



Civil Resolution Tribunal

Date Issued: March 5, 2021

File: SC-2020-007743

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bozzo v. Kuprowsky*, 2021 BCCRT 248

B E T W E E N :

ROY BOZZO

APPLICANT

A N D :

GEORGE KUPROWSKY

RESPONDENT

A N D :

ROY BOZZO

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about electrical services the applicant Roy Bozzo provided to the respondent George Kuprowsky, also known as Dr. Stefan Kuprowsky.
2. Mr. Bozzo says he has not been paid for the electrical services he provided to Dr. Kuprowsky. Mr. Bozzo seeks payment of \$2,365.32 for time and materials.
3. Dr. Kuprowsky says Mr. Bozzo overcharged him and used an apprentice who improperly wired a generator panel. Dr. Kuprowsky says he should not have to pay the full \$2,365.32 invoice.
4. Dr. Kuprowsky counterclaims, saying the improper wiring of the generator panel by Mr. Bozzo's apprentice damaged his appliances and electronics. Dr. Kuprowsky seeks \$2,500 to replace the damaged appliances and electronics.
5. Mr. Bozzo and Dr. Kuprowsky are both self-represented.

JURISDICTION AND PROCEDURE

6. 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 the dispute's parties that will likely continue after the CRT process has ended.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

8. 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.
9. 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.
10. During the evidence collection phase of the CRT dispute, Dr. Kuprowsky uploaded two Excel spreadsheets into the CRT's online portal. I was not able to open the files. Through the CRT's staff, I asked Dr. Kuprowsky to provide readable versions of both documents, which he did. It is unclear whether Mr. Bozzo has seen copies of these documents.
11. Typically, in these circumstances, I would give Mr. Bozzo an opportunity to provide submissions as a matter of procedural fairness. However, the two documents in question are just copies of Mr. Bozzo's estimate and invoice, which are already in evidence, and do not contain any new information. So, I find that there is no need to delay a final decision by giving Mr. Bozzo an opportunity to make submissions about the new documents.
12. In his counterclaim submissions, Dr. Kuprowsky raised an issue with alleged overcharges on a previous invoice issued by Mr. Bozzo. Dr. Kuprowsky did not include this claim in his counterclaim application. I decline to address this additional claim. This is because I find that it would be procedurally unfair to Mr. Bozzo to do so where Mr. Bozzo has had no proper opportunity to respond.

ISSUES

13. The issues in this dispute are:
 - a. To what extent, if any, Dr. Kuprowsky must pay Mr. Bozzo \$2,365.32 for the installation and wiring of a generator panel, and

- b. To what extent the installation and wiring of the generator panel damaged Dr. Kuprowsky's appliances and electronics, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Mr. Bozzo must prove his claim on a balance of probabilities, and Dr. Kuprowsky must prove his counterclaim to the same standard. However, as discussed below, the burden is on Dr. Kuprowsky to prove the deficiencies he alleges. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
15. The parties did not have a written agreement. I find they agreed that Mr. Bozzo would install a generator panel at Dr. Kuprowsky's home in exchange for payment for time and materials. As discussed below, I do not accept Dr. Kuprowsky's submission that this was a fixed price contract.
16. It is not disputed that Mr. Bozzo and his apprentice installed a generator panel at Dr. Kuprowsky's home on September 17, 2020.

The Contract and the Invoice

17. On September 25, 2020, Mr. Bozzo invoiced Dr. Kuprowsky \$2,365.32 for the installation. The invoice does not specify an interest rate for overdue payments. Dr. Kuprowsky did not pay the invoice.
18. Dr. Kuprowsky says that he should only have to pay Mr. Bozzo the estimate amount. He says the invoice is not accurate for the following reasons:
 - a. The invoice was twice as high as the estimate Mr. Bozzo provided,
 - b. Mr. Bozzo charged for his apprentice to help with the installation, which was unnecessary,
 - c. Mr. Bozzo did not provide a breakdown of the materials costs, and,

