



# Civil Resolution Tribunal

Date Issued: March 8, 2021

File: SC-2020-007264

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Moran, 2021 BCCRT 257*

**B E T W E E N :**

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

**APPLICANT**

**A N D :**

**TERENCE L. MORAN and DOROTHEA STEIN**

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This dispute is about plumbing services.
2. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), performed plumbing work in a condominium rental suite owned

by the respondent, Terence L. Moran. The respondent, Dorothea Stein, was Mr. Moran's tenant at the time. Mr. Moran does not reside in the suite.

3. Aslan claims \$1,037.33 for the plumbing work, plus contractual interest at a rate of 19.6% per year.
4. Mr. Moran disputes that he owes the claimed amount. He alleges that Aslan used an unqualified technician, performed substandard work, and overcharged him.
5. Ms. Stein says she was only the tenant and does not owe Aslan anything for the plumbing work. Mr. Moran agrees and says if either respondent is found liable to pay, he will pay 100% of the ordered amount.
6. Aslan is represented by an employee. Mr. Moran and Ms. Stein are self-represented.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. The parties have not requested an oral hearing and I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. Bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
9. 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.

10. 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.
11. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.
12. The printed version of the Dispute Notice issued on October 22, 2020 incorrectly shows the applicant Aslan's name as "Aslan Electrical,Plumbing,Gasfitting,Refrigera Sheetmetal Services Ltd". Based on the BC Company Summary, Aslan's correct legal name, including the spacing is:

Aslan Electrical,Plumbing,Gasfitting,Refrigeration& Sheetmetal Services Ltd.

13. When the CRT issued the Dispute Notice, the end of the word "Refrigeration&" was cut off in Aslan's name due to an internal CRT system error. Given it was the CRT's error and the parties proceeded on the basis the correct legal name was used, I find it is appropriate to direct the use of Aslan's correct legal name in these proceedings. So, the style of cause above reflects Aslan's full spelling as it applied, even though the printed version of the Dispute Notice may have Aslan's name appear cut off.

## **ISSUES**

14. The issues in this dispute are
  - a. Is Ms. Stein responsible to pay for Aslan's plumbing work?
  - b. Did Aslan breach the plumbing contract by substandard work or by using an unqualified technician?

- c. What amount, if any, is Aslan entitled to for its plumbing services?

## **EVIDENCE AND ANALYSIS**

15. In a civil proceeding like this one, as the applicant Aslan must prove its claims on a balance of probabilities. I have read the parties' submissions, but only comment on the argument and evidence that I find relevant to provide context for my decision.
16. The following facts are not in dispute. Mr. Moran hired Aslan to perform plumbing work in his rental suite tenanted by Ms. Stein. On September 2, 2020, Aslan replaced the hot water tank, installed some connective piping, and replaced a shut-off valve at Mr. Moran's request. As Ms. Stein was on site, Aslan's technician had her sign Aslan's Work Authorization form and the work orders. After completing the work, Aslan invoiced Mr. Moran a total of \$1,567.58, plus GST. Mr. Moran paid Aslan \$530.25 on September 11, 2020. Aslan claims the outstanding \$1,037.33 invoice balance here.

### ***Claim Against Ms. Stein***

17. Although Aslan named Ms. Stein as a respondent, it did not explain its claim against her and had never invoiced her for its work. Based on the parties' submissions, I find Ms. Stein was not a party to the contract. I find the contract was entirely between Aslan and Mr. Moran.
18. The legal doctrine known as "privity of contract" means that a contract cannot give rights or impose obligations on persons who are not parties to the contract. As a non-party, I find Ms. Stein had no obligation to pay for Aslan's plumbing work. I also find Ms. Stein did not agree to pay because she signed Aslan's Work Authorization. No one argues that she did. I find Aslan has not proven that Ms. Stein is responsible to pay its invoice and so I dismiss Aslan's claim against Ms. Stein.

## ***Claim Against Mr. Moran***

### **Alleged Breach of Contract**

19. Mr. Moran argues that Aslan breached the contract by using an uncertified plumber and allegedly performing substandard work, which Aslan denies.
20. I find it was an implied term of the plumbing contract that Aslan would perform the contract in good faith and to a reasonably professional standard. I also find it was implied that Aslan's technician would be trained to competently perform the work.
21. Mr. Moran says the suite's strata corporation bylaws and the insurer required that the plumbing work be done by a "certified journeyman". It is undisputed that Aslan's technician did not have this specific certification and was trained in-house. However, I find no evidence that Aslan represented or implicitly held out that its technician would have the "journeyman" certification. There is also no supporting evidence that the strata or insurer required this certification or that it was required for this particular plumbing job. I find Aslan did not breach the contract because the plumber lacked "journeyman" certification.
22. The burden of proving breach of a plumbing contract for substandard work is on the party who alleges it, in this case, Mr. Moran (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124).
23. I find an assessment of whether Aslan's plumbing work fell below a professional standard is technical and outside the scope of common understanding. I find such an assessment would need an opinion from someone with expertise in the trade (see *Bergen v. Guliker*, 2015 BCCA 283).
24. Mr. Moran relies on a general manager's statement from "Brown Mechanical Service" that describes their discussion with Mr. Moran over Aslan's work. As the manager did not state their qualifications, I do not know if they are qualified to provide an opinion. For this reason, I find the manager's statement does not meet the requirements in CRT's rule 8.3 for expert evidence. The manager also does not say they inspected

Aslan's work in person and so, in the circumstances I find their statement unreliable. For these reasons, I have put no weight on the manager's statement.

