



Civil Resolution Tribunal

Date Issued: June 22, 2023

File: SC-2022-007106

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *A.S.A.P. Ventures Ltd. v. Moore*, 2023 BCCRT 524

B E T W E E N :

A.S.A.P. VENTURES LTD.

APPLICANT

A N D :

AMBER MOORE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a broken microwave.
2. The applicant, A.S.A.P. Ventures Ltd., says the respondent, Amber Moore, refused to pay it for repairs it performed on the respondent's Bosch microwave. The applicant claims \$919.03 for an unpaid invoice for the repair work.

3. The respondent denies the applicant performed the microwave repairs for which it claims. They say even if the applicant performed the repairs, it was not authorized to do so, and so they are not responsible for paying for the work.
4. The applicant is represented by its owner, Trevor Gains. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.
6. 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. Some of the evidence in this dispute amounts to a "it said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.
7. 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.

8. Where permitted by CRTA section 118, 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

9. The issue in this dispute is whether the applicant is entitled to the claimed \$919.03 for its unpaid repair invoice.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to what I find is necessary to explain my decision.
11. I begin with the undisputed background. In December 2021, the respondent contacted the applicant about servicing their broken microwave. The applicant advised the respondent of their \$204.75 service call fee, which the respondent agreed to and paid. The applicant's technician attended the respondent's home on December 14. The work order in evidence shows the microwave's issues were that it had no power, the clock light was very faint, and the door did not attach properly. The applicant reattended the respondent's home on January 18, 2022 to complete the repair and charged the respondent's credit card \$919.03 on January 19. The applicant had its credit card company reverse the charges shortly after that.
12. The applicant says during the December 14 service call, its technician installed a new control board but there was still no display on the microwave's control panel, so they concluded they needed to change the control board. The applicant says the technician determined the microwave also needed a cut off sensor and door hinges, which could not be ordered separately and so required a new door assembly. However, a December 15 estimate in evidence indicates the parts needed for the repair were a fuse, a switch and two microswitches, totaling \$171.17. That estimate does not include the amount for a new control board or the door assembly, and the

applicant does not explain why those expenses were not included. In a January 31, 2022 email to the respondent's husband, Mr. Gains says that after the technician's December 14 service call, the technician told the respondent's husband there had been a "door failure" and the "door needed changing as well as some components in the switching of the door." More on the respondent's husband's involvement below. However, the applicant does not say it told the respondent of the need for a new control board and its anticipated cost before installing one.

13. The applicant says that in answer to the respondent's questions about why the fuse and switches were needed, the technician called them back on January 5 and explained "what the parts were and what they fixed." The applicant does not say they mentioned the control board or the door replacement during this conversation. The applicant says the respondent then booked an appointment for January 18 to finish the repair, but on that day the technician arrived to find the microwave door broken on the floor. The applicant says the technician installed the fuse and switches, and the microwave "powered up ok" but a new door was "absolutely" necessary to complete the repair.
14. On January 19, the applicant emailed the respondent a \$725.87 door estimate. The applicant says at this point, the respondent decided not to continue with the repair, so it invoiced them for the fuse and switch work and the new control board and charged their credit card. The applicant says after the respondent reversed the charges, it tried to get the respondent to settle their bill by suggesting it remove the parts it had installed and return them to the distributor so it could offer the respondent a full refund, but the respondent refused.
15. The respondent disagrees with the applicant's version of events. They say they were not present on December 14 for the technician's service call but that they had provided the applicant with their phone number and asked that the technician call once they had assessed the microwave. The respondent also says their nanny was home during the service call and told the technician the respondent could be reached on their phone, though the respondent did not provide a statement from the nanny.

However, it is undisputed that the respondent did not receive a call or an estimate for a new control board. This contrasts with the \$171.17 December 15 estimate the applicant provided for the fuse and switch work. On balance, I find the December 15 estimate is the best evidence of what the applicant communicated to the respondent about the required microwave repair work before January 19.

16. After some back and forth, the respondent says their husband agreed to the fuse and switch work around January 8, and a technician attended their home on January 18. The respondent says the January 19 \$725.87 door estimate was the first they heard about needing a new door. It is undisputed that the respondent did not authorize nor were they charged for a new door. However, the respondent says they had the credit card charges for the fuse, switches, and new control board reversed because they also did not authorize them.
17. Both parties rely on the applicant's terms and conditions in support of their positions, which they agree govern their service agreement. I find the terms and conditions formed the parties' contract for repair work. The relevant parts of the terms and conditions say:

The credit card on file will be directly billed for the one-time Flat-Rate Service Call Fee prior to your appointment (...). Please be advised that if any parts/supplies are used to complete the repair, they will be an extra charge and are not included in the service call fee. They will be direct billed to the credit card on file once that appointment has been completed. You will receive all parts estimates and updates via email or text message.

18. The applicant says the terms and conditions entitled them to charge the respondent's credit card for both the fuse and switch repair work and the new control board. I infer the applicant's position is that it was entitled to charge for the new control board without having provided the applicant with an estimate or receiving further authorization.

