



Civil Resolution Tribunal

Date Issued: July 4, 2022

File: SC-2021-009346

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. Jatzek*, 2022 BCCRT 758

B E T W E E N :

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

APPLICANT

A N D :

PHILIP JATZEK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a TV bracket installation.

2. The respondent, Philip Jatzek, hired the applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), to wall-mount a TV with a bracket he supplied.
3. Aslan mounted the TV in August 2020 and returned 9 months later to adjust the bracket. Aslan says it invoiced Mr. Jatzek \$428.40, which is what it claims in this dispute. Aslan is represented by an employee.
4. Mr. Jatzek refuses to pay Aslan anything. He says Aslan's bill is too high and Aslan's work was faulty. Mr. Jatzek represents himself.

JURISDICTION AND PROCEDURE

5. 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.
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.
9. The Dispute Notice generated by the CRT on December 10, 2021 incorrectly shows the applicant Aslan's name as

ASLAN
ELECTRICAL,PLUMBING,GASFITTING,REFRIGERAT
SHEETMETAL SERVICES LTD.

10. Based on the BC Company Summary, Aslan's correct legal name, including the unusual spacing, is: Aslan Electrical,Plumbing,Gasfitting,Refrigeration& Sheetmetal Services Ltd.
11. It is apparent that the Dispute Notice did not display the end of the word "Refrigeration&" in Aslan's name. Given it was the CRT's error and the parties proceeded on the basis that the correct legal name was used, I have corrected the style of cause to show Aslan's full legal name.

ISSUE

12. The issue in this dispute is whether Mr. Jatzek must pay Aslan some or all of the claimed \$428.40 for its TV mounting work.

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Aslan must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Mr. Jatzek did not provide any evidence, despite being given the opportunity to do so. This is discussed more below.

14. Aslan says in August 2020 it installed Mr. Jatzek's mounting bracket and TV with no issues. Aslan says months later, Mr. Jatzek asked Aslan to adjust the brackets. Aslan says it was only when Aslan gave Mr. Jatzek his invoices in June 2021 that he complained that the TV was originally mounted too far from the wall and gave him a concussion. Aslan says Mr. Jatzek refused to pay because he claimed he was injured. It is not clear why Aslan waited 9 months to invoice Mr. Jatzek for the initial installation, but I find nothing turns on this.
15. Mr. Jatzek says he suffered a head injury because Aslan did not initially install the mounting bracket and TV correctly or following safety guidelines or building codes. He does not explain how he injured his head. Mr. Jatzek says he "would like to counter sue for head injuries" but he did not file a counterclaim.
16. Mr. Jatzek says he will submit videos and a detailed statement proving the installation was faulty. However, he did not provide any evidence. CRT staff emailed Mr. Jatzek 2 reminders to submit his evidence. I find that Mr. Jatzek had a reasonable opportunity to provide evidence but did not do so, and I draw an adverse inference against him. An adverse inference is where the CRT assumes that a party failed to provide relevant evidence because the missing evidence would not support their case or does not exist. This means I find, on a balance of probabilities, that Aslan did not mount the TV in a way that was faulty or dangerous.
17. Based on the work authorization form and work orders, I find Mr. Jatzek agreed to pay \$98 per hour for labour plus reasonable material costs. I find Mr. Jatzek must pay the first invoice for the August 28, 2020 installation. The total is \$232.05, broken down as 2 hours of labour plus a \$15 truck charge and GST.
18. Aslan's evidence does not include an invoice for the June 9, 2021 work. However, Mr. Jatzek says he refused to pay when he saw that the bill was over \$400, so I find Aslan did invoice Mr. Jatzek for its June 9, 2021 work. I find the second invoice was for \$196.35, as indicated on a work order.

19. The work authorization form addresses callbacks, which I find applies to the June 9 work. It says there is no charge if work is under warranty. To the extent that Mr. Jatzek argues the remounting should have been covered by a warranty on Aslan's work, I find he has not proven any breach of warranty. As noted above, he did not provide any evidence, such as photos, to show that the initial installation was defective and not that he simply later wanted the TV mounted in a different way. So, I find Mr. Jatzek must pay for the work Aslan did on June 9, 2021.
20. I find Mr. Jatzek must pay Aslan the claimed \$428.40.
21. Aslan claims interest under the *Court Order Interest Act* (COIA), which applies to the CRT. However, section 2(b) of the COIA says pre-judgment interest under the COIA does not apply where the parties have an agreement about interest. I find the parties agreed about interest in the work authorization form, but Aslan does not claim contractual interest, so I do not award any.
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 find Aslan is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order Mr. Jatzek to pay Aslan a total of \$553.40, broken down as follows:
 - a. \$428.40 in debt, and
 - b. \$125.00 in CRT fees.
24. Aslan is entitled to post-judgment interest, as applicable.

25. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member