Civil Resolution Tribunal

Date Issued: May 21, 2021

File: SC-2021-000282

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Veridis Plumbing & Heating Ltd. v. Stainton-Mussio,* 2021 BCCRT 557

B E T W E E N :

VERIDIS PLUMBING & HEATING LTD.

APPLICANT

A N D :

PENELOPE STAINTON-MUSSIO

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Leah Volkers

INTRODUCTION

1. This dispute is about appliance installation services. The applicant, Veridis Plumbing & Heating Ltd. (Veridis) says the respondent, Penelope Stainton-Mussio, hired it to install a wine cooler, hood fan, and ice maker. The appliances were supplied by Trail

Appliances. Veridis says that it installed the hood fan and wine cooler but could not finish the ice maker installation due to missing parts. Veridis says it invoiced Mrs. Stainton-Mussio for its work but she refused to pay. Veridis claims $588.93 for its unpaid invoice and contractual interest.

2. Mrs. Stainton-Mussio disputes Veridis's claims. She says Veridis did not complete the installation. She also says she did not contract personally with Veridis and is not the proper respondent to this dispute. She says her husband, WM, is the registered owner of the strata lot (condo) where the installation took place, and she says he did not contract with Veridis either. Mrs. Stainton-Mussio says Veridis contracted with Trail Appliances for the installation. WM and Trail Appliances are not named parties in this dispute.

3. The applicant is represented by its general manager, CB. Mrs. Stainton-Mussio 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). 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.

5. 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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

6. 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

7. The issues in this dispute are:

   a. Whether Mrs. Stainton-Mussio is a proper party to this dispute, and if so,

   b. How much, if anything, does Mrs. Stainton-Mussio owe Veridis for its installation services.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, as the applicant Veridis must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

Is Mrs. Stainton-Mussio a proper party to this dispute?

9. As noted above, Veridis says it was hired by Mrs. Stainton-Mussio to install appliances during the condo renovation. Mrs. Stainton-Mussio disputes this and says she did not "personally contract" with Veridis. Mrs. Stainton-Mussio says she does not own the condo and no services were provided for her benefit. She says she did not act as an agent for the condo's owner, WM. She also says that the appliance provider, Trail Appliances, agreed to pay for the appliance installation. She says

Veridis has no legal standing to sue her personally and this dispute should be dismissed. For the following reasons, I find that Mrs. Stainton-Mussio hired Veridis and agreed to pay for the installation.

10. Contrary to Mrs. Stainton-Mussio's argument, I find that a party to a contract for services does not need to own the property where the services will be provided in order to be bound by the terms of the contract. While the evidence shows that Mrs. Stainton-Mussio was not the condo's registered owner, I find this fact to be irrelevant to the question of whether she entered into a contract with Veridis, and on what terms.

11. In evidence are three recorded phone calls between Veridis employees and Mrs. Stainton-Mussio. In a July 26, 2019 phone call, Mrs. Stainton-Mussio confirmed Veridis could bill her for the installation and provided her email address for billing. She also confirmed the condo's address and the items to be installed. She confirmed the installation in two subsequent phone calls with Veridis. I find this evidence shows that Mrs. Stainton-Mussio personally agreed to pay for the installation at the condo. I note that Mrs. Stainton-Mussio did not address these phone calls in her submissions.

12. Also in evidence are sworn affidavits from Mrs. Stainton-Mussio and her husband, WM. Both affidavits indicate that Mrs. Stainton-Mussio "helped with the design and picking out various appliances and furniture" for the condo but left the condo's financial transactions to WM. I find this evidence is inconsistent with the July 26, 2019 phone call where Mrs. Stainton-Mussio confirmed Veridis could bill her for the installation services and provided her own email address, rather than WM's, for billing.

