Civil Resolution Tribunal

Date Issued: December 19, 2023

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rather Be Plumbing Ltd. v. Skolski,* 2023 BCCRT 1112

B E T W E E N :

RATHER BE PLUMBING LTD.

APPLICANT

A N D :

LINDA SKOLSKI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Leah Volkers

INTRODUCTION

1. The applicant, Rather Be Plumbing Ltd., provided plumbing and excavating services to the respondent, Linda Skolski. The applicant says the respondent refused to pay a portion of its invoice. The applicant claims $400 for the outstanding portion of its invoice.

2. The respondent says the applicant damaged her irrigation system when excavating without her consent while trying to locate a blocked sewer pipe. The respondent says she held back $400 from the amount owing on the applicant's invoice to account for $2,200 in damage to her irrigation system. The respondent did not file a counterclaim.

3. The applicant is represented by its owner. The respondent is self-represented.

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.

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.

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.

ISSUES

8. The issues in this dispute are:

a. Is the applicant entitled to $400 for the outstanding portion of its invoice?

b. Is the respondent entitled to a set-off?

EVIDENCE AND ANALYSIS

9. In this civil proceeding, the applicant must prove its claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.

Is the applicant entitled to $400 for the outstanding portion of its invoice?

10. The respondent hired the applicant to replace a sectional sewer line outside the respondent's home following a sewer blockage. The respondent signed the applicant's March 14, 2022 estimate that quoted $4,410 to replace the sewer line. The work included excavating a trench, abandoning the old sewer line and replacing it with a new sewer line, installing a "clean out" in the lawn, and backfilling the trench. None of this is disputed.

11. The applicant provided a March 24, 2022 invoice totaling $4,410 for the same work detailed in the estimate. The invoice was due on receipt. The invoice shows two payments were applied on April 19 and April 26, 2022, totaling $4,010, with $400 outstanding. The respondent does not dispute that the applicant completed the work it charged for in the March 24, 2022 invoice, or argue that the amount charged was unreasonable.

12. The respondent argues that she was entitled to retain $400 from the amount owing to the applicant on its invoice because the applicant has a 100% satisfaction guarantee on its work. The respondent says she was not entirely satisfied with the applicant's work. A screenshot of the applicant's website said "100% satisfaction guaranteed or your money back". However, I find this guarantee did not form part of the parties' agreement for plumbing work, and it is not listed on either the estimate or the invoice. Further, the respondent has not argued that the applicant failed to provide

any of the work the parties' agreed to. As noted above, the respondent agreed to the $4,410 estimate for the work. The work was undisputedly completed, and invoiced at the estimate amount. So, I find the applicant is entitled $400 for the outstanding portion of its invoice, subject to any proven set off.

Is the respondent entitled to a set-off?

13. The respondent says the applicant had difficulty locating the blocked sewer pipe and excavated further than originally planned in order to locate it, without her consent. The respondent says the applicant caused $2,200 in damages to her irrigation system as a result, including electrical and irrigation lines. The respondent says she withheld paying the final $400 owing on the applicant's invoice to account for the damage. As noted above, the respondent did not file a counterclaim. So, I infer she claims a set-off based on the applicant doing work either without her consent, or negligently.

14. An equitable set-off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue. The respondent's set-off claim is limited to the $400 I have awarded the applicant. Since the respondent claims the set-off, she has the burden of proving she is entitled to any set-off amount.

15. The applicant says all excavating was done with the respondent's approval. The applicant provided photos of the planned excavation route, as well as photos of the respondent's partner, S, standing beside the excavator while the work was being performed. Based on the parties submissions, I infer S resides at and co-owns the property with the respondent. I find it unlikely that the applicant excavated without either the respondent or S's approval as the respondent alleges because the photos show S was present during the excavating. The respondent did not provide a statement from S to contradict the applicant, and also did not say that either S or herself asked the applicant to stop excavating at any point, or explain when they first noticed any irrigation line damage. So, I find the excavation work was likely completed with the respondent's approval.

16. I turn next to negligence. To prove negligence, the respondent must prove that the applicant's services fell below a reasonably competent standard and that the respondent suffered damages as a result.

17. I accept the applicant owed the respondent a duty of care as its customer.

18. The applicant does not dispute that some irrigation lines were damaged, but says it was unable to determine their exact location because they are buried under the lawn. The applicant says major yard excavation work can yield unforeseen damage. The applicant says it was aware of the sprinkler heads during the excavation, and tried its best not to hit any irrigation lines. The applicant also says it was also trying to avoid excavating too close to a pond also located in the respondent's yard. The respondent did not address this submission.