- d. The shop materials charge of \$55 was too high because auto repair shops typically charge \$5 to \$8 for shop materials.
19. Mr. Bozzo says his July 24, 2020 estimate was incomplete. He says the estimate made it clear that not all materials were included on the estimate. He also says the installation's final cost would depend on the generator panel selected by Dr. Kuprowsky and the number of circuits moved.
20. Mr. Bozzo's estimate includes an estimate for labour, the electrical permit and some potential material costs. It does not include an estimate of the electrical work's total cost. I find the estimate was not intended to reflect the installation's total cost.
21. I find that the electrical work's scope changed after Mr. Bozzo gave the estimate to Mr. Kuprowsky. While the parties disagree about the extent of the change, the evidence clearly shows that after the estimate was provided, a different generator panel was installed in a different location further away from the other electrical panels at Mr. Kuprowsky's home.
22. In any event, I find that this was not a fixed price contract. Mr. Bozzo's estimate makes that clear. In the circumstances before me, the material point is whether Mr. Bozzo's invoice reflects time and materials that were reasonably spent. I find the answer is yes. My reasons follow.
23. Mr. Bozzo says that an apprentice was required for the installation and he confirmed this with Dr. Kuprowsky. He says without an apprentice it would have taken much longer to complete the installation. In contrast, Mr. Kuprowsky submitted an August 26, 2020 email from Mr. Bozzo that indicated the generator panel would be installed by only Mr. Bozzo.
24. The parties' emails on September 10 and 11, 2020 show that Mr. Bozzo told Dr. Kuprowsky that he needed his apprentice to help install the generator panel in the new location to the right of the utility sink. In his email response confirming the installation date, Dr. Kuprowsky did not raise any concerns or object to Mr. Bozzo using his apprentice for the installation. I accept that it was reasonable to use an

apprentice for the installation after the scope of work changed. I agree with Mr. Bozzo that without his apprentice, the installation would have taken longer and Dr. Kuprowsky would have been charged Mr. Bozzo's more expensive rate.

25. Dr. Kuprowsky questions whether Mr. Bozzo and the apprentice charged for their lunch break, but otherwise does not dispute the time billed was spent. I accept that the labour charge of 9.5 hours for Mr. Bozzo at \$75.00 per hour, and 6.5 hours for the apprentice at \$50.00 per hour, is reasonable and accurate. Dr. Kuprowsky does not dispute Mr. Bozzo's \$75 hourly rate.
26. Mr. Bozzo said that his apprentice was a fourth-year apprentice who was close to completing his schooling and becoming a journeyman electrician. Contrary to Dr. Kuprowsky's assertion, I find that it was reasonable for Mr. Bozzo to charge \$50.00 per hour for his apprentice.
27. I accept Mr. Bozzo incurred \$1,160.19 in materials costs, which is not disputed and is supported by submitted receipts and calculations.
28. Mr. Bozzo says that the \$55 shop material charge covers incidentals and wear and tear on tools and equipment. Mr. Bozzo says that he charges this fee rather than marking up the actual materials to account for incidentals and wear and tear. Dr. Kuprowsky acknowledges that a shop materials charge is appropriate but says that it should only be \$5 to \$8, similar to what is charged at an auto repair shop. Neither party provided any evidence of the shop material charge other electricians use. On balance, given that Mr. Bozzo does not charge a mark-up on materials, I accept that it is reasonable for him to include a shop material charge of \$55 to cover incidentals and wear and tear on tools and equipment.
29. I do not accept Dr. Kuprowsky's submission that the electrical work is incomplete because Mr. Bozzo has not returned to Dr. Kuprowsky's residence to show him how the generator panel works. I find that the electrical work consisted of the installation and wiring of a generator panel. I accept that Mr. Bozzo and his apprentice completed the electrical work reflected in the invoice. I find that Mr. Bozzo is entitled to full

payment of his \$2,365.32 invoice, subject to any deductions for damage as discussed below.

