



Civil Resolution Tribunal

Date Issued: August 10, 2018

File: SC-2018-000769

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *BANNER CARPETS LTD V. DCI BUILDING SERVICES AND
CONSTRUCTION MANAGEMENT LTD.*, 2018 BCCRT 446

B E T W E E N :

BANNER CARPETS LTD

APPLICANT

A N D :

DCI BUILDING SERVICES AND CONSTRUCTION MANAGEMENT
LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment of \$1,501.45 for carpets and underlay the applicant, Banner Carpets Ltd, says it provided to the respondent, DCI Building Services and Construction Management Ltd. The respondent says it did not hire the applicant. Rather, the respondent says that the applicant was hired “by a Design firm that was paid from their client”. The applicant is represented by Lynn Herberts, an employee or principal. The respondent is represented by Debbie Brand, an employee or principal.

JURISDICTION AND PROCEDURE

2. These are the tribunal’s formal written reasons. The tribunal has jurisdiction over small claims 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. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions as I find I can fairly resolve the issues based on the documentary evidence before me.
4. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under the Act and tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

6. The issue in this dispute is whether the respondent was the contracting party with the applicant for carpets, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision. I have provided greater detail of some messages as support for my conclusion that the respondent is the proper party and is liable to pay the applicant's invoice, as discussed further below.
8. On April 18, 2017, the applicant's sales and showroom assistant S sent an email to T, the respondent's employee, and to C, who based on his email address is the employee of a business called Pacific Edge Designs (Pacific Edge). The email was also sent to G, another sales representative with the applicant.
9. In S's April 18, 2017 email, she provided an estimate for the carpet and underlay at the property in question. The applicant's estimate names "DCI Contracting" as "sold to", which I infer refers to the respondent. The estimate totaled \$3,761.45, including taxes. The estimate stated a 60% deposit was required at the time of order, and the balance due 24 hours before the order left the applicant's warehouse, unless prior credit terms were established. The estimate set out that a 24% annual interest applied on late payments. The estimate also stated that if a deposit is received by credit card, the balance may be processed on delivery or completion, unless otherwise notified.
10. On April 20, 2017, S emailed T and G and asked T to "double check the estimate, sign it and email it back to me with 60% deposit". S wrote that a further 30% will be needed before the carpet could be installed, and then the balance after installation. A minute later, T replied "Go it", to which S replied "Perfect. Let me know if you have any questions."

11. On April 24, 2017, S emailed T in follow-up, reminding him that they needed the deposit at least to have the material cut for installation “on Wednesday”. S wrote that the warehouse needed 24 hours’ notice for cuts, otherwise a rush charge would apply.
12. On April 24, 2017, the applicant received payment of \$2,260 by MasterCard, which left the \$1,501.45 balance, the amount claimed in this dispute. The evidence before me is clear that it was T who paid the \$2,260, which is reflected in the applicant’s April 27, 2017 invoice and “Receipt History” for this order.
13. In particular, on June 16, 2017, S emailed T and C, noting that the carpet job in question was completed on April 26, 2017. She enclosed the \$1,501.45 invoice balance, and asked for a credit card or payment by cheque. T emailed S “you guys already have my Visa and I thought this was already charged I have already filled out a credit card authorization form?” S replied to T that payment had not been received because his deposit credit card payment was by phone and the applicant does not keep the information on file.
14. On June 19, 2017, C emailed S and T and others that he was instructed “the Carpet Co” was approved by the designer and had the estimates sent to S, T, and “designer”. It appears the designer could refer to another third-party, JV Design Group. In response to S’s request for payment, T emailed later on June 19, 2017 “a cheque is being sent thx”. S replied that the applicant’s accountant would email the receipt when received.
15. The applicant then emailed T in follow-up on June 23, 2017, and he replied that he had forwarded the request “to my office” and that a cheque would be issued “if it has not been already”. The applicant followed up again on June 26 and July 5, 2017. At no time in this chronology did T ever indicate the respondent was not responsible to pay the applicant’s invoice. To the contrary, T always accepted responsibility. T had an email address clearly associated with the respondent and his emails concluded with the respondent’s logo block.

16. The applicant's accounting staff kept following up, and started emailing the respondent's "admin" email address to ask for payment. On July 18, 2017, the respondent's employee K emailed back "We will pay on our next cheque run. Next week". Further exchanges occurred with K saying they would let the applicant know when the cheque was ready for pick-up.
17. On July 25, 2017, for the first time the respondent balked at making payment and wrote that it was waiting for the client to pay, and that in the meantime "please stop sending me urgent emails". The respondent reiterated that position on August 3, 2017.
18. The respondent's submission is brief, and says the applicant was hired by "a Design firm" that was paid from their client. This is not our issue". I find this submission to be disingenuous and inaccurate in light of the email correspondