



Civil Resolution Tribunal

Date Issued: July 6, 2021

File: SC-2021-001341

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheet Metal Service Ltd. v. Hensley, 2021 BCCRT 740*

B E T W E E N :

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

APPLICANT

A N D :

MERNA HENSLEY

RESPONDENT

A N D :

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

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This is a dispute about electrical work. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration, & Sheetmetal Services Ltd. (Aslan), says that the respondent, Merna Hensley, has failed to pay its invoice. Aslan claims \$869.85 for its unpaid invoice, plus contractual interest at a rate of 19.6% per year.
2. Ms. Hensley says Aslan overcharged her. Ms. Hensley also says Aslan's work was "a mess and very displeasing to look at" and not up to "code". She says that Aslan removed a ceiling fan and refused to put it back up. She counterclaims for \$500 for the cost of replacing the ceiling fan, relocating wires, and punitive damages for her time and stress.
3. Aslan is represented by an employee, RH. Ms. Hensley 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. 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.
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. Whether Aslan overcharged Ms. Hensley, created a mess, and failed to reinstall a ceiling fan, and if so, whether Ms. Hensley is responsible for Aslan's invoice in the amount of \$869.85.
 - b. Whether Aslan is responsible for the \$500 in damages claimed by Ms. Hensley.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant (whether by claim or counterclaim) must prove their 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 Ms. Hensley responsible for Aslan's \$869.85 invoice?

10. It is undisputed that Aslan attended at Ms. Hensley's home to investigate a malfunctioning kitchen outlet in March 2020. Aslan says an employee attended on both March 11 and March 12, 2020 for 3.5 hours each day. Ms. Hensley says she called Aslan on March 11, 2020 but says that Aslan only attended at her home on March 12, 2020 for 3.5 hours.
11. In evidence are two work orders, both of which are dated March 11, 2020. However, the content of the work orders is not the same:

- a. The first work order identified the problem as “outlet in kitchen not working”, described the condition found as “broken neutral” and then noted the work done in the kitchen. On the form, an Aslan employee recorded 3.5 hours of work on March 11, 2020 and indicated that the work was not complete. Ms. Hensley did not sign this work order.
 - b. The second work order also identified the problem as “outlet in the kitchen not working” but then describes the condition found as “bedroom/bathroom devices also out” and then notes the work done, which includes replacing a fan “due to non supportive box”. On the form, an Aslan employee recorded 3.5 hours of work on March 12, 2020 and indicated that the work was complete. Ms. Hensley undisputedly signed this work order.
12. Also in evidence is a work authorization form signed by Ms. Hensley on March 12, 2020 where she authorized Aslan to perform electrical work for the “outlet in kitchen not working” (reproduced as written) at \$98 per hour, plus materials. This reflects the rates charged on the invoice, discussed below. While Ms. Hensley denies that Aslan attended on two days, she does not dispute that Aslan completed electrical work in the kitchen, bedroom, and bathroom in her house. I find nothing turns on the fact that Ms. Hensley signed the work authorization on March 12, 2020 instead of March 11, 2020, or the fact that the work authorization did not identify any work in the bedroom or bathroom. I say this because I find the parties had a verbal agreement that authorized Aslan to do the work in Ms. Hensley’s kitchen, bedroom and bathroom on both days, which is supported by the work orders described above.
13. Aslan’s invoice in evidence also describes work done in Ms. Hensley’s kitchen, bedroom, and bathroom on March 11 and 12, 2020. Finally, Aslan also submitted its GPS report for March 11 and 12, 2020, which shows that Aslan attended at Ms. Hensley’s home on both days. On balance, and considering all the evidence, I find Aslan has proven that it attended at Ms. Hensley’s home on both March 11, 2020 and March 12, 2020 to investigate and complete the electrical work listed in the two work

orders. Given my conclusions above, I also find that Aslan completed the seven hours of work listed in the two work orders and on the invoice.

