



Civil Resolution Tribunal

Date Issued: August 26, 2021

File: SC-2021-001740

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan, Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Vernon Full Gospel Tabernacle*, 2021 BCCRT 940

B E T W E E N :

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

APPLICANT

A N D :

VERNON FULL GOSPEL TABERNACLE

RESPONDENT

A N D :

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

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about plumbing services. The applicant and respondent by counterclaim is Aslan, Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan). The respondent and applicant by counterclaim is Vernon Full Gospel Tabernacle (VFGT). Aslan says VFGT hired it to repair a sewage lift station. Aslan claims \$4,759.58 for an unpaid August 2020 invoice plus yearly contractual interest of 19.5%. VFGT disagrees it owes anything. It says that Aslan's work was deficient.
2. VFGT says it paid Aslan \$18,000 for allegedly useless work on the lift station done in January and May 2019. It counterclaims for \$5,000, the small claims monetary limit in the Civil Resolution Tribunal (CRT). Aslan disagrees that it did anything wrong.
3. The parties are represented by their employees or principals.
4. For the reasons that follow, I find Aslan partially successful and order VFGT to pay the amounts set out below. I dismiss VFGT's counterclaims.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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. 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.

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.

ISSUE

9. The issue in this dispute is whether Aslan's work was deficient and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Aslan and VFGT must prove their respective claims and counterclaims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed background facts. In January 2019, VFGT hired Aslan to replace 2 sewage pumps in a sewage lift station. VFGT paid \$8,303.51 for this work. In May 2019 the lift station stopped working. VFGT hired Aslan for repairs. Aslan discovered a crack in a pipe fitting, and it replaced much of the piping in the lift station. VFGT paid \$10,586.31 for this work. As mentioned above, VFGT counterclaims for \$5,000 for the January and May 2019 work.
12. Aslan's invoices and a signed work authorization form show it charged based on hourly rates for labour and the cost of materials. The parties did not enter into any fixed-price contracts.

13. In August 2020 the lift station malfunctioned by overflowing. VFGT hired Aslan to diagnose and fix the problem. Aslan found problems with the float switches and a check valve and replaced them. In September 2020, VFGT decided to hire another company, Special T Cleaning, to finish repairs. Special T Cleaning advised bypassing the lift station entirely by installing a new gravity sanitary sewer line to connect to the city's sewer main. VFGT agreed with Special T Cleaning and paid it \$9,135 for this work. In February 2021, Aslan invoiced VFGT \$4,759.58 for its August 2020 work, the amount Aslan claims in this dispute.

Was Aslan's work deficient?

14. The party asserting that work is deficient or not in proper compliance with the contract bears the burden of proof to show the contract has been breached: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. Where a dispute's subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of professional competence and to show whether the standard was breached: *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119.

15. VFGT alleges that Aslan's work was deficient. So, I find VFGT has the burden to prove this. I also find the subject matter of this dispute, sewer and lift station repairs, is a technical matter. So, I find that expert evidence is necessary to determine the appropriate standard of professional competence.

16. VFGT provided a May 10, 2021 letter from Special T Cleaning, the company that VFGT hired in September 2020 to take over from Aslan. CRT rule 8.3(2) requires an expert to state their qualifications. Special T Cleaning did not, so its letter is presumptively not expert evidence. However, Special T Cleaning's evidence shows that it is generally in the business of conducting sewer repairs. Aslan did not question Special T Cleaning's qualifications. I find it appropriate to exercise my discretion under rule 1.2(2) and waive the requirements of rule 8.3(2) to promote the fair and efficient resolution of this dispute. For that reason, I accept Special T Cleaning's letter as expert evidence.

17. Special T Cleaning wrote that it examined Aslan's work and found a broken check valve. Special T Cleaning says it then advised VFGT to bypass the lift station entirely. Special T Cleaning explained this would save VFGT money because there would be no future emergency visits to address pump failures. VFGT would also no longer rely on PVC piping which Special T Cleaning said was "notorious for constantly breaking in a commercial setting like this". After VFGT agreed, Special T Cleaning says it cleaned out the lift station for decommissioning and installed the new gravity sanitary sewer line.
18. As noted above, Aslan invoiced VFGT for fixing a check valve. Special T Cleaning determined the check valve was still broken. So, I find that this part of Aslan's work was deficient. However, I find that VFGT has not proven any other deficiencies. Special T Cleaning did not comment on Aslan's January or May 2019 repairs. It did not say, for example, that the January 2019 work was substandard or resulted in any subsequent problems. It did not comment on whether Aslan's work was the reason the float switches and check valve failed in August 2020.
19. VFGT says its employee, RB, asked Aslan in January 2019 if VFGT should use a gravity sanitary sewer line instead of repairing the lift station. RB says Aslan's representative said no, as "everyone in the area" used sewage pumps instead. On balance, I find this conversation occurred as RB signed a statement about it. Aslan denied it but did not provide any evidence, such as a statement from the employee RB identified.
20. As stated above, Special T Cleaning ultimately bypassed the lift station in September 2020. However, Special T Cleaning did not comment on whether Aslan breached any professional standards by advising VFGT to continue using the sewage pumps and lift station prior to that. This was a key point in this dispute. For that reason, I find it unproven that Aslan's advice was substandard.

What are the appropriate remedies?

21. Aslan invoiced VFGT \$4,759.58 for the August 2020 work. This included investigating the lift station and replacing the float switches and a check valve. I find that VFGT should only pay for work that is not connected to replacing the check valve. Aslan described its hours worked in 12 separate work forms. I find that Aslan is entitled to payment of a total of 10 hours of work for work orders 2, 3, 9, 10, and 11 at the hourly rate of \$98 per hour. This rate is stated in the signed work authorization form. The total equals \$980. I do not award any amounts for the cost of materials because the work orders and invoice do not provide this information.
22. This leaves contractual interest. In a signed August 23, 2020 work authorization form, VFGT agreed to pay late interest of 19.6% per year. However, it is undisputed that Aslan did not issue the August 2020 invoice until February 2021. I therefore find Aslan is only entitled to contractual interest starting from March 1, 2021. This equals \$93.67.
23. I have found it unproven that Aslan's other work or advice, including the work done in January and May 2019, is deficient. So, I dismiss VFGT's counterclaim.
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. I see no reason in this case not to follow that general rule. I find Aslan has been partially successful, so I award reimbursement of half its CRT fees. This equals \$87.50. Aslan did not claim for any dispute-related expenses, so I order none. I dismiss VFGT's counterclaim for reimbursement of paid CRT fees.

ORDERS

25. Within 14 days of the date of this order, I order VFGT to pay Aslan a total of \$1,161.17, broken down as follows:
 - a. \$980 in debt,
 - b. \$93.67 in contractual interest at the yearly rate of 19.6%, and

c. \$87.50 in CRT fees.

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

27. I dismiss VFGT's counterclaims.

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 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.

30. 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.

David Jiang, Tribunal Member