



Civil Resolution Tribunal

Date Issued: January 11, 2021

File: SC-2020-006700

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kitchen v. Faires*, 2021 BCCRT 30

B E T W E E N :

WILLIAM KITCHEN

APPLICANT

A N D :

BARRY FAIRES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about an unpaid invoice for work on a sailboat (boat).

2. The applicant, William Kitchen, investigated corrosion on the sail drive of a boat belonging to the respondent, Barry Faires. Mr. Kitchen seeks payment of his \$1,702.40 invoice.
3. Mr. Faires refuses to pay the invoice. He says he did not request or authorize the work. He also says the invoice unfairly applies Mr. Kitchen's hourly rate to work done by subcontractor or assistant.
4. Both parties are 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says 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, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

7. Section 42 of the CRTA says 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.

ISSUES

9. The issues in this dispute are:
 - a. To what extent, if any, did Mr. Faires authorize the work in Mr. Kitchen's July 2019 invoice?
 - b. What rate was applicable for Mr. Kitchen's sub-contractor or assistant's work?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil dispute, Mr. Kitchen must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

Background

11. The following facts are not in dispute. Mr. Kitchen has worked on Mr. Faires's boat, on and off, since at least 2017. Mr. Faires paid Mr. Kitchen's invoices until the July 2019 invoice, which covers work from October 2018 to February 2019.
12. In August 2018, Mr. Faires noticed a drag on the underside of his boat, and found the engine was overheating. At Mr. Faires's request, Mr. Kitchen checked the boat's engine but could not find any reason for the overheating.

13. The engine's cooling water comes through the sail drive, which cannot be serviced unless the boat is out of the water. The parties agreed to tow the boat to Race Rocks Yacht Services (Race Rocks) for further investigation. The boat also needed routine power-washing and painting, which was to be done at the same time.
14. On September 18, 2018, Mr. Kitchen and a "subcontractor", DN, towed Mr. Faires's boat from Bowen Island to Race Rocks. Mr. Kitchen reported to Mr. Faires that the sail drive was badly corroded by electrolysis and beyond repair. Due to the motor's age it was not possible to obtain a replacement sail drive, so Mr. Kitchen recommended replacing both the sail drive and the motor.
15. On September 21, 2018, Mr. Kitchen invoiced Mr. Faires just under \$5,000 for work that included testing, inspecting, towing, scraping, and painting. Although Mr. Kitchen says the charges were excessive for various reasons, he paid the invoice in full and it is not the subject of this dispute, so I have not addressed those issues here.
16. The next invoice is the disputed July 2019 invoice. It is for 16 hours of labour between October 2018 and January 2019, totaling \$1,702.40. The work is described later in this decision but generally relates to investigating the cause of the sail drive corrosion.

Was the investigative work authorized?

17. The parties have different recollections of the events leading to the July 2019 invoice.
18. Mr. Faires says he did not want to replace the motor and sail drive due to the expense, but he considered making an insurance claim. He says his insurer advised that he needed to provide proof of the cause of the damage. Mr. Faires says he told Mr. Kitchen in late 2018 that he had hired a qualified electrician, Trevor Gibbons, to examine the electrical system on the boat and provide an opinion about the cause of the sail drive's corrosion. He says Mr. Kitchen seemed upset that Mr. Faires had hired someone else to work on the boat, and purposely conducted his testing in January 2019 before Mr. Gibbons could, without Mr. Faires's authorization.

19. In contrast, Mr. Kitchen says Mr. Faires asked him to investigate the cause of the corrosion to substantiate his insurance claim. To complete this work, Mr. Kitchen purchased a galvanic test meter, the invoice for which is dated October 15, 2018. He did not charge Mr. Faires for the galvanic test meter. Mr. Kitchen says the parties verbally agreed that Mr. Kitchen would test the boat with the galvanic test meter. He says his testing was all completed before Mr. Gibbons was hired. Mr. Kitchen says once he completed his testing, he suggested Mr. Faires get a second opinion from a marine electrician before making the insurance claim.
20. It is undisputed that on February 1, 2019, Mr. Gibbons conducted corrosion testing on the boat. Mr. Faires says his insurer denied the claim due to a policy exclusion clause. Mr. Faires then found another mechanic who could build a new sail drive and provide an outboard motor, so he had his boat towed from Race Rocks.
21. Weighing the evidence, I find in favour of Mr. Kitchen. Mr. Faires' argument that the work was unauthorized hinges on acceptance that he told Mr. Kitchen in late 2018 that Mr. Gibbons was doing the testing. He does not explain why, if he hired Mr. Gibbons in late 2018, Mr. Gibbons did not attend until February 1, 2019. Mr. Faires did not submit any confirmation from Mr. Gibbons about when he was contacted or hired. I find it would have been relatively easy to obtain this information given Mr. Faires produced Mr. Gibbons's emailed responses to questions about other issues. I find it more likely that Mr. Faires hired Mr. Gibbons after Mr. Kitchen reported the results of his investigation and recommended a second opinion.
22. Mr. Faires argues that Mr. Kitchen's investigative work was done on Mr. Kitchen's own initiative to secure the insurance claim and resulting engine and sail drive repair work. He says the fact that Mr. Kitchen invoiced several months after the work, contrary to his usual practice, indicates that Mr. Kitchen hoped to bill the insurer rather than Mr. Faires. Mr. Faires says in June 2019 when he told Mr. Kitchen the insurance claim was rejected and he was going to have another mechanic do the repairs, Mr. Kitchen became angry and tried to recover his costs with the July 2019 invoice. I find

that Mr. Kitchen's delay in invoicing while Mr. Faires made an insurance claim does not necessarily mean Mr. Faires did not ask Mr. Kitchen to do the work.

23. Although Mr. Faires argues he would not have hired Mr. Kitchen, who is not a marine electrician, to do that work, the invoices show that Mr. Faires had hired Mr. Kitchen for electrical work in the past.
24. Although Mr. Faires says there was no quote for the work in the July 2019 invoice, there is no evidence that Mr. Kitchen ever produced a quote in the past. I find the parties' contracts were verbal agreements.
25. Because Mr. Faires argued that certain itemized charges were not agreed to, I next consider the itemized charges on the July 2019 invoice.
26. The July 2019 invoice reflects 16 hours of labour at \$95 per hour, plus taxes, for a total of \$1,702.40. I summarize the charges as follows:
 - a. October 5, 2018 – 4 hours inspecting electrical systems.
 - b. January 11, 2019 – 6 hours testing with a galvanic meter and other tools.
 - c. January 12, 2019 – 4 hours described as "repeat test from Jan 11".
 - d. Undated – 2 hours meeting marine electrician and checking for stray current.
27. For the October 5, 2018 work, Mr. Faires only says that he did not request that Mr. Kitchen remove the electrical panel. I find the invoice shows the work included more than removing the electrical panel. I find Mr. Faires must pay for the October 5 work.
28. Mr. Faires says the January 12, 2019 testing was unnecessary. The invoice says the January 12, 2019 work involved repeating the tests from January 11, 2019. Mr. Faires notes that the tests took a combined 10 hours, but only took Mr. Gibbons 2 hours to conduct tests he considered necessary. Mr. Kitchen has not explained why it was necessary to repeat the tests, or why it took him so much longer than Mr. Gibbons. Mr. Kitchen also does not say that Mr. Faires authorized a second day of testing. I

find, had Mr. Faires been asked, he likely would not have agreed to it. I find it appropriate to reduce the testing charge to 6 hours.

