



Civil Resolution Tribunal

Date Issued: August 24, 2022

File: SC-2021-008818

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kooltech Refrigeration v. Mountainview Meats*, 2022 BCCRT 949

B E T W E E N :

KOOLTECH REFRIGERATION and RODNEY BOJECHKO

APPLICANTS

A N D :

MOUNTAINVIEW MEATS and ANNA BACHMIER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about refrigeration setup and repair services. The respondent partnership, Mountainview Meats (Mountainview), hired the applicant, Kooltech Refrigeration (Kooltech) to setup and repair a walk in freezer and cooling system. Kooltech is a registered sole proprietorship, owned by the applicant, Rodney Bojechko. The respondent, Anna Bachmier, is a partner of Mountainview. In the

Dispute Notice, the applicants claim that the respondents owe \$3,844.44 in unpaid work. However, the respondents have paid the applicants \$3,606.09 after this dispute started.

2. Mountainview denies the applicants' claim. Mountainview says that it fully paid the applicants for Kooltech's work after this dispute started. Mountainview also says that Kooltech's work was deficient. Anna Bachmier did not file a response to the Dispute Notice and so they did not participate in this proceeding and are in default.
3. The applicants are represented by a Kooltech employee or principal. Mountainview is represented by an employee or principal.

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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondents owe the applicants a debt for unpaid refrigeration setup and repair work.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

Parties’ legal status

10. I turn first to the issue of the parties’ legal status, which the parties did not raise but I find is a threshold legal question I must address. As noted above, Kooltech is a registered sole proprietorship, which is not a separate legal entity from its owner, Mr. Bojecho (*Singh v. Soper*, 2012 BCSC 1312). Similarly, Mountainview, as a partnership, is not a legal entity from its partners, including Anna Bachmier (*Fasken Martineau DuMoulin LLP v. British Columbia (Human Rights Tribunal)*, 212 BCCA 313). So, I find the agreement was not between Kooltech and Mountainview. Rather, I find the agreement was between Kooltech’s owner, Mr. Bojecho, and Mountainview’s partners, including Anna Bachmier. Mountainview’s other partners are not named parties to this dispute.
11. Based on the above, I dismiss Kooltech’s claim and I dismiss Mr. Bojecho’s claim against Mountainview. I consider below Mr. Bojecho’s claim against Anna Bachmier for unpaid work, based on her position as Mountainview’s partner.

Claim for unpaid work

12. Mr. Bojecho's quoted Mountainview's partners a fixed price of \$9,001.88 plus GST on April 20, 2021 to setup and repair their refrigeration system. It is undisputed that Mountainview's partners hired Mr. Bojecho and made an initial payment of \$6,000 on July 5, 2021. In doing so, I find that Mr. Bojecho entered a contract with Anna Bachmier, as Mountainview's partner, on the quote's terms.
13. It is undisputed that Mr. Bojecho performed the work, though the respondents say his work was deficient. Anna Bachmier may be entitled to a setoff from any amounts they owe Mr. Bojecho if they can prove that the work was deficient. However, based on my finding below that the respondents have fully paid for Mr. Bojecho's work, I find it unnecessary to determine whether his work was deficient.
14. Mr. Bojecho issued an August 4, 2021 invoice for \$9,606.09. This included \$9,001.88 for the walk in cooler and freezer repair and \$146.78 for work described as "sight glass convenience inspections indoors." However, Mr. Bojecho's quote says that the contract price includes sight glasses. In the absence of any evidence or submissions from Mr. Bojecho relating to their sight glass inspection charge, I find that this fee was already included in the contract's fixed price. So, I find that Anna Bachmier does not owe Mr. Bojecho the \$146.78 sight glass inspection fee.
15. Based on the above, I find that Anna Bachmier owed Mr. Bojecho \$9,001.88 plus tax for the August 4, 2021 invoice. This totals \$9,451.74. After deducting the \$6,000 payment, Anna Bachmier owed a balance of \$3,451.74.
16. Mr. Bojecho says he performed additional work on October 15, 2021, outside the scope of the original contract. Mr. Bojecho says this work consisted of the "termination of two crankcase heaters." Mr. Bojecho says these heaters warm oil in the system, which he says is important for proper system operation. Mr. Bojecho says he performed this work because he thought that the respondents had not done so. Mr. Bojecho provided a ledger showing that he sent Mountainview an additional

invoice for \$238.35 on October 15, 2021, which Mr. Bojecho claims is unpaid. I infer this \$238.35 charge relates to Mr. Bojecho's alleged termination services.

17. Anna Bachmier will only be responsible for this alleged extra work if Mr. Bojecho proves that Mountainview's partners explicitly or implicitly authorized this work and Mountainview's partners were informed or necessarily aware that the extra work would increase the cost (*Kei-Ron Holdings Ltd. v. Coquihalla Motor Inn Ltd.*, 1996 CanLII 3443 (BC SC) at paragraph 41). Here, there are no evidence or submissions showing Mountainview's partners authorized this extra work or that Mountainview's partners were aware that such extra work would increase the cost. So, I find that Mr. Bojecho has not proved that Anna Bachmier owes \$238.35 for unpaid extra work.
18. Based on the above, I find that Anna Bachmier owed Mr. Bojecho a balance of \$3,451.74 when Mr. Bojecho applied for dispute resolution on December 12, 2021. However, it is undisputed that the respondents paid Mr. Bojecho \$3,606.09 on January 5, 2022, after this dispute started. Since this payment exceeds the \$3,451.74 owed, I find that Anna Bachmier does not owe Mr. Bojecho a debt for unpaid work. So, I dismiss Mr. Bojecho's debt claim against Anna Bachmier.

CRT fees and expenses

19. 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. Though I dismissed the applicants' debt claim, I find that Mr. Bojecho was generally successful against Anna Bachmier. I reach this conclusion because the respondents paid Mr. Bojecho almost the entire amount claimed after this dispute started. Based on this, I find that Mr. Bojecho is entitled to reimbursement of his CRT fees, being \$175. Mr. Bojecho also claim an \$11.50 dispute-related fee for a BC Registry Services company name search. I infer that Mr. Bojecho incurred this expense to determine the respondents' proper names for this dispute. I find this is a reasonable expense and I allow it. The respondents did not pay CRT fees and no dispute-related expenses were claimed.

ORDERS

20. Within 30 days of the date of this order, Anna Bachmier to pay Mr. Bojecho \$186.50, for \$175 in CRT fees and \$11.50 for dispute-related expenses.
21. I dismiss Kooltech's claims and I dismiss Mr. Bojecho 's claim against Mountainview.
22. Mr. Bojecho is entitled to post-judgment interest from Anna Bachmier, as applicable.
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 British Columbia.

Richard McAndrew, Tribunal Member