



# Civil Resolution Tribunal

June 15, 2018

File: SC-2017-002751

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *D.R. Coell & Associates Inc. v. Broadsword Management Inc.*,  
2018 BCCRT 260

**B E T W E E N :**

D.R. Coell & Associates Inc.

**APPLICANT**

**A N D :**

Broadsword Management Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Catherine Sullivan

## **INTRODUCTION**

1. The applicant D.R. Coell & Associates Inc. (Coell) provided property appraisal services to the respondent in May, 2016. The applicant wants payment of its May 31, 2016 invoice #23671 for \$4,631.03.
2. The respondent Broadsword Management Inc. (Broadsword) did not make any payment. The respondent says there was no agreement between the parties about the fee which it says is excessive. The respondent also challenges the quality of the appraisal.
3. The applicant is represented by its president Scott Humphreys. The respondent is represented by its president Bruce Lane.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims matters brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally and flexibly. The tribunal must apply legal principles and fairness to the parties. The tribunal recognizes that parties sometimes have pre-existing relationships that will continue after this dispute resolution process has concluded.
5. The tribunal may accept as evidence any information it considers relevant, necessary and appropriate, whether that information would be admissible in a court of law. The tribunal member may ask questions of the parties and the witnesses and may inform itself in any other way it considers appropriate.
6. The tribunal has discretion to determine the format of the hearing including receiving evidence in writing or email or by telephone or videoconferencing or a combination of any of these. I decided to receive evidence in this hearing through written submissions because I find there are no significant credibility issues in the evidence or other reasons that might require an oral hearing.

7. Under tribunal rule 126, in resolving a dispute, the tribunal may make one or more of the following orders:
  - a. Order a party to do or stop doing something, or
  - b. Order a party to pay money and/or
  - c. Order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the respondent must pay the \$4,631.03 invoice for the property appraisal services?

## **EVIDENCE AND ANALYSIS**

9. This is a civil claim where the applicant must prove its claim on a balance of probabilities.
10. I have read and reviewed all the materials and evidence presented in the case. I am identifying only the evidence and arguments necessary to explain the basis for my decision.
11. The applicant operates a commercial real estate appraisal and consultant business located in Victoria, British Columbia.
12. The respondent is an investment management company also located in Victoria, British Columbia. This dispute concerns the respondent's non-payment for the cost of the applicant's property appraisal completed to finance the purchase of a winery property.
13. In February, 2016, the respondent executed an offer to purchase agreement with the owners of a winery on Salt Spring Island. On March 25, 2016, an account manager at the Bank of Montreal (BMO) wrote to the applicant president stating a client (the respondent) needed an appraisal for a winery property on Salt Spring Island. The applicant confirmed it wanted the work and put the BMO manager in

contact with one of its appraisers who had commercial appraisal experience. On March 28, 2016, the BMO manager provided the name and the address for the winery property to the appraiser (Balderston). The BMO manager said the appraisal was being conducted for financing purposes and only the land and property market values (not the assets) needed to be assessed.

14. On March 29, 2016 the BMO manager sent an email to the appraiser stating an appraisal will be commissioned after the respondent confirmed the terms of the lending request.
15. The BMO manager asked the appraiser for a cost quote from the appraisal. The assessor replied stating the fee for a land and buildings assessment would be between \$2,950.00 and \$4,300.00 plus the cost of travel and disbursements and GST.
16. It is not clear when the appraiser and the respondent first made personal contact. The appraiser says the respondent sent him an email on May 2, 2016 and there was a phone call the following day that confirmed the appraisal work would proceed. In answer to his request for a copy of the financial statements, the respondent told the appraiser he did not need to review them as the property was not being valued on that basis.
17. The parties agree the appraiser travelled to Salt Spring Island on May 19, 2016 and the respondent president was present when he conducted the onsite appraisal of the winery property. The appraiser says the respondent president told him the purpose of the appraisal was for a mortgage loan with BMO to purchase the winery. It is undisputed the respondent president told the appraiser to forward his appraisal report and the invoice to his lawyer and he provided a copy of the lawyer's business card.
18. On May 30, 2016, the appraiser provided a copy of the appraisal report and the invoice to the respondent's lawyer.