19. As it is undisputed that the excavation caused some damage, the question is whether the applicant's excavation fell below the standard of a care. Generally, expert evidence is required when a customer alleges that a professional's work fell below a reasonably competent standard because an ordinary person does not know the standards of a particular profession or industry, such as plumbing and excavating. The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company,* 2019 BCSC 196 at paragraph 112.

20. In this dispute, I find expert evidence is required to determine whether the applicant's excavation fell below the standard expected of a reasonably competent plumbing and excavating company.

21. The respondent provided an expert report from Tyler Paquette, an electrician and irrigation service technician at College Lawn Sprinklers Ltd. In their report, Tyler Paquette said the applicant should have taken more care when excavating to avoid causing damage. They said it would be difficult to avoid damaging "absolutely anything", but it would have been possible to minimize damage in certain areas by using alternate excavation methods, or by stopping excavating after discovering the

first broken irrigation pipe and requesting consultation about where “zone lines” and other irrigation equipment may be located. They also said the applicant should not have backfilled the trench until the irrigation repairs were completed.

22. I accept Tyler Paquette has expertise about irrigation systems as an irrigation specialist and electrician. However, they did not say how they are qualified to provide expert evidence on the standard of care for excavating and plumbing work, and I find they are not. Therefore, I place no weight on their opinion that the applicant should have taken more care when excavating the sewer line to avoid damage. Further, while Tyler Paquette said the applicant should have taken more care, they did not identify the standard expected of an excavating and plumbing professional before and during a blocked sewer line excavation in any event, beyond suggesting “other excavation techniques” and consulting with someone about the location of irrigation equipment, without further details. I find this evidence unhelpful.

23. The respondent did not provide expert evidence about the standard of care for a sewer line excavation. So, the evidence does not show that the applicant should have exercised more care or excavated differently to gain access to the respondent’s blocked sewer pipe. There is also no evidence about the location of the electrical or irrigation lines. So, I find the evidence also does not show that the applicant could have excavated the blocked sewer pipe without causing any damage. Given the above, I find the respondent has not proven the applicant’s excavation failed to meet the required standard of care or was negligent.

24. The respondent also says the applicant removed tarps that had been placed on the yard to protect the lawn. The applicant says it removed the tarps because they can become entangled in the excavator tracks and create a safety hazard. The respondent did not dispute this, or provide any documentary evidence to show any damage resulting from the tarps being removed in any event.

25. Finally, the respondent says the applicant backfilled the trench after S asked the applicant to leave the trench open for irrigation repairs. The respondent says S spent hours digging out the trench again to facilitate irrigation repairs, but provided no

further details. For its part, the applicant says there was a lack of clarity over this issue and says the respondent wanted the trench backfilled promptly to minimize disturbance to their vacation rental guests. The respondent did not provide a statement from S to confirm they told the applicant not to do so. I find the respondent has not proved it is more likely than not that S instructed the applicant to leave the trench open to facilitate irrigation repairs. Further, without more details of S's work to re-dig the trench, I find the respondent has not proved the applicant filling the trench resulted in any damages in any event.

26. I find the respondent has not proved that the applicant negligently damaged the respondent's irrigation system or yard, so she is not entitled to any set-off. So, I order the respondent to pay the applicant the claimed $400, without any set-off.

Interest, CRT fees and expenses

27. Th applicant claims contractual interest on the $400 unpaid invoice balance. I note the *Court Order Interest Act* (COIA) does not apply if the parties have an agreement about interest. Here, both the applicant's estimate and invoice noted that a 10% interest charge would apply after 30 days of non-payment, and increase by 10% every month. The respondent agreed to the applicant's estimate, including the interest charge. However, a 10% interest charge equals 120% per year, which is higher than the 60% criminal interest rate set out in section 347 of the *Criminal Code.* As the parties agreed to an initial 10% interest rate, which would increase by 10% each subsequent month, I find the parties' agreement about interest is illegal and therefore unenforceable. As there is no enforceable agreement about interest, I find the applicant is entitled to pre-judgment interest under the COIA on the $400 from the March 24, 2022 invoice date to the date of this decision. This equals $22.13.

28. 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. As the applicant was successful, I find it is entitled to reimbursement of $125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $547.07, broken down as follows:

    a. $400 in debt,

    b. $22.07 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

30. The applicant is entitled to post-judgment interest, as applicable.

31. 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.

Leah Volkers, Tribunal Member