Wiring Issue after Installation

30. Dr. Kuprowsky says he should not have to pay Mr. Bozzo's invoice because the completed electrical work was deficient and a wiring issue allegedly damaged his appliances and electronics, including: a DVD player, an electrical timer switch, a Maytag refrigerator, a Yamaha electric panel, a juicer, numerous lightbulbs, a Panasonic telephone, and an e-book reader.
31. Mr. Bozzo denies that he damaged the items. He says the wiring issue was minor and would not damage appliances or electronics.
32. The burden of proving deficiencies is on the person alleging them, here Dr. Kuprowsky: see *Lund v. Appleford*, 2017 BCPC 91.
33. On September 29, 2020, 12 days after the installation, Dr. Kuprowsky emailed Mr. Bozzo with concerns about the generator panel. He did not have water pressure and his kitchen lights, fridge and freezer were off. I accept this undisputed evidence.
34. Mr. Bozzo and his apprentice attended Dr. Kuprowsky's home on September 29, 2020 to investigate the power supply issues. Mr. Bozzo identified and fixed a wiring issue at no charge, which is undisputed.
35. Mr. Bozzo's apprentice gave a statement confirming that a wiring issue was identified and fixed on September 29, 2020. The apprentice indicated that they left Dr. Kuprowsky's home with Mr. Bozzo after power was fully restored and all appliances were working correctly.
36. I find that whether the electrical work was deficient or below industry standards is technical and beyond ordinary knowledge. In such cases, expert evidence is generally required to determine the appropriate standard of professional competence: see *Bergen v. Guliker*, 2015 BCCA 283.

37. Dr. Kuprowsky has not provided any expert evidence to prove that the electrical work performed by Mr. Bozzo and his apprentice was deficient or below industry standards. However, Mr. Bozzo admits that there was a minor wiring issue, and says it was fixed, which is not disputed. So, I find that the fixed deficiency does not warrant any deduction.
38. I am not prepared to rely on either party's explanation of the wiring issue. I find that expert evidence about the wiring issue and its consequences is required to determine whether the wiring issue caused damage to Dr. Kuprowsky's appliances and electronics. As noted, Dr. Kuprowsky has failed to provide any.
39. Dr. Kuprowsky submitted photographs of some electronics, including a DVD player and other items. Photographs of electronics are not sufficient evidence to prove electrical damage.
40. Dr. Kuprowsky submitted a statement from N.B., certifying that all electrical equipment listed in the "Itemized Letter of Electrical Equipment Failure" is non-functional and has been damaged due to the electrical failure at Dr. Kuprowsky's home.
41. N.B.'s statement does not meet the standard required for expert evidence under the CRT's rules. N.B. is identified by name only and does not list their qualifications. It is not possible to identify which electronics N.B. is referring to in the statement. The itemized letter of electrical equipment referred to in the statement is not included in the evidence submitted and the statement does not identify the cause of the damage to the electronics is the result of the wiring issue.
42. Given the above, I find it unnecessary to review Dr. Kuprowsky's \$2,500 damage claim in any detail. However, I note that Dr. Kuprowsky has not provided sufficient evidence to prove his claimed damages in any event.
43. Given the above, I dismiss Dr. Kuprowsky's counterclaim for damages.

44. In summary, I find that Mr. Bozzo has proven his claim and that Dr. Kuprowsky must pay Mr. Bozzo \$2,365.32 for electrical services provided.
45. The *Court Order Interest Act* applies to the CRT. Mr. Bozzo is entitled to pre-judgment interest on the \$2,365.32 award, calculated from September 25, 2020, the date Dr. Kuprowsky received the invoice, September 25, 2020, to the date of this decision. This equals \$4.71.

Tribunal Fees and Expenses

46. 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 Mr. Bozzo is entitled to reimbursement of \$125 in CRT fees. Mr. Bozzo did not submit any dispute-related expenses and so, I have awarded none. As Dr. Kuprowsky was unsuccessful, I dismiss his claim for reimbursement of CRT fees.

ORDERS

47. Within 14 days of the date of this order, I order George Kuprowsky to pay Roy Bozzo a total of \$2,495.03, broken down as follows:
 - a. \$2,365.32 in debt,
 - b. \$4.71 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
48. Dr. Kuprowsky's counterclaim is dismissed.
49. Mr. Bozzo is entitled to post-judgment interest, as applicable.
50. 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.

51. 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.

Leah Volkens, Tribunal Member