



Civil Resolution Tribunal

Date Issued: June 3, 2022

File: SC-2021-007716

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Arco Plumbing & Heating Ltd. v. W.Coast Construction Group Inc.*, 2022
BCCRT 653

B E T W E E N :

ARCO PLUMBING & HEATING LTD.

APPLICANT

A N D :

W.COAST CONSTRUCTION GROUP INC. and CAVIT CELANI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about payment for plumbing services. The applicant, Arco Plumbing & Heating Ltd. (Arco), says it completed plumbing work for the respondents, W.Coast Construction Group Inc. (W.Coast) and Cavit Celani, on October 5, 2019 but has not

been paid. Arco claims \$2,021.25 for its October 9, 2019 invoice for the plumbing work.

2. The respondents say that W.Coast is not a proper respondent in this dispute because it did not exist until April 2020. Mr. Celani does not deny that Arco did the plumbing work but says that some of Arco's work was defective and had to be fixed by another company.
3. Arco and W.Coast are represented by their respective owners. Mr. Celani 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. 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 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.
8. Though not specifically argued by the parties, I have considered whether Arco's claim is out of time under the *Limitation Act*. The *Limitation Act* applies to disputes before the CRT. It sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed.
9. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and a claim may not be started more than 2 years after the day on which it is discovered. A claim is "discovered" when the applicant knew or reasonably should have known they had a claim against the respondents and that a court or tribunal proceeding was an appropriate remedy. Here I find that Arco should have known it had a claim when the invoice remained unpaid after it became due. Arco's October 9, 2019 invoice states no specific due date. I find the invoice was due immediately. Arco filed its CRT application on October 7, 2021. So, I find that Arco's claim is not out of time.

ISSUES

10. The issues in this dispute are:
 - a. Is W.Coast a proper respondent in this dispute?
 - b. What amount, if any, is Arco entitled to for its plumbing work?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Arco must prove its claims on a balance of probabilities. I have read all the parties' submitted evidence and argument

but refer only to what I find relevant to provide context for my decision. I note Arco did not provide any reply submissions despite having the opportunity to do so.

Is W.Coast a proper respondent in this dispute?

12. As mentioned above, the respondents argue that W.Coast is not a proper party to this dispute because the company was not incorporated until April 2020, months after Arco did the plumbing work. None of the parties have submitted any evidence about the existence or liability of W.Coast in this dispute. The evidence includes an October 10, 2019 email from Arco's owner to "West Coast Renovation", attaching a document which Arco says is the October 9, 2019 invoice. However, there is no evidence that the associated email address belongs to W.Coast.
13. A BC Company Summary notes that W.Coast was incorporated on April 21, 2020. Based on this document and given the lack of other evidence about W.Coast's liability for the plumbing work, I find that W.Coast is not a proper respondent in this dispute. So, I dismiss Arco's claims against W.Coast.

What amount, if any, is Arco entitled to for the plumbing work?

14. I now consider Mr. Celani's liability for Arco's October 9, 2019 invoice.
15. Arco says that after completing the plumbing work, it issued its invoice to Mr. Celani and that Mr. Celani did not raise any issues about the plumbing work until January 18, 2021. Mr. Celani says that the day after Arco did the plumbing work, DM, the main plumbing and mechanical contractor on the job, noticed Arco installed the hot water tank incorrectly and re-installed it. Mr. Celani further says that he told Arco the hot water tank had been installed incorrectly and asked Arco to speak with DM to resolve the issue. He says that Arco refused to speak with DM and Arco issued its invoice instead. Mr. Celani says that he called Arco's owner immediately after receiving the invoice and told him that DM had been paid to redo the work.

16. Arco's evidence includes text messages which it says are between Arco's owner and Mr. Celani. Since Mr. Celani does not dispute this, I find that the text messages are between him and Arco's owner.
17. On October 5, 2019, Mr. Celani asked Arco via text message if Arco could install a hot water tank and hook up the water line for an ice machine and stove at a property on Mainland Street in Vancouver. As mentioned, on October 10, 2019, Arco's owner sent an email to "West Coast Renovation", attaching a document which Arco says is the October 9, 2019 invoice. As noted earlier, there is no evidence about who the email address belongs to, so it is unclear when Mr. Celani received Arco's invoice. However, based on the text messages mentioned below, I find that Mr. Celani received the October 9, 2019 invoice sometime before November 6, 2019.
18. Between November 6, 2019 and January 17, 2021, Arco's owner texted Mr. Celani numerous times about payment of its invoice. On November 9, 2019, Mr. Celani asked where he could mail the cheque to. On December 5, 2019, Mr. Celani told Arco that he had mailed the cheque in late November and that Arco should have received it by now. Arco continued to follow up and, on December 22, 2019, Mr. Celani said that he would write a new cheque that Arco could pick up from him when he was back in town the following week. It was not until January 18, 2021 that Mr. Celani informed Arco that he was waiting for some information from DM and would be back in touch with Arco once he heard back.
19. Based on these text messages, I find that Mr. Celani did not inform Arco of any issues with the plumbing work until January 18, 2021, over 15 months after it completed the plumbing work.
20. Mr. Celani argues, in essence, that he does not need to pay Arco's invoice because some of the work it did was defective and had to be redone by DM. The burden to prove breach of contract for defective or substandard work is on the party alleging the breach, in this case, Mr. Celani (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). There are no photographs or videos showing Arco's hot water tank installation was defective.

21. Mr. Celani's sole piece of evidence is a March 24, 2022 statement from DM's owner. DM says that Arco did not install the hot water tank piping correctly and that DM had to drain it and re-install. There is no further evidence before me about the alleged defective work or what costs, if any, Mr. Celani incurred to have DM re-install the hot water tank.
22. Overall, I find the text messages more persuasive than Mr. Celani's submissions and DM's statement because the text messages were made at the relevant time. I find if Mr. Celani had concerns about Arco's hot water tank installation, he reasonably would have raised them with Arco instead of consistently agreeing to pay Arco's invoice. Having weighed the evidence, I find it more likely than not that Arco's work was done properly. Therefore, I find Arco did not breach the parties' agreement.
23. Since I have found that Arco did not breach the parties' agreement, I find Arco is entitled to the \$2,021.25 it claims for the plumbing work. So, I find that Mr. Celani owes Arco this amount.
24. The *Court Order Interest Act* applies to the CRT. Arco is entitled to pre-judgment interest on the \$2,021.25 from October 9, 2019, the date of the invoice, to the date of this decision. This equals \$46.19.
25. 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 Arco is entitled to reimbursement of \$125 in CRT fees. Arco did not claim any dispute-related expenses.

ORDERS

26. Within 30 days of the date of this decision, I order Mr. Celani to pay Arco a total of \$2,192.44 broken down as follows:
 - a. \$2,021.25 in damages for the unpaid invoice,

- b. \$46.19 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

27. Arco is entitled to post-judgment interest, as applicable.

28. Arco's claim against W.Coast is dismissed.

29. 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.

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.

Nav Shukla, Tribunal Member