



Civil Resolution Tribunal

Date Issued: December 13, 2022

File: SC-2022-001578

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. v. EFI Global Canada Inc.*, 2022 BCCRT 1334

B E T W E E N :

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

APPLICANT

A N D :

EFI GLOBAL CANADA INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The respondent, EFI Global Canada Inc. (EFI), hired the applicant, Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services Ltd. (Aslan), to

locate an underground cable. Aslan was unable to locate the cable. EFI hired another company to locate the cable and did not pay Aslan's \$1,202.83 invoice.

2. Aslan says EFI must pay the invoice because there are no guarantees a buried cable will be located. EFI says Aslan's technician was inexperienced and their work fell below a reasonable standard.
3. Each party is represented by an employee or principal. As I explain below, I dismiss Aslan's claim.

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.

Style of cause

8. The Dispute Notice generated by the CRT on May 3, 2022 shows Aslan's name as:
ASLAN
ELECTRICAL,PLUMBING,GASFITTING,REFRIGERAT
SHEETMETAL SERVICES LTD.
9. However, Aslan's correct legal name on its BC Company Summary, including the unusual spacing, is "Aslan Electrical,Plumbing,Gasfitting,Refrigeration& Sheetmetal Services Ltd." I have used Aslan's correct legal name in the style of cause above.

ISSUE

10. The issue in this dispute is whether Aslan is entitled to the claimed \$1,202.83 for cable locating services.

EVIDENCE AND ANALYSIS

11. 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. Aslan provided no evidence in this dispute, despite having the opportunity to do so.
12. On a date that is not clear from the evidence but I infer was in late 2020 or early 2021, EFI hired Aslan to locate an underground cable on a property along the Trans-Canada Highway in BC. Aslan failed to find the cable but invoiced EFI \$1,202.83 for its work. EFI refused to pay.
13. EFI says after Aslan failed to find the cable, it had to hire a second company, Locates Unlimited Services Ltd. (LUS), to do so. This is confirmed by an invoice in evidence.

14. There is an implied term in contracts for professional services that the service will be done to a reasonably competent standard. In general, expert evidence is required to prove whether a professional's conduct fell below a reasonably competent standard. This is because the ordinary person does not know the standards of a particular profession or industry. The exceptions to this general rule are when conduct is obviously substandard or about something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112). I find underground cable location is a technical issue where the standards of conduct must be proven by expert evidence.
15. EFI provided an email from an LUS technician, LL, confirming that they used the induction method to locate the cable. This method involves putting a transmitter on the ground in the area where the cable is suspected to be, inducing a signal on the cable, and identifying where the signal peaks. Although EFI did not submit this evidence as expert evidence, I accept that LL, who is identified in their email as a utility locating specialist, is qualified to give evidence about utility locating techniques. Moreover, LL relied on and provided an excerpt from what appears to be a utility-locating manual to support their evidence. Importantly, Aslan did not challenge this evidence or provide any contradictory evidence. So, I find that induction was an appropriate utility locating technique that a competent utility locator would have used to locate the cable.
16. EFI says Aslan's technician advised EFI that he was not experienced in underground cable location. Aslan says its technician was qualified to do the work. However, Aslan does not provide the technician's qualifications or experience. There is also no statement from the technician in evidence confirming their experience or indicating the techniques they employed when attempting to locate the cable. As noted, Aslan did not submit any evidence in this dispute.
17. On the limited evidence before me, I find the Aslan technician either did not attempt the induction method or did not do it correctly. By failing to employ professional

techniques, I find Aslan breached the implied term of the parties' contract to do the work to a reasonably competent standard.

18. On that basis alone, I would dismiss Aslan's claim. However, I would also dismiss on the basis that Aslan failed to provide sufficient evidence to prove its claims. Aslan is an experienced applicant at the CRT and should be aware that it is required to provide evidence to prove its claims (see, e.g., *Aslan Electrical, Plumbing, Gasfitting, Refrigeration & Sheetmetal Services LTD v. Mulholland*, 2018 BCCRT 696). That evidence includes, at minimum, the invoice at issue. Although EFI did not dispute the amount claimed, without the invoice I cannot determine what work Aslan did, the techniques it employed, whether the invoice was consistent with the parties' agreement, and whether the invoice was reasonable. I also note that LUS invoiced \$528.68 for its successful cable locating work, suggesting Aslan's invoice was not reasonable. Either way, I dismiss Aslan's claim.
19. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. EFI was successful but did not pay CRT fees or claim expenses. I dismiss Aslan's claim for reimbursement of CRT fees.

ORDER

20. I dismiss Aslan's claims and this dispute.

Micah Carmody, Tribunal Member