

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING & PROPERTY LIST

VCAT REFERENCE NO. BP104/2018

CATCHWORDS

Plumbing work carried out – account rendered and paid - whether overcharged – whether a refund should be ordered

APPLICANT	Tracey Webster
RESPONDENT	De Petro Nominees Pty Ltd (ACN: 146 351 760)
WHERE HELD	Melbourne
BEFORE	Senior Member S. Kirton
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	3 April 2018
DATE OF ORDER	20 April 2018
CITATION	Webster v De Petro Nominees Pty Ltd (Building and Property) [2018] VCAT 588

ORDERS

1. The respondent must pay the applicant the sum of \$660 forthwith.
2. Having regard to section 115B(1) of the *Victorian Civil And Administrative Tribunal Act 1998* and being satisfied that the applicant has not substantially succeeded in her claim, the Tribunal orders that the application for the reimbursement of the filing fee is dismissed.

SENIOR MEMBER S. KIRTON

APPEARANCES:

For the Applicant	Ms T. Webster in person
For the Respondent	Mr De Petro in person

REASONS

Background

- 1 This claim was brought by the applicant Ms Webster seeking a refund of \$2100, being a portion of the money she has paid to the respondent, De Petro Nominees Pty Ltd. During the hearing, evidence was given by the applicant, her partner Mr Bartlett, and Mr De Petro, who is a director of the respondent.

The applicant's evidence

- 2 The applicant said that she noticed a gas leak from her gas hot water unit on or about 15 December 2017. She searched the internet for a plumber and came across the listing for the respondent. She phoned the respondent and Mr De Petro attended her property on the morning of 15 December. He said to her that it was an old hot water unit and it was time that it was replaced with a new one. Her evidence was that he quoted the price to do that work to her at \$2200 fully installed, including taking away the old unit.
- 3 The applicant said that she told Mr De Petro to go ahead, which his company did that day. She was at home while the work was being carried out, but as she was recovering from a course of radiotherapy treatment she said she did not get involved in the works as she was resting. She said that she saw three people working at her house but could not remember how long they were actually on site for. She said at no time did anyone approach her and say the work would cost more than \$2200.
- 4 At the end of the job, she was handed the bill. She showed the Tribunal the respondent's invoice, which is dated 15 December 2017 and is for the total amount of \$4192.04. The invoice is itemised and includes a number of items as well as the supply and installation of a new hot water service, as follows:

"As per verbal quote.

Supply and install Aquamax 390 gas hot water unit. Remove existing unit from site. Pressure test gas line, loss of pressure. Leak detection found leak around existing hot water unit. Repair gas leak and re-pressure test, no loss of pressure recorded.

<i>service call</i>	<i>\$120</i>
<i>labour 2m x 2hrs</i>	<i>\$480</i>
<i>supply and install unit</i>	<i>\$2200</i>
<i>leak detection</i>	<i>\$495</i>
<i>pressure test</i>	<i>\$195</i>
<i>material</i>	<i>\$228</i>
<i>total excluding GST</i>	<i>\$3718</i>
<i>GST</i>	<i>\$371.80</i>
<i>total including GST</i>	<i>\$4089.80</i>
<i>credit card surcharge applies total</i>	<i>\$4192.04"</i>

- 5 The applicant said that she was shocked when she saw the bill but she paid it without asking any questions even though it was for a much larger sum than she had been quoted. Her explanation for doing this was that she was not thinking clearly because of her illness and the radiotherapy treatment.
- 6 Sometime later she thought to question the amount she had been charged. Mr Bartlett then gave evidence that he looked at the invoice and thought the charges were excessive. He contacted the respondent's company and asked for a refund, which was refused. Mr Bartlett also searched the internet for prices from other plumbers for similar works and showed the Tribunal printouts indicating other plumbers may charge significantly less than \$2200 to replace a hot water service.
- 7 Mr Bartlett said that the complaints he and the applicant have about the invoice include the following:
 - a. Why was a service call of \$120 charged on top of the supply and install of the hot water unit?
 - b. Why was there a charge for labour when that should have been included in the amount of \$2200 for the supply and install of the hot water unit?
 - c. Why was there a charge for a leak detection test, given the applicant knew there was a leak which is why she had called the respondent in the first place?
 - d. Why was a pressure test not included in the charge for the supply and install?
 - e. Why was there a charge for materials on top of the \$2200?

