



Civil Resolution Tribunal

Date Issued: July 5, 2021

File: SC-2020-007598

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Preferred Restorations Ltd. v. Tran*, 2021 BCCRT 734

B E T W E E N :

PREFERRED RESTORATIONS LTD.

APPLICANT

A N D :

MONG TRANG TRAN and MINH HAI DUONG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about restoration services. The applicant, Preferred Restorations Ltd. (Preferred), claims the respondent homeowners, Mong Trang Tran and Minh Hai Duong, hired it to perform restoration services to extract leaked sewage but did not pay for its services. Preferred claims \$2,167.85 in unpaid work and \$300 for collection costs.

2. The respondents deny Preferred's claim. They say that they did not hire Preferred or authorize its restoration work.
3. Preferred is represented by an employee. Mrs. Tran and Mr. Duong are 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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.
7. 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

8. The issues in this dispute are:
 - a. Did Mrs. Tran and Mr. Duong hire Preferred and authorize its services?
 - b. Was Mrs. Tran and Mr. Duong entitled to cancel the contract under the *Business Practices and Consumer Protection Act* (BPCPA)?
 - c. Must Mrs. Tran and Mr. Duong pay Preferred \$2,167.85 for unpaid restoration services?
 - d. Must Mrs. Tran and Mr. Duong pay Preferred \$300 for collection costs?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Preferred must prove its claim 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.
10. Preferred says the respondents hired it to extract leaked sewage from their home. Preferred provided an undated form, which Mrs. Tran admits signing, authorizing restoration work by "BC Preferred Restoration." Preferred also sent the respondents letters containing the name "BC Preferred Restoration." I infer that Preferred does business under this name and I find that the authorization form referred to Preferred.
11. The signed form authorized Preferred to proceed with all reasonable steps to preserve and restore the property to a pre-loss condition. The form also says that Mrs. Tran will pay the industry standard rates for work not covered by insurance. The respondents say that they did not make an insurance claim.
12. The respondents deny hiring Preferred. They say they hired Mr. Rooter, a plumbing business, and not Preferred. The respondents say they agreed to pay Mr. Rooter \$99 to assess the sewage leak, which would be applied towards any repair costs. The respondents say that Mr. Rooter told them that it was a minor problem that could be

fixed within an hour and Mr. Rooter quoted \$300 to \$400 for the plumbing repairs. The respondents say that they told Mr. Rooter that they needed a quote before performing restoration services. Mr. Rooter is not a party in this dispute.

13. The respondents say they did not authorize or receive a quote for restoration services. Further, the respondents say that they did not realize that Preferred was providing restoration services until the following day when the work was finished. Until that time, the respondents say that they thought that only Mr. Rooter worked on their property.
14. Preferred does not explain who contacted it or whether it has a business relationship with Mr. Rooter. However, Preferred says the respondents welcomed it into their home to extract the sewage that was all over the floor and on some walls. Preferred says that the respondents authorized its services by signing the work authorization. Preferred says it does not provide a quote or offer a set price for its services because it cannot determine how much work will be required in advance.
15. As noted, Mrs. Tran admits signing the authorization form but says that she did not know it was a binding agreement. She says a contractor told her that she needed to sign the form before they will enter the house. However, in general, a signature is persuasive evidence that a person intended to enter into a contract and I find that the work authorization form clearly says that it authorizes restoration services. Although the respondents say that they told Mr. Rooter that they would not authorize restoration work without a quote, there is no evidence before me that the respondents demanded a quote from Preferred. On balance, I find that Mrs. Tran hired Preferred to perform restoration services by signing the authorization form. Further, I find that by doing so, the authorization form became a contract and Mrs. Tran is bound by its terms.
16. However, Mr. Duong did not sign the contract and Preferred has not provided any evidence showing that Mrs. Tran signed the contract on Mr. Duong's behalf. Further, I find that Preferred has not proved that Mr. Duong had otherwise agreed to hire Preferred. So, I find that Mr. Duong is not bound by the contract. Since Preferred's

claim for unpaid work is based on the contract, I dismiss Preferred's claim against Mr. Duong.

BPCPA

17. I have considered whether the application of the BPCPA to this dispute. Since the parties did not contemplate the BPCPA in their submissions, I gave both parties an opportunity to provide further submissions. I reviewed both parties' submissions and neither party asserted that BPCPA applied in this dispute. The parties also provided additional unrelated submissions which were not considered because these were beyond the permitted scope of further submissions.
18. The BPCPA applies to consumer transactions, which is the supply of goods or services by a supplier for a consumer for purposes that are primarily personal, family, or household. In the respondents' initial submissions, they say the property "unit" was rented out. Without further explanation, which was not provided in the submissions, I am unable to conclude that Preferred's services was a consumer transaction under the BPCPA and I find that the respondents were not entitled to cancel the contract under the BPCPA.

Restoration fees

19. Preferred says it performed the restoration work, which was completed by the next day, except for equipment left to dry the property. The respondents do not dispute that the work was performed, though they claim they were not aware it was performed until it was complete. Preferred provided an August 7, 2021 invoice for \$2,167.85 to remove sewage and provide restoration services to the respondents' bathroom and an area under the stairs. Preferred provided multiple before and after photographs showing its work. Since Preferred has provided supporting photographs, and the respondents did not dispute that work was performed, I find that Preferred performed the work itemized in the invoice.
20. The contract says that Mrs. Tran will pay Preferred the industry standard rates for its services. Preferred sent the respondents a September 23, 2020 letter saying that its

invoiced charges were the standard industry rate, which the respondents did not dispute. Since this is not disputed, I find that Preferred charged standard industry rates as agreed under the contract and I find that Mrs. Tran owes Preferred the invoiced amount of \$2,167.85 for unpaid restoration work.

Collections costs

21. Preferred claims \$300 for collection costs. However, I find that Preferred has not proved that Mrs. Tran agreed to pay its collection costs under the contract. Further, Preferred did not provide any submissions explaining how it calculated this claim. Also, Preferred did not provide any evidence showing that it actually paid anyone, or owes anyone, an amount for collections activity, such as timesheets, invoices, or receipts. I find Preferred has not proved this claim that it incurred any collections costs and I dismiss this claim.

Interest, fees and expenses

22. Preferred claims contractual interest. The contract says interest is payable at 2% monthly on overdue amounts but it did not state an annual rate. Section 4 of the federal *Interest Act* says that when an interest rate is expressed as a rate for a period of less than a year, and the contract does not say the equivalent annual percentage rate, the maximum allowable interest is 5% per year. Therefore, I find that Preferred is entitled to contractual interest at 5% annually on the \$2,167.85 from August 7, 2020, the date of the invoice to the date of this decision. This totals \$98.59.

23. 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. Since Preferred was generally successful against Mrs. Tran, I find that Preferred is entitled to reimbursement of \$125 in CRT fees from Mrs. Tran. Preferred did not request reimbursement of dispute-related expenses. Mr. Duong did not request reimbursement of CRT fees or of dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order Mrs. Tran to pay Preferred a total of \$2,391.44, broken down as follows:
 - a. \$2,167.85 in debt for unpaid work,
 - b. \$98.59 in pre-judgment contractual interest, and
 - c. \$125 in CRT fees.
25. Preferred is entitled to post-judgment interest against Mrs. Tran, as applicable.
26. I dismiss Preferred's claim against Mr. Duong.
27. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.
28. 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.

Richard McAndrew, Tribunal Member