



Civil Resolution Tribunal

Date Issued: June 14, 2021

File: SC-2021-000470

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Webster*, 2021 BCCRT 653

B E T W E E N :

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

APPLICANT

A N D :

HILDA WEBSTER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a partially paid invoice for installing a microwave.

2. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), installed an over-the-range microwave in the home of the respondent, Hilda Webster. Aslan invoiced \$501.90. Ms. Webster only paid \$250.
3. Aslan seeks payment of the \$251.90 balance, plus contractual interest. Ms. Webster says Aslan overcharged the time and materials, and charged for an electrical permit that was not required. She also says Aslan damaged her countertop, which she says will cost at least \$100 to repair. Ms. Webster did not file a counterclaim.
4. Aslan is represented by an employee or principal. Ms. Webster is represented by a family member, Barbara Webster-Evans, who is also a lawyer.

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.
9. Both parties submitted evidence after the evidence deadline. Both parties had the opportunity to comment on the other parties' late evidence and neither party objected to its admission. I find that neither party was prejudiced by late evidence, so I have considered all the evidence in my decision.

ISSUES

10. The issues in this dispute are:
 - a. Is Aslan entitled to payment of some or all of the \$251.90 invoice balance?
 - b. If so, is Ms. Webster entitled to any set off for the alleged countertop damage?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil dispute, Aslan must prove its claim on a balance of probabilities. Ms. Webster must prove her entitlement to set off to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. Ms. Webster called Aslan to have a microwave installed over her range, where her old microwave had been mounted. The evidence is unclear about whether the microwave included a ventilation system.

13. It is undisputed that Ms. Webster did not request, and Aslan did not provide, a quote or estimate for the installation.
14. On May 25, 2020, Ms. Webster signed Aslan's Work Authorization Form (WAF) and Aslan's 2 installers installed the microwave. I consider the WAF's specific terms as applicable to the itemized invoice below.
15. Aslan invoiced Ms. Webster \$501.90. The invoice included 3 hours of labour at \$98 per hour for a total of \$294, a \$30 truck charge, \$144 for an electrical permit, \$10 for shop supplies, and \$23.90 GST.
16. Ms. Webster says she received the invoice in October 2020 and immediately called Aslan to dispute the charges. She was unsuccessful in having the invoice reduced but paid Aslan \$250, which she says is fair given the work and some damage to her laminate countertop, discussed below.

Labour

17. As noted, Aslan charged Ms. Webster for 3 hours of labour at \$98 per hour. The invoice describes the work as removing the existing microwave/range hood, installing a new microwave/range hood, and testing operation.
18. In her Dispute Response, Ms. Webster said Aslan only provided 1 hour of work. In submissions she clarified that 2 installers each worked for 1 hour. In a written statement, Ms. Webster said when she asked 1 of the installers how long he would be billing for, he replied, "1 hour."
19. I find that nothing turns on this statement because Ms. Webster agreed under the WAF to pay for the installers' time from when they left the shop until they returned to the shop. I find one installer's billing time estimate does not override the WAF's clear terms, particularly where that estimate was made before the work was complete and the installer returned to Aslan's shop. As well, Ms. Webster does not dispute that 2 installers were required to lift and install the microwave. The WAF does not limit the number of installers, and says the hourly rate is "per man".

20. Ms. Webster says after she received the invoice she obtained quotes from others for the same work for \$159.99 and \$165. However, she did not submit copies of any written quotes in evidence, so there is no way for me to know the information or assumptions on which the alleged quotes are based. I put no weight on the alleged quotes.
21. Aslan submitted copies of 2 work orders that I infer are internal documents that were completed by each installer, similar to a timesheet. Both work orders indicate 1.5 hours of work. The work orders are supported by GPS records. The GPS records show that 1 vehicle left Aslan's shop at 12:27 p.m. and returned at 2:00 p.m., for a total of 1 hour and 33 minutes. The other vehicle left Aslan's shop at 12:28 p.m. and returned at 1:51 p.m., for a total of 1 hour and 23 minutes. I find it was reasonable for Aslan to round 2 hours and 56 minutes up to 3 hours. Although Ms. Webster says the installers likely ate lunch or talked on the phone, the GPS records do not show any stops other than at Ms. Webster's home. The installers could have sat in their vehicles near Ms. Webster's to eat their lunches, but I am not prepared to make that inference simply because the installation happened around the time when many people typically eat lunch. I find Aslan has proved its \$294 labour charge.