The respondent's evidence

- 8 The respondent's evidence was that there was a gas leak in the hot water unit but that there was a second gas leak on the fitting line and the extra charges relate to the work required in relation to the second leak.
- 9 He agreed with the applicant that he came to her house early on the morning of 15 December and that he had quoted her \$2200 to supply and install a new hot water unit. He said that he told her that this amount would be "plus GST". She agreed to that price and he then arranged for the work to be carried out that morning.
- 10 He had two of his employee plumbers bring a new hot water unit to the property and install it. The installation work took about one hour. His staff then did a leak test, which involved taking the gauge off and testing all the gas pipes. They found a further leak, not being the leak from the hot water unit that the applicant had noticed originally. The plumbers checked some of the gas piping visually, including going into the ceiling of the house, but could not find the source of the leak.

- 11 The respondent said that at that point he spoke to the applicant and told her she had a further leak and that he could not leave her in that situation. He said he could use leak detection equipment to locate it and they would then fix it. He said that she agreed to this. The respondent told the Tribunal that he would have had to turn off her gas supply altogether if she had not agreed to find and repair the leak on that day, although it is not clear whether he told her that at the time.
- 12 Mr De Petro's evidence was that he told the applicant that there would be a further charge for this work, although she denies this. The respondent says that even if she did not understand or remember that conversation, the applicant saw his men in the ceiling space, saw them carrying out far more work than just replacing the hot water unit, and saw them on-site for more than three hours, so she knew or should have known that there would have been a charge on top of the originally quoted price.
- 13 The respondent provided a breakdown of the extra charges, as follows:
 - a Service call \$120 - Mr De Petro said that this charge is always added to the respondent's accounts and customers are told this when they phone to make a booking. Mr Bartlett suggested that this should be deducted from the cost of doing the work, as is common with other businesses. Mr De Petro said that the charge comes about because his company has to pay the internet search engine and that is the way they recoup the advertising costs.
 - b. Labour 2m x 2hrs \$480 - Mr De Petro said that this was the work required to find the second leak and to fix it. He said he had two men working and they spent one hour locating the leak and half an hour fixing it. He conceded that they had not worked the full two hours charged, but that the respondent rounds up time on all their invoices to the nearest full hour.
 - c. Supply and install unit \$2200 - this was the amount originally quoted and was the only charge made for the original scope of work.
 - d. Leak detection \$495 - Mr de Petro explained that his company owns a specialised piece of equipment for detecting leaks. This was the piece of equipment used to locate the second leak. He initially said it costs \$495 to run the equipment but when I asked him to explain what that cost was made up of, he said that the figure was what other independent leak detector companies would charge and the respondent bases its prices on the market. Mr Bartlett suggested that that figure should include labour, if that is what other leak detector companies charge.
 - e. Pressure test \$195 - Mr De Petro said that this test was required to confirm that the second leak had been rectified. He said that one

pressure test had been included in the installation of the hot water unit but this was a second test.

- f. Material \$228 - the respondent said that the material which was charged was a section of copper pipe and a valve which had to be replaced, around the area of the second leak.

The decision

- 14 I accept that there was an original agreement between the parties for the supply and installation of a new hot water unit for the price of \$2200, including removal of the old unit. In circumstances where the respondent had been called out because the applicant had detected a leak, I find that the amount originally quoted included all necessary leak testing in respect of the leak to the hot water service.
- 15 I accept the respondent's evidence that having completed the original scope of work, a second leak was detected and that those charges on top of the \$2200 relate to work done to identify and repair the second leak. I also accept that Mr De Petro did indicate to the applicant during the course of the morning that further works would be required and that she agreed to those works being carried out. However I do not accept that he provided her with any detail of what charges would be made for this extra work.
- 16 The fact that the applicant paid the respondent's bill on 15 December is not conclusive evidence that she agreed to the amount charged. I accept her evidence that she was unwell and that she did not think at that time to challenge the bill.
- 17 Accordingly, I find there was no agreement between the parties in respect of the price to be paid for the extra works. Having said that, I accept that the works had to be carried out, that they were done so either at the applicant's request or with her consent, and that she has benefited from them.
- 18 The Tribunal's power to make orders in this proceeding is set out in Chapter 7 of the *Australian Consumer Law and Fair Trading Act 2012* ("the ACLFTA"). Section 182(1) relevantly provides as follows:

What is a consumer and trader dispute?