13. As noted above, Mrs. Stainton-Mussio denied that she contracted with Veridis either personally or as WM's agent. However, the evidence supports a finding that Mrs. Stainton-Mussio contracted with Veridis in some capacity. Here, I have found that she contracted with Veridis personally. However, I note that even if Mrs. Stainton-Mussio contracted with Veridis as an agent for an undisclosed principal (WM), she would still be personally liable under the contract. The law of agency provides that when an agent acts with actual (or presumed) authority on behalf of an undisclosed principal

without disclosing they are acting as an agent, the contractor can sue the agent personally on the contract. When the contractor learns of the principal, it can choose whether to proceed against the agent or the principal (see: *Barnett v. Rademaker, et al*, 2004 BCSC 1060 at paragraph 28).

14. In their affidavits, both Mrs. Stainton-Mussio and WM also say that Trail Appliances agreed to cover the installation costs. WM says his "clear understanding was the installation cost was covered by Trail Appliances, especially given the tens of thousands of dollars I spent on high end appliances".

15. It is undisputed that Trail Appliances supplied the wine cooler, ice maker, and hood fan to be installed at the condo. However, Trail Appliances' emails in evidence do not indicate that it agreed to pay for the installation. A July 26, 2019 email from Trail Appliances to Veridis shows that it contacted Veridis to arrange installation and was "also creating a 3rd party request on the way". The customer listed in the email is "Penny Mussio". Two February 26, 2021 emails from Trail Appliances to Mrs. Stainton-Mussio indicate that "Veridis was referred to the Mussio's" and that "the second installer did not charge you for the icemaker installation because …he did a favor for me while he was in Nanaimo". I find these emails show that Trail Appliances referred Veridis to Mrs. Stainton-Mussio for the installation, but do not show that Trail Appliances agreed to pay for the installation. Again, I do not find Mrs. Stainton-Mussio's evidence on this point credible because she directly contradicts her own statements in the phone call with Veridis. In any event, even if Trail Appliances agreed to reimburse Mrs. Stainton-Mussio or WM for the installation, that is an issue between them and has no bearing on whether Veridis and Mrs. Stainton-Mussio had a contract. As noted above, Trail Appliances is not a party to this dispute.

16. On balance, I find Veridis has proven that the parties' entered into a verbal agreement for Veridis to complete the installation at Mrs. Stainton-Mussio's expense. Veridis's claim, in essence, is that Mrs. Stainton-Mussio breached the parties' agreement because she failed to pay for Veridis's work. As I find Mrs. Stainton-Mussio is a party

to the agreement, I find she is a proper party to this dispute. I will now turn to address the installation itself.

How much, if anything, does Mrs. Stainton-Mussio owe Veridis for its installation services?

17. It is undisputed that Veridis's general manager, CB, attended at the condo to install appliances. It is also undisputed that Veridis did not complete the installation. The parties' dispute the extent of the work that was completed.

18. Veridis says it installed the hood fan and plugged in the wine cooler but could not complete the icemaker installation due to missing parts. Veridis's invoice in evidence also notes that the missing "overlay hardware" for the wine cooler was not installed. Veridis says it requested the missing parts from Mrs. Stainton-Mussio's general contractor, RB, and planned to complete the installation when the parts were available. I find this submission is supported by text messages in evidence between Veridis and RB.

19. Mrs. Stainton-Mussio disputes this and says that "no work was done" at the condo. She says CB was overwhelmed and left after only a few minutes. I do not find this evidence credible. I say this because it is contradicted by Mrs. Stainton-Mussio's September 11 and 12, 2019 emails to Veridis where she acknowledges that some work was done, including that "He should have contacted me to follow up on the half job he did…" (my emphasis).

20. Mrs. Stainton-Mussio also relies on WM's affidavit and a statement from a cabinet contractor, CF. WM says he hired CF to install the condo cabinetry. WM says CF also installed the range hood fan. In CF's February 26, 2021 email statement in evidence, CF stated "I am dead certain that I installed the hood fan that day. This would be my practice in all installations as otherwise I could not install the remaining cabinetry properly…When I left the condominium on August 19, 2019, the range hood fan was definitely installed". WM says CF invoiced him for the cabinetry installation and installation of the range hood fan. In CF's email, CF says their invoice included

invoicing for the hood fan. However, CF's invoice only lists "supply & install cabinetry" and makes no reference to a hood fan installation.