25. There are no photographs or other documentary evidence showing any obvious defects in Aslan's work. There are also no records showing the work had to be redone by others. Absent an expert opinion critical of Aslan's work, I find Mr. Moran has not proven that Aslan's work was substandard. I find no negligence or any contractual breach.

### **How much must Mr. Moran pay Aslan for the plumbing job?**

26. The charges as set out in the September 2, 2020 invoice are as follows: labour \$490 (4.5 hours at \$98 and 1 hour at \$49), truck \$30, disposal \$49, electrical permit \$78.50, and materials \$845.43.
27. Starting with the labour charge, Mr. Moran says Aslan quoted 2 hours labour at \$98 per hour to install the hot water tank. He says Aslan did not tell him about the \$49 charge for an extra person. Aslan says it never provided a quote but agrees its hourly rate was \$98. Apart from the rate, I have insufficient evidence to prefer either party's assertion over the alleged quote.
28. Aslan says Mr. Moran is bound to pay its labour hours based on the terms in its Work Authorization. It argues that Ms. Stein signed the Work Authorization on Mr. Moran's behalf, as his agent. Mr. Moran disagrees.
29. The law of agency applies when one party (the principal) gives explicit or implicit authority to another party (the agent) to enter contracts with third parties on its behalf (see *De Cotiis v. Hothi*, 2019 BCCA 472 starting at paragraph 54).
30. Aslan did not provide Mr. Moran with a copy of the Work Authorization or tell him about the terms prior to starting the work. This is undisputed. There is also no evidence to suggest that Ms. Stein had express authority to agree to any terms of the plumbing contract on Mr. Moran's behalf. On Aslan's own submission, Aslan simply had Ms. Stein sign because she was on site. I find it was not reasonable for Aslan to

infer Ms. Stein had authority simply because she was on site at the time. I find Aslan has not proven that Ms. Stein signed the Work Authorization as Mr. Moran's agent. So, I find the contracting parties came to no agreement over the Work Authorization terms and its terms do not apply to this plumbing contract.

31. In the circumstances, I find it is appropriate to apply the legal principle of "*quantum meruit*", which means value for work performed. I find Aslan is entitled to payment for its reasonable time for performing the work.
32. Based on the technicians' time shown on GPS tracking sheets, I find the technician was at Mr. Moran's suite for about 3 hours and 15 minutes. The rest of the billed time was mostly for short trips for supplies and transit to and from the job. I find the multiple trips are excessive as they are not explained. I accept that Aslan is entitled to be paid its reasonable time to purchase supplies after assessing the work. Based on the GPS sheets, I find an additional 20 minutes to purchase supplies is reasonable.
33. Mr. Moran says \$98 per hour is too much because it is a "journeyman" rate. Again, the technician did not have this certification. However, there is no information on industry rates to find it was too much. As I find Mr. Moran agreed to pay this hourly rate, I find Aslan was reasonably entitled to charge it. I allow \$351.13 for 3 hours and 35 minutes in labour (3.58 hours x \$98).
34. As for the extra person, Aslan says its company policy requires a second set of hands whenever heavy or awkward objects are moved. However, Aslan did not support this assertion with any policy document. I find its assertion is also inconsistent with its technician having moved the new hot water tank into the suite without help. I find it is more likely that the second worker helped move the tank simply because they were on site, having undisputedly joined the technician for the next job. I find the extra labour charge unreasonable and I have not allowed it.
35. Next, I allow \$845.43 for the materials and \$30 for the truck fee because these charges are not disputed. However, I find Aslan is not entitled to the disposal or electrical permit fees. This is because I find Aslan did not tell Mr. Moran it would

charge for these items and Aslan provided no evidence, such as receipts or a copy of the permit, showing it incurred any costs for these items.

## Summary

36. Based on my findings above, I find Aslan was entitled to charge \$1,287.89 for the plumbing job. This is calculated as: \$351.13 in labour, \$845.43 in materials, \$30 for the truck fee, and \$61.33 in GST. Since Moran already paid \$530.25, I conclude that Mr. Moran must pay Aslan \$757.64, inclusive of tax.
37. I find the parties came to no agreement over interest and so, I find Aslan is not entitled to the claimed 19.6% in annual interest. I find the *Court Order Interest Act* (COIA) applies instead to this claim. I find Aslan is entitled to pre-judgment interest on the \$757.64 debt from October 8, 2020, the invoice due date, to the date of this decision. This equals \$1.48.
38. 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 Aslan was partially successful in its claims against Mr. Moran. I find Mr. Moran must reimburse Aslan \$62.50, which is ½ its paid CRT fees. None of the parties claimed dispute-related expenses.

## ORDERS

39. Within 30 days of the date of this order, I order Mr. Moran to pay Aslan a total of \$821.62 broken down as follows:
- a. \$757.64 in debt for plumbing services,
  - b. \$1.48 pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
40. Aslan is entitled to post-judgment interest, as applicable.



41. Aslan's claims against Ms. Stein are dismissed.
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.

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Trisha Apland, Tribunal Member