29. The undated work I infer took place on February 1, 2019, when Mr. Gibbons inspected the boat. Mr. Kitchen says he and DN met Mr. Gibbons at the marina and took him to Mr. Faires's boat. He says they assisted Mr. Gibbons by opening up areas for testing and assisting him with his readings, and loaning his galvanic meter.
30. Mr. Faires says Mr. Kitchen offered to meet the electrician and show him to the boat to save Mr. Faires a trip from the lower mainland. He says he did not ask Mr. Kitchen to otherwise assist Mr. Gibbons as all that was required was 5 minutes to meet Mr. Gibbons and direct him to the boat. He says if Mr. Kitchen stayed at the boat while Mr. Gibbons was conducting his investigation, it was out of Mr. Kitchen's own interest. Given the surrounding evidence, I agree. Mr. Gibbons said Mr. Kitchen was only there for part of the inspection and that Mr. Gibbons conducted his own testing and used his own tools. Mr. Gibbons said he did not recall borrowing a meter and said both the meters photographed in the report are his. As Mr. Gibbons has no interest in the outcome of this dispute, I prefer his evidence where it conflicts with Mr. Kitchen's. I also note DN's statement provides no evidence that he or Mr. Kitchen were involved, other than being present while Mr. Gibbons conducted his tests.
31. I find Mr. Kitchen voluntarily offered to meet Mr. Gibbons and show him to the boat, remained there out of interest, and provided no further benefit to Mr. Faires. I find Mr. Faires is not responsible for the 2 hours of labour charged.
32. In summary, I find Mr. Faires is responsible for the October 5 and January 11 work, amounting to 10 hours.

DN's rate

33. Mr. Faires says he only discovered in this CRT proceeding that Mr. Kitchen billed him for the work of a "sub-contractor", DN. Mr. Kitchen confirms that the July 2019 invoice includes 7 hours of DN's work (2 on October 5, 3 on January 11 and 2 on January

- 12). The invoice does not separate Mr. Kitchen's hours from DN's hours and bills all hours at \$95. DN's invoice shows that DN charged Mr. Kitchen \$50 per hour.
34. Mr. Faires says Mr. Kitchen was not hired as a general contractor who was permitted to subcontract work. He says he hired Mr. Kitchen alone to do the work.
35. Mr. Kitchen says at times he gets so busy he needs help. He says he introduced DN to Mr. Faires as someone working with him, and Mr. Faires had no issues. Mr. Kitchen says he was always present on the boat when DN was working. In that sense, I find Mr. Kitchen has not truly sub-contracted the work.
36. As there is no written contract, I must infer the terms of the parties' agreement based on the evidence before me. In doing so, it is not what the parties subjectively think that matters, but what an objective person in the parties' positions would have understood. Mr. Faires knew that DN helped Mr. Kitchen tow Mr. Faires's boat and do other work on the boat in September 2018, and he paid the September 21, 2018 invoice, which did not separate DN's hours and billed all hours at \$95 per hour. I therefore find an objective person in Mr. Faires's position would have understood that the applicable rate for DN's work on later invoices was also \$95 per hour.
37. In summary, I find Mr. Faires authorized and must pay for 10 hours of labour at \$95 plus tax. The total is \$1,064.
38. The *Court Order Interest Act* applies to the CRT. Mr. Kitchen is entitled to pre-judgment interest on the balance of the invoice from July 31, 2019, the approximate date of the invoice, to the date of this decision. This equals \$21.66.
39. 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. Mr. Kitchen was partially successful in this dispute. I find he is entitled to reimbursement of half his \$125 in CRT fees, or \$62.50. He did not claim any dispute-related expenses.

ORDERS

40. Within 14 days of the date of this order, I order Mr. Faires to pay Mr. Kitchen a total of \$1,148.16, broken down as follows:
- a. \$1,064.00 in debt for the July 2019 invoice,
 - b. \$21.66 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
41. Mr. Kitchen is entitled to post-judgment interest, as applicable.
42. 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.

43. 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.

Micah Carmody, Tribunal Member