21. CF's statement is contradicted by an email statement from RB. RB confirmed they were the general contractor for the condo renovation. RB said CF was not on site when the hood fan was installed, but did prepare the cabinetry for the hood fan, which "included drilling and cutting out the nec area for access to the rangehood ductwork" (reproduced as written). RB says CF was due later in the project to continue his work. While RB was not present when the hood fan was installed, RB recalled discussing the hood fan with CB and was always under the impression that it had been installed by Veridis. RB also confirmed that Veridis was unable to complete the icemaker installation because of missing parts, which RB said should have been supplied by Trail Appliances.

22. I find RB's statement more credible that CF's statement, because it is more consistent with the surrounding evidence, including Mrs. Stainton-Mussio's email that confirms Veridis completed some work at the condo. More importantly, I find CF's statement inconsistent with the July 26, 2019 recorded phone call where Mrs. Stainton-Mussio confirmed that Veridis would be installing the hood fan. I also note that in an August 28, 2019 recorded phone call from Veridis to Mrs. Stainton-Mussio confirming the installation date, Mrs. Stainton-Mussio did not tell Veridis that CF had already installed the hood fan. So, I accept Veridis's evidence that CB installed the hood fan, not CF.

23. Veridis sent an invoice on September 10, 2019 for $588.93. Veridis says it charged for the time spent on site, travel time, materials, and a small truck charge to cover consumables such as tape screws and other small items. I find the invoice reflects this and does not appear to charge for any aspects of the installation that were admittedly not completed.

24. While it is undisputed that Veridis did not complete the installation, Veridis is entitled to payment for the work performed. This is known in law as '*quantum meruit'*, or value for work done. On balance, I find Veridis has proven it completed the hood fan

installation and partially installed the wine cooler and icemaker. I find Veridis is entitled to payment of $588.93 for its unpaid invoice.

25. In her Dispute Response, Mrs. Stainton-Mussio said WM had to hire another plumber to complete the installation and paid for that work "at a significant cost". Mrs. Stainton-Mussio has not filed a counterclaim or provided any evidence to support this bare assertion, such as an invoice from another plumber. I note that WM's affidavit says that as part of his "deal" with Trail Appliances, he did not pay any service invoice for the plumber who later completed the installation, which is inconsistent with this alleged cost.

26. In the Dispute Notice, Veridis claims contractual interest at 26.82% per year. Although Veridis's invoice states that it would charge 26.82% interest on overdue invoices, I do not find that Mrs. Stainton-Mussio agreed to this. There is no contract in evidence and there is no other evidence that shows Mrs. Stainton-Mussio agreed to pay this rate of interest or any rate. Contractual interest must be agreed to and cannot unilaterally be imposed in a later invoice (see *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.,* 1999 BCCA 775). I dismiss the contractual interest claim.

27. As the parties did not agree on contractual interest, the *Court Order Interest Act* applies. Veridis is entitled to pre-judgment interest on its unpaid invoice from October 10, 2019, 30 days from its invoice date to the date of this decision. This equals $10.61.

28. 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 Veridis is entitled to reimbursement of $125 in CRT fees. Veridis did not claim any dispute-related expenses and so I award none.

ORDERS

29. Within 30 days of the date of this order, I order Mrs. Stainton-Mussio to pay Veridis a total of $724.54, broken down as follows:

a. $588.93 in debt,

b. $10.61 in pre-judgment interest under the *Court Order Interest Act*, and

c. $125 in CRT fees.

30. Veridis is entitled to post-judgment interest, as applicable.

31. 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.

32. 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 Volkers, Tribunal Member