19. The \$4,631.03 invoice itemizes a professional fee of \$4,300.00, disbursements of \$112.50 and GST of \$220.53.
20. The respondent did not provide any payment or any response to the appraiser's May 30, 2016 invoice.
21. On August 10, 2016, the appraiser sent an email to the respondent requesting payment of the May 30, 2016 invoice. Four weeks later, on September 2, 2016 the respondent's president sent an email to the appraiser stating the appraisal report was inaccurate and unacceptable. He said the appraiser used the wrong property comparables, his square footage cost quotes were too low, the bill was not itemized and the cost was excessive. The respondent's president also said he had no prior notice of the cost as the BMO manager had not told him about the appraiser's fee quote.
22. On November 1, 2016, the appraiser sent another email about the outstanding invoice to the respondent and copied the respondent's lawyer. The appraiser provided a detailed response to the specific concerns raised in the respondent's September 2, 2016 email. He mentioned the May 2, 2016 email and the phone conversation on May 3, 2016 when the respondent president told him to proceed with the appraisal in accordance with the BMO requirements. The respondent provided no response to the appraiser's November 1, 2016 email.
23. On February 9, 2017, the appraiser contacted the respondent's lawyer to attempt again to resolve the outstanding invoice. The parties did not resolve their differences and the applicant filed this application on June 22, 2017.
24. It is clear there were discussions about the appraisal between the applicant and the BMO account manager that predated the contact between the applicant and the respondent. The BMO manager confirmed the applicant was available for the work and obtained a quote for the cost before the respondent had any contact with the applicant.

25. There is no direct evidence confirming the BMO manager gave the fee quote information to the respondent. However, as discussed below I find it is likely the BMO manager did so.
26. I have reached this conclusion for the following reasons. The BMO manager contacted the applicant on behalf of the respondent who was interested in purchasing the winery property. The winery purchase contract contains a subject clause that reads “this offer is subject to the Buyer, Broadsword securing financing at a rate, term and security to the satisfaction of Broadsword”. This language fits with the evidence the respondent was communicating with BMO to put the financing in place for the purchase. The BMO manager was setting up the appraisal as one of the preliminary steps in the financing process. It is undisputed the appraisal was being performed for financing purposes only and would only proceed if and after the client (the respondent) finalized his request.
27. Based on the wording of the emails, I find a financial arrangement was reached between the respondent and BMO. BMO then took the next step and put the respondent in contact with the applicant for the appraisal work to proceed. I find it is more likely than not that the BMO manager would have provided all available information (including the fee quote) to the respondent. It makes no sense that the BMO manager would not provide the fee information that he had specifically asked the applicant to provide. The parties and BMO are all sophisticated business entities who would reasonably and routinely want and would obtain information about the cost of any business transaction.
28. As I have concluded the BMO manager would have provided the fee quote information to the respondent, there is no need for me to make any finding about whether the respondent confirmed the terms of the fee arrangement in his May 2, 2016 email. No copy of any May 2, 2016 email was submitted into evidence. I therefore did not rely on the appraiser’s assertion about the May 2, 2016 email in reaching my decision there was prior discussion and an agreement between the

parties about the appraisal fee. I find the respondent accepted the applicant's fee quote.