Electrical permit

22. Aslan charged Ms. Webster \$144 plus GST for an electrical permit. Aslan says the fee included an administration fee, but it does not say how much the administration fee was.
23. The WAF said charges for permits and administration fees may apply. There are no details provided, so I find it is an implied term of the contract that permits must be required and the charges must be reasonable.
24. Ms. Webster says there was no electrical work done, and the microwave was simply plugged into an existing outlet. Ms. Webster did not provide any independent evidence, such as a copy of the instruction manual or a photo of the microwave's power source. Similarly, Aslan did not provide any direct evidence from the installers

about the installation, the microwave's power source or the necessity for an electrical permit. The evidence on this point is inconclusive.

25. Aslan provided in evidence a copy of an electrical installation permit issued by Technical Safety BC. The permit is for Ms. Webster's residential address and identifies Aslan as the contractor. There is no fee indicated on the permit.
26. I find Aslan has not shown that the permit fee was a reasonably necessary fee. First, the permit is dated October 21, 2020, but the installation happened on May 25, 2020. Aslan does not explain the nearly 5-month delay in obtaining the permit.
27. Second, I find Aslan has not justified the permit fee because although it provided a copy of the permit, it did not provide any invoice or receipt for the permit fee. Nor did Aslan break down the administrative fee. As a result, I cannot determine whether the permit charge and administrative fee were reasonable.
28. I find Aslan has not supported the electrical permit charge with sufficient evidence to show that it was authorized under the WAF.

Truck charge and shop supplies

29. The WAF says charges may apply for vehicles and shop supplies. As the WAF does not provide for minimum charges or explain how these charges are calculated, I find it was an implied term of the contract that the charges reasonably reflect actual costs Aslan incurred.
30. Aslan charged \$30 for "truck". It is not disputed that Aslan's 2 installers attended in 2 vehicles. Ms. Webster says there is no reason that 2 vehicles were required. The GPS records show that the vehicles both left and returned to Aslan's shop within minutes of each other and neither made any stops other than at Ms. Webster's home. Aslan has not explained why it was necessary to use 2 vehicles. Inferring that the charge breaks down to \$15 per vehicle, I find Aslan is entitled to \$15 in vehicle charges for the reasonable use of 1 vehicle.

31. Aslan charged \$10 for shop supplies. Aslan says the shop supplies used in this job were company uniforms and paper for work orders and work authorization forms. Ms. Webster does not dispute that the installers wore company uniforms. However, uniforms are not single-use and the \$10 charge is not supported by any evidence. On a judgement basis, I find a reasonable shop supply charge for uniform cleaning and 3 sheets of paper is \$2.

Is Ms. Webster entitled to any set off?

32. Ms. Webster did not counterclaim for the damage to her countertop, but I find she is seeking a set-off of those damages against her debt for the invoice.

33. A set-off is a right existing between parties that owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue: *Black's Law Dictionary*, revised 4th edition, at paragraph 1538. When the desired set-off is closely enough connected with an applicant's claimed rights that it would be unjust to proceed without permitting a set-off, equitable set-off may be applied: *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34. I find that Ms. Webster's set-off claim is closely connected to the invoice claim because the alleged damage happened during the installation covered by the invoice. I find it would be unfair not to consider the claim for set-off in this dispute.

34. Ms. Webster provided a photo of her damaged laminate countertop below the microwave. Aslan denies causing the damage, but it did not provide a statement from either installer denying the damage. I understand that 1 installer retired, but Aslan did not explain why it did not obtain a statement from the other installer. I draw an adverse inference against Aslan for its failure to provide evidence from an installer without explanation, and find it likely the installer damaged the countertop.

35. Aslan says it is "convenient" that Ms. Webster alleged damage only after she was given an invoice she did not agree with. However, the invoice was sent in October 2020 and Ms. Webster mentioned the damage in Aslan's telephone recording from July 20, 2020.

36. I find Ms. Webster has proved that Aslan's installers caused the damage. I also find Ms. Webster has proved, with a quote from a laminate installer, that repairing the damage will cost at least \$100. I allow a set-off of \$100.

Summary

37. I have found Aslan entitled to \$294 for labour, \$15 for truck charges, and \$2 for shop supplies. This equals \$311, plus GST for a total of \$326.55. Ms. Webster paid \$250 toward the invoice, leaving a \$76.55 balance. She is entitled to a set-off of \$100, but did not file a counterclaim, so the net result is that Ms. Webster owes Aslan nothing.

Interest, CRT fees and expenses

38. Aslan claims contractual interest of 19.6%. I find that at the time Aslan invoiced Ms. Webster, she did not owe Aslan anything as the damage to her countertop was already done. I dismiss Aslan's claim for interest.

39. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Ms. Webster was successful but did not pay fees or claim expenses. I dismiss Aslan's claim for reimbursement of CRT fees.

ORDER

40. I dismiss Aslan's claims and this dispute.

Micah Carmody, Tribunal Member