19. In contrast, the respondent argues the applicant was not entitled to charge them at all. The respondent says since the applicant never mentioned the need for a new control board, did not provide an estimate, and only informed them one had been installed by way of the January 19 invoice, they never authorized the control board work. The respondent also says the credit card charge for the fuse and switch work was not approved, though they do not explain why the technician returned on January 18 if it was not to perform that work as authorized. More on this below.
20. I find the terms and conditions ambiguous. On one hand, I find they can be read as authorizing the technician to proceed with any work not included in the service call fee during a service call and then direct billing a customer's credit card for that work once the appointment is complete. On the other hand, I find that including a commitment to send "all parts estimates", which only exist before the work is done, and updates by email or text could mean the applicant intends to give the customer the chance to review and consider work not included in the service call fee before authorizing its performance. Despite the language about direct billing extra charges to the credit card on file, I find the second interpretation equally as plausible as the first. This is because I find it makes sense that the applicant would want to ensure a customer agrees with the work, especially costly work, before completing the same.
21. I find the legal doctrine of *contra proferentum* applies here. This is a principle of contractual interpretation that means when a contract is ambiguous, the ambiguity should be resolved against the party that drafted the contract (see, for example, *Seidel v. TELUS Communications Inc.*, 2011 SCC 15). Applying the doctrine here, I find if parts or supplies were needed to complete a repair, the applicant would provide the respondent with an estimate of their cost by text or email and wait for authorization before going ahead with the work. It is undisputed the applicant did not do this for the more than \$660 control board.
22. I find this interpretation of the terms and conditions also aligns with what the applicant did when it came to the fuse and switch work and the replacement door. In both cases, the applicant provided the respondent with an estimate of the repair cost before doing

any work, with the option to accept the estimate if they were happy to proceed. I find the email evidence indicates the respondent's husband accepted the December 15 estimate when they booked the technician's January 18 visit. I find the respondent did not accept the applicant's January 19 estimate for a replacement door, and this is supported by the fact that the applicant did not charge the respondent for the door.

23. So, I find the applicant was not contractually entitled to install a new control board and charge the respondent for that work without first providing the respondent with an estimate for the new control board and waiting for authorization to proceed. By not doing this, I find the applicant breached the parties' contract.
24. I considered whether the respondent may have been unjustly enriched by the new control board, even though the applicant installed it in breach of the contract. To prove unjust enrichment, the applicant must show a) the respondent was enriched, b) the applicant suffered a corresponding loss, and c) there was no juristic reason or valid basis for the enrichment (see *Moore v. Sweet*, 2018 SCC 52).
25. The respondent denies the applicant installed the control board, or alternatively says they did not authorize its installation. The respondent does not dispute the applicant's assertion that it offered to remove unspecified parts it says it installed, but says they refused because they did not want the applicant anywhere near their home.
26. I find there is no reliable evidence the new control board was installed and the respondent enriched. That is, there is no statement from the technician confirming they installed it, and so Mr. Gains' evidence that this was done is hearsay. While hearsay evidence is admissible in CRT proceedings, I decline to admit it here, as it is unsupported by, for example, an invoice for the new control board. In submissions, the applicant says it pre-emptively orders parts to bring to a service call based on the issue described by the customer. If that is the case, I would expect the applicant to have been able to easily provide documentary evidence of the new control board it says it ordered and installed in the respondent's microwave. The applicant provided no such evidence.

27. In these circumstances, I find the applicant is not entitled to compensation for a new control board based on unjust enrichment.
28. Next, the \$171.17 for the fuse and switch work. As noted above, I find the respondent's husband authorized the technician's January 18 service call to perform this work, not the respondent. In submissions, the respondent says they "asked my husband to take over as I was beyond frustrated with (the applicant)". I find that in doing this, the respondent authorized their husband to agree to the fuse and switch work on their behalf, which they did.
29. The respondent does not dispute that the fuse and switch work was necessary to repair the microwave, so I accept that it was. However, though I find the applicant was authorized to proceed with the fuse and switch work and I accept that work was necessary, I find the respondent is not responsible for paying for that work. This is because I find the applicant was negligent in causing the respondent to authorize the fuse and switch work at all. To prove negligence, the respondent must show the applicant owed it a duty of care, the applicant breached the applicable standard of care, and the respondent sustained damage because of that breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
30. Here, I find the applicant owed the respondent a duty of care to perform its microwave repair work in the manner of an objectively prudent repairer. I find this included ensuring it provided the respondent with timely information about the cost of the repair work. I find "timely" in this context means at the time of or shortly after diagnosing the problem. So, I find the applicant breached the standard of care by failing to provide the respondent with information about the cost of a new control board until over a month after it allegedly performed that work. That breach resulted in the respondent authorizing and incurring the expense of the fuse and switch repair work during that month. Put another way, the respondent committed to the fuse and switch work around January 8, before the applicant told them the cost of the control board the applicant says it installed on December 14 and invoiced the respondent for on January 19. I find that had the applicant provided the respondent with timely

information about the control board's cost (around December 14), it is unlikely the respondent would have proceeded with the repair at all, for the reasons below. So, they would not have authorized and incurred the fuse and switch expense.

31. Email evidence shows the respondent questioned the fuse and switch work after they received the \$171.17 estimate. So, I find the respondent was hesitant to proceed with work they thought would cost them around \$171.17. In addition, the respondent decided not to continue with the repair when they learned of the much larger \$725.87 door estimate on January 19, which the applicant told them was necessary for the repair. I find that had the respondent known of the similarly large \$667.73 plus tax expense of the new control board around the time the technician identified it as necessary to the repair on December 14, it is unlikely they would have proceeded with the repair at all.
32. In these circumstances, I find the applicant is not entitled to the claimed \$919.03 for its unpaid invoice and I dismiss its claim.
33. 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. The applicant was unsuccessful, so I dismiss its fee claim. The respondent was successful but did not pay any fees, and neither party claimed dispute-related expenses.

ORDER

34. I dismiss the applicant's claims and this dispute.

Megan Stewart, Tribunal Member