14. Ms. Hensley also says she was charged \$78.50 for a permit when Aslan did not take out a permit for the work. Aslan says this was a clerical error and the permit has since been obtained. Ms. Hensley submitted the permit in evidence, and evidence that Aslan paid \$54 for the permit. Aslan did not provide any explanation for why it charged Ms. Hensley \$78.50 for the \$54 permit. So, I find the \$869.85 claimed must be reduced by \$25.73 to account for the \$24.50 overcharge for the permit, plus GST.
15. In total, I find Ms. Hensley must pay Aslan \$844.13. I now turn to address Ms. Hensley's counterclaim.

Is Aslan responsible for the \$500 in damages claimed by Ms. Hensley?

16. Ms. Hensley counterclaims for a total of \$500 in damages, which consists of \$227.65 to fix the wiring in her bedroom and re-install the ceiling fan, plus punitive damages. She says she claims punitive damages because she had to start taking medication as a result of the stress of dealing with "this issue".
17. Ms. Hensley provided an estimate from another electrical company for \$227.65 to hide the wiring on the ceiling and re-install the ceiling fan. The estimate includes installing additional support to re-install a ceiling fan. Ms. Hensley also submitted photographs in evidence that show a light fixture on the ceiling, and covered wires attached to the ceiling.
18. Ms. Hensley says Aslan removed the ceiling fan in the bedroom and refused to replace it, stating that it was too unstable. Ms. Hensley also said that Aslan "created an unsightly mess" with the staples and wire coming from the light to the main power box in the bedroom. Aslan says that its employee went over the option of concealing the exposed wiring on the ceiling with a mold at the time the work was done, but Ms. Hensley chose not to do so. Aslan does not dispute that it did not replace the ceiling fan, but says Ms. Hensley agreed to the solution proposed by Aslan when the work

was done. The invoice and work order in evidence indicate that the ceiling fan was replaced with a light fixture.

19. I find I am left with an evidentiary tie. Aslan says Ms. Hensley agreed to the exposed wiring on the ceiling and a light fixture in place of the ceiling fan, Ms. Hensley says she did not. Ms. Hensley has not provided any objective evidence that Aslan was responsible for covering the ceiling wiring or reinstalling the ceiling fan. She also did not provide any expert opinion evidence that reinstalling the ceiling fan was possible. As the applicant by counterclaim, Ms. Hensley bears the burden of proving her claims on a balance of probabilities. Here, I find she has not met her burden. So, I dismiss her counterclaim for \$500.
20. Given that I have found Ms. Hensley did not meet her burden of proving her counterclaim against Aslan for the alleged damage, I would find she is not entitled to punitive damages. However, even if Ms. Hensley had proven her counterclaim against Aslan, I find she would not be entitled to punitive damages in any event. Punitive damages are to punish a “morally culpable” party and are usually granted only for malicious and outrageous acts: see *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paragraphs 62 and 68 and *Chalmers v. AMO Canada Company*, 2010 BCCA 560 at paragraph 29. Punitive damages should be resorted to in only exceptional cases and with restraint: see *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at paragraph 69. Here, I find there is no evidence to support a punitive damages claim.

Interest, CRT fees, and expenses

21. Aslan claims contractual interest at a rate of 19.6% per year. I find the parties agreed to this when Ms. Hensley signed the work authorization form on March 12, 2021, the second day Aslan attended at her home to perform the electrical work. Aslan claims contractual interest from April 12, 2021 to the date of this decision. However, Ms. Hensley says she did not receive Aslan’s invoice until August 2020. Aslan did not dispute this. So, I find Ms. Hensley must pay contractual interest on \$844.13, from August 12, 2020, which I find is reasonable in the circumstances, to the date of this decision. This interest totals \$149.13.

22. 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 is entitled to reimbursement of \$125 in CRT fees. Aslan did not claim any dispute-related expenses, and so I award none. As Ms. Hensley was unsuccessful in her counterclaim, I dismiss her fee claim.

ORDERS

23. Within 30 days of the date of this order, I order Ms. Hensley to pay Aslan a total of \$1,118.26, broken down as follows:

- a. \$844.13 in debt for Aslan's invoice,
- b. \$149.13 in contractual interest, and
- c. \$125 in CRT fees.

24. Aslan is entitled to post-judgment interest, as applicable.

25. I dismiss Ms. Hensley's counterclaim.

26. 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.

27. 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