



Civil Resolution Tribunal

Date Issued: August 4, 2021

File: SC-2021-001914

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Clemens*, 2021 BCCRT 848

B E T W E E N :

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

APPLICANT

A N D :

WENDY CLEMENS

RESPONDENT

A N D :

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

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), installed new bathroom fixtures for the respondent, Wendy Clemens. Mrs. Clemens refuses to pay Aslan's \$1,565.78 invoice because she says that Aslan negligently installed the toilet. Aslan asks for an order that Mrs. Clemens pay the outstanding \$1,565.78 invoice.
2. Mrs. Clemens says that after Aslan's installation there was a slow leak from the toilet that caused significant damage to her home. She counterclaims for \$1,000 for her insurance deductible, \$1,000 to replace a love seat, and \$2,000 for stress. Aslan says that the toilet was installed correctly. Aslan also says that its insurance will cover the deductible.
3. Aslan is represented by an employee. Mrs. Clemens 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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did Aslan negligently install the toilet?
 - b. If so, what remedy is appropriate?
 - c. Does Mrs. Clemens need to pay Aslan's outstanding invoice?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Aslan as the applicant must prove its claims on a balance of probabilities. Mrs. Clemens must prove her claims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. In late May 2020, Mrs. Clemens hired Aslan to install a new bathtub, toilet, sink and faucet in an upstairs bathroom in her home. Two Aslan employees worked on the installation over several days, completing the work on May 26, 2020.
11. In late January 2021, Mrs. Clemens says she noticed discolouration and moisture on her ceiling in the main floor. She reported the problem to her insurer, who sent a restoration contractor to assess the situation. The restoration contractor opened up

the ceiling and discovered extensive water damage, including mold. Mrs. Clemens' insurer remediated the mold, repaired the water damage, and restored the bathroom.

12. Aslan sent Mrs. Clemens an invoice for \$1,565.78 on February 18, 2021. Aslan does not explain the delay in providing the invoice. The invoice includes charges for some parts but not for the fixtures themselves, so I infer that Mrs. Clemens bought the fixtures separately. As mentioned above, Mrs. Clemens has refused to pay the invoice.
13. Mrs. Clemens says that Aslan improperly installed the toilet and caused the damage to her home. She relies on a report from the plumber her insurer hired as part of the restoration, Logan Owen, from North Okanagan Plumbing & Heating Ltd. While Mrs. Clemens does not say this, I infer that she wants to rely on Logan Owen's report as expert evidence because they provide an opinion about what caused the leak, which I find is outside the common knowledge of an ordinary person.
14. CRT rule 8.2(2) requires an expert to provide their qualifications in a written expert report. There is no evidence of Logan Owen's qualifications. However, CRT rule 1.2(2) allows me to waive the application of a rule to facilitate the fair resolution of a dispute. Bearing this in mind, and the CRT's mandate for flexibility, I accept Logan Owen's report as expert evidence under the CRT's rules despite the lack of direct evidence about their qualifications, for 2 reasons. First, Mrs. Clemens' insurer's adjuster hired Logan Owen, who prepared their report to help the insurer diagnose and repair the damage. Given the nature of an insurance adjuster's profession and expertise, I find it unlikely that they would have hired an unqualified person for this task. Second, Aslan did not dispute Logan Owen's qualifications.
15. Logan Owen said that the installer, who I find was Aslan, added an additional flange to the original toilet flange. Logan Owen said that the installer did not properly seal these surfaces, so water escaped every time the toilet flushed.

16. Aslan says that its technician installed the toilet properly. However, Aslan did not provide any evidence from the 2 installers, respond to Logan Owen's evidence, or say anything about what caused the leak.
17. On balance, I find that Mrs. Clemens has proven that Aslan's employees negligently installed the toilet. I find that this faulty installation caused the leak, which damaged Mrs. Clemens' home. I find that Logan Owen's explanation is consistent with the fact that the damage was not apparent until several months after Aslan installed the toilet. This is because there was only a leak when the toilet flushed, not a continuous leak. I turn then to Mrs. Clemens' damages.
18. Mrs. Clemens says that she paid her insurer a \$1,000 deductible. Aslan does not dispute this but says that its insurance would cover the deductible. Mrs. Clemens says that Aslan or its insurer have not refunded her deductible. The only evidence that Aslan has provided about this issue is a statement from its owner, who said that their insurance broker said that Mrs. Clemens would not have to pay the deductible. There is no objective evidence, such as correspondence with Aslan's insurer or insurance broker, to support this statement. While the CRT can accept hearsay evidence, I find that this evidence is not enough to prove that Mrs. Clemens has been or will be reimbursed the deductible. I find that Mrs. Clemens has paid the \$1,000 deductible and that Aslan has not reimbursed her, either directly or through its insurer. I therefore find that Aslan must pay Mrs. Clemens' \$1,000 for the deductible.
19. As for the love seat, Mrs. Clemens says that the leak damaged a sofa, which her insurance paid to replace. She says that she also got rid of a matching loveseat because they were a set, which her insurance did not cover. There is no evidence that the loveseat was damaged. In any event, Mrs. Clemens provided no evidence about the value of the loveseat or the cost of a replacement. I find that she has not proven this claim and I dismiss it on that basis.
20. As for Mrs. Clemens' claim for \$2,000 for stress, she says that the repair work was extensive and chaotic, which I accept was likely true. She says that she has an underlying anxiety disorder and had to increase her blood pressure medication and

start taking stomach medication because of the stress. However, there is no medical evidence to support her claims, which I find is required to prove a claim for mental distress (see *Lau v. Royal Bank of Canada*, 2017 BCCA 253).

21. I note that Mrs. Clemens said in her reply submissions that she could provide medical evidence “if required”. Under the CRT’s rules, Mrs. Clemens was required to provide all relevant evidence, including medical evidence, at the time evidence was collected from the parties. I decided not to ask Mrs. Clemens for more evidence because it would delay the conclusion of this dispute. So, while I accept that the restoration process was stressful and unpleasant, I find she has not proven this claim, so I dismiss it.
22. What about Aslan’s invoice? Aslan argues that Mrs. Clemens would effectively get a free bathroom if she does not pay Aslan because her insurance paid to repair the damage. I disagree. I find that this would give Aslan the benefit of Mrs. Clemens’ insurance. I also find that the contractors who repaired the damage had to redo all the work Aslan had done. In other words, I find that there is no evidence that Mrs. Clemens retained any value from Aslan’s work, so I find that Aslan is not entitled to collect anything. I dismiss Aslan’s claims.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Mrs. Clemens is entitled to pre-judgment interest on the deductible. There is no evidence about when she paid it, so I award interest from March 19, 2021, the date she filed her counterclaim, to the date of this decision. This equals \$1.70.
24. 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. Mrs. Clemens was partially successful in her counterclaim, so I find she is entitled to reimbursement of half of her \$125 in CRT fees, which is \$67.50. Aslan was unsuccessful in its claim for payment of its invoice, so I dismiss its claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order Aslan to pay Mrs. Clemens a total of \$1,069.20, broken down as follows:
 - a. \$1,000 in damages,
 - b. \$1.70 in pre-judgment interest under the COIA, and
 - c. \$67.50 for CRT fees.
26. Mrs. Clemens is entitled to post-judgment interest, as applicable.
27. I dismiss Mrs. Clemens' remaining claims. I dismiss Aslan's claims.
28. 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 day that the state of emergency declared on March 18, 2020 ended, 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.

29. 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.

Eric Regehr, Tribunal Member