- (1) In this Chapter a consumer and trader dispute is a dispute or claim arising between a purchaser or possible purchaser of goods or services and a supplier or possible supplier of goods or services in relation to a supply or possible supply of goods or services.

- 19 Section 183 provides:

What is a small claim?

In this Chapter "small claim" means a consumer and trader dispute in relation to—

- (a) a claim for payment of money in an amount not exceeding \$10 000 or other prescribed amount; or
- (b) a claim for performance of work of a value not exceeding \$10 000 or other prescribed amount—

that in either case arises out of a contract for the supply of goods or the provision of services other than a contract of life insurance.

20 Section 184 relevantly provides:

Settlement of consumer and trader disputes or small claims

- (1) VCAT may hear and determine a consumer and trader dispute.
- (2) VCAT may do one or more of the following in relation to a consumer and trader dispute—

...

- (b) order the payment of a sum of money—
 - (i) *found to be owing by one party to another party;*
 - (ii) *by way of damages (including exemplary damages and damages in the nature of interest);*
 - (iii) *by way of restitution;*

...

- (e) *order the refund of any money paid under a contract ...;*

21 As a result of my findings set out above, especially at paragraphs 15 and 17, and pursuant to subsections 184(2)(b)(i), (b)(iii) and (e) of the ACLFTA, I will allow the respondent a reasonable amount for the works that it was reasonable for it to have carried out.

22 The amounts I will allow are as follows:

Service call \$120	I accept that the respondent may have advised the applicant over the telephone that there would be a service call fee. However I do not accept that there was any agreement that the amount of this fee was to be charged on top of the quoted amount of \$2200 for the replacement of the hot water service. I find it unlikely that Mr De Petro would have told the applicant the cost of replacing the hot water service was \$2200 if in fact the actual cost was going to be \$2200 plus \$120. It is more likely that he would have quoted \$2320 if he meant to charge the call out fee. I do not allow this item.
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<p>Labour 2m x 2hrs \$480 and</p> <p>Use of leak detection equipment \$495</p>	<p>I have considered these two items together because they relate to the same task. The respondent was unable to explain why it was reasonable to charge \$495 to use a piece of equipment which is in its possession, other than on the basis that an independent leak detection firm would charge that amount if the respondent had engaged it to come and do this work. I would have expected the respondent to provide me with its operating costs, such as the volume and price of expendable materials used in the machine and the hire, leasing or depreciation costs of the machine, to establish the actual cost to the respondent. Since it was unable to do that, I will allow the amount of \$495, based on what I was told an independent leak detection firm would charge if called in by the respondent. I will disallow the claim for labour of \$480 on top of the \$495, on the grounds that there was no evidence before me that an external leak detection firm would charge for labour on top of its \$495 rate.</p>
<p>pressure test \$195</p>	<p>I will allow this amount as I accept that a second pressure test was required to confirm that the second leak had been rectified.</p>
<p>material \$228</p>	<p>I will allow this amount as I accept that materials were required to repair the leak. Mr Bartlett suggested that the amount appeared excessive for the materials used, but I have no evidence before me to support that allegation.</p>

- 23 I have concluded that the reasonable cost for the necessary works carried out by the respondent is \$3118, excluding GST and the credit card surcharge. The applicant did not challenge the addition of GST to the total bill, nor the credit card surcharge. Accordingly I will not review the imposition of these charges, but will adjust the amount of GST charged to take into account the \$600 removed from the invoice. The amount of GST charged was \$371.80. The amount of GST due on \$3118 is \$311.80. I will allow the difference to the applicant, being \$60.

Orders

24 The orders to give effect to the above findings are as follows:

- (1) There will be an order that the respondent is to pay the applicant the sum of \$660.
- (2) Having regard to section 115B(1) of the *Victorian Civil And Administrative Tribunal Act 1998* and being satisfied that the applicant has not substantially succeeded in her claim, the Tribunal orders that the application for the reimbursement of the filing fee is dismissed.

SENIOR MEMBER S. KIRTON