



Civil Resolution Tribunal

Date Issued: July 26, 2022

File: SC-2021-007905

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *HLC Holdings Inc. v. Kainz*, 2022 BCCRT 847

BETWEEN:

HLC HOLDINGS INC.

APPLICANT

AND:

DENISE KAINZ and SPAR GROUP INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about payment for asbestos abatement services completed as part of a bathroom renovation project. The applicant, HLC Holdings Inc. (HLC), was

undisputedly hired to remove asbestos drywall on the bathroom floor and shower surround. HLC claims \$3,360 for its work.

2. The respondent Denise Kainz is the homeowner. Ms. Kainz hired the respondent Spar Group Inc. (Spar), which did business as Blue Ladder Projects, to do the entire bathroom renovation. Spar hired HLC as a sub-contractor to do the project's asbestos abatement.
3. Ms. Kainz does not criticize HLC's work but says Spar did everything incorrectly with her bathroom renovation and also damaged new cabinetry. Ms. Kainz says she owes HLC nothing.
4. Spar says it tried to fix various deficiencies identified by Ms. Kainz but she fired Spar and refused to pay. Spar says Blue Ladder Projects is out of business and that Spar now cannot afford to pay HLC, having paid other trades on a "first come" basis.
5. HLC is represented by its owner, Harry Caya. Ms. Kainz is self-represented and Spar is represented by its principal, Lance Sparling.

JURISDICTION AND PROCEDURE

6. 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). CRTA section 2 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.
7. CRTA section 39 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. 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.

8. CRTA section 42 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.
9. 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.
10. Ms. Kainz submitted evidence past the CRT's deadline. Given the CRT's flexible mandate and because the other parties had the opportunity to review and comment on it, I allow the late evidence and have considered it in my analysis below. That said, nothing turns on Ms. Kainz's evidence given my conclusions below.

ISSUE

11. The issue is whether either of the respondents is responsible for HLC's invoice for asbestos abatement work HLC did in Ms. Kainz's bathroom at Spar's request.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant HLC must prove its claims on a balance of probabilities (meaning "more likely than not"). HLC did not submit any documentary evidence, though it had the opportunity to do so.
13. Ms. Kainz hired Spar to renovate her bathroom. Spar hired HLC as a sub-contractor, to do the asbestos abatement work for the renovation project. Ms. Kainz was not a party to HLC's and Spar's contract. HLC completed its work in August 2021, and issued its \$3,360 invoice to Spar on August 14, 2021, with a September 12, 2021 due date. None of this is disputed, though as noted HLC submitted no documentary evidence in support of its claim, such as a copy of its invoice to Spar.

14. Spar's overall project cost was around \$27,000 and Ms. Kainz paid it \$9,163.76. Spar submitted a spreadsheet setting out the project's itemized costs, and HLC's work is listed as the claimed \$3,360. Again, none of this is disputed. Further, neither of the respondents allege any defects in HLC's work and neither challenge the amount of HLC's invoice. So, I find the amount owing for HLC's work is undisputed.
15. Most of Spar's and Ms. Kainz's submissions are about alleged deficiencies in Spar's work. That issue is not before me in this dispute. I make no findings about any money Ms. Kainz and Spar might owe the other, because neither of those parties filed a CRT claim against the other. The only issue before me is whether HLC is entitled to payment for its work, and if so, from who.
16. I find Spar owes HLC the claimed \$3,360 under its contract with HLC. While I acknowledge Spar says it cannot afford to pay HLC because Ms. Kainz has not paid Spar, that is irrelevant to Spar's contractual obligation to HLC. Spar does not argue that HLC contractually agreed that Spar must first be paid before Spar pays HLC and there is no evidence before me to support such an assertion. Inability to pay does not mean HLC is not entitled to an order in its favour for a proven debt claim.
17. Further, while Spar argues Blue Ladder Projects went out of business on September 23, 2021, there is nothing in evidence to support this assertion. Further, "Blue Ladder Projects" is not a legal entity as it is neither a corporation nor a sole proprietorship. Spar does not dispute it was the corporate entity doing business as Blue Ladder Projects and does not dispute Spar contracted with HLC, either under the Blue Ladder Projects business name or as Spar. According to a BC Company Summary in evidence, Spar was an active corporation as of January 17, 2022 and was not in receivership. So, I find no legal basis not to hold Spar liable for HLC's claimed debt.
18. Next, I dismiss HLC's claim against Ms. Kainz. I say this because HLC had no contract with Ms. Kainz and Ms. Kainz's obligation to pay for HLC's work is to Spar, subject to the deficiencies and damages issue which I have found above is not before me in this dispute. HLC also makes no allegations specifically against Ms.

Kainz, and simply argues that it wants to be paid and it does not care which respondent pays it.

19. The *Court Order Interest Act* (COIA) applies to the CRT. I find HLC is entitled pre-judgment interest on the \$3,360. Calculated from September 12, 2021 to the date of this decision, this interest equals \$13.14
20. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As HLC was successful, I find Spar must reimburse HLC \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

21. Within 21 days of this decision, I order Spar to pay HLC a total of \$3,548.14, broken down as follows:
 - a. \$3,360 in debt,
 - b. \$13.14 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
22. HLC is entitled to post-judgment interest, as applicable. I dismiss HLC's claim against Ms. Kainz.
23. 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 BC.

Shelley Lopez, Acting Chair and Vice Chair