29. The respondent president also argued the BMO had no involvement in the offer of purchase and that the evidence of discussions between the BMO manager and the applicant are not relevant to the issues in this dispute. It submitted a copy of the "Offer to Purchase" document which references existing mortgages on the winery property that were held with the Farm Credit Corporation. I have attached no weight to this argument as I find the email correspondence between the BMO manager and the applicant is straightforward and the content is unequivocal.
30. As noted above, the respondent says the appraisal work was negligently performed and lists a number of specific areas where the appraiser's work fell below the standard of a competent appraiser.
31. Before responding to those concerns, I will make some general observations about the appraiser's report. It is a comprehensive 30-page narrative document (with attachments) that includes a detailed table of contents, an executive summary and general and specific background assessment information about the winery property. There are many photos (including aerial) of the property that are professionally presented. The appraiser used the cost and direct market assessment valuation methods. For the cost analysis, he reviewed and compared sales information for 6 properties with comparable acreage. For the direct market assessment analysis, he compared five local properties.
32. The respondent says the appraiser did not compare the winery property to any property sales over \$900,000.00 even though the appraiser knew the winery asking price was \$1,625,000.00. The respondent also says there were no comparisons with other winery sales. The respondent says there were a number of sold property listings that should have been compared with the winery property. The respondent did not present any evidence about the sold property listings. Based on my review of the appraisal report, the appraiser was conducting an appraisal of a unique winery property in a relatively small real estate market (Salt

Spring Island). I find it was a reasonable decision to compare the winery property with other similar sized (acreage) and somewhat similar characteristic properties in that same small market.

33. The respondent says the sale of the Garry Oaks Winery on Salt Spring Island should have been included in the appraiser's report. The appraiser explained that information about that sale was not available at the time he performed the onsite appraisal on May 19, 2016 (the Garry Oaks sale closed on September 4, 2016) and might not be relevant for comparison purposes as the asset portion might not have been easily separated from the Garry Oaks sale price. The appraiser in the case before me was performing a land and buildings appraisal only for financing purposes.
34. The respondent says the appraiser did not compare the winery property with any other commercial properties. That comparison would not be relevant as the winery property in this dispute is zoned agricultural (not commercial) and has restrictions on other uses because it is in the agricultural land reserve. In answer to the respondent's claim that no relevant replacement costs were performed, and the square footage quotes were too low, the appraiser used the standard industry recognized costs from the Marshall and Swift Costing Manual.
35. The applicant issued its invoice on May 31, 2016. The cover letter clearly stated that the respondent should contact the appraiser if further information was required or there were questions about the report or the invoice. The respondent took no steps to contact the appraiser. The appraiser heard nothing from the respondent until September 2, 2016. I find the lack of contact at an earlier date suggests the respondent had no concerns about the appraisal report until it was pressed to pay the invoice.
36. As to whether the appraiser's fee is too high, the respondent submitted a January 28, 2016 invoice for a \$500 appraisal fee from another appraiser employed by the applicant. The respondent says the appraiser's bill in this dispute is excessive as it is eight times the amount charged by the other appraiser. The January 28, 2016



invoice was issued for the completion of a form report on a residential property. I find it is not an appropriate comparator in deciding whether the fee charged for a detailed comprehensive narrative report on a winery property was inappropriate.

37. On balance, I cannot find the evidence supports the respondent's argument the amount charged for the appraisal service was excessive. I find the fee charged for the services was reasonable in all the circumstances.
38. I find the respondent has not proven the applicant's appraiser services were negligently performed. I find the fee was not excessive for the reasons outlined above.
39. I find the applicant has proved, on a balance of probabilities that it provided reasonable property appraiser services to the respondent as agreed and that it billed for those services and received no payment. The applicant is entitled to payment of its \$4,631.03 invoice.
40. Under section 49 of the Act and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was successful in this dispute, I order the respondent to pay the applicant \$175 as reimbursement for tribunal fees.
41. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act (COIA)* as set out in my order below.

## **ORDERS**

42. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$4,848.84 broken down as follows:
  - (a) \$4,631.03 for invoice #23671;
  - (b) \$42.42 as pre-judgment interest under the COIA calculated from June 22, 2017 and;
  - (c) \$175.00 for tribunal fees.

43. The applicant is also entitled to post judgment interest, as appropriate.
44. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
45. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Catherine Sullivan, Tribunal Member