interest, or an unreasonable delay in PRL's work.
24. I find PRL is entitled to 5% annual interest on the \$3,938.01 owing, starting 30 days after the January 27, 2020 invoice for that amount, which is February 26, 2020, until the date of this decision. This equals \$120.30.

ORDERS

25. Within 30 days of the date of this order, I order Mr. Felker to pay PRL a total of \$4,233.31, broken down as follows:
 - a. \$3,938.01 in debt for home repairs,
 - b. \$120.30 in contractual interest on debt, and
 - c. \$175 in CRT fees.
26. PRL is entitled to post-judgment interest, as applicable.
27. 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.

28. 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.

Chad McCarthy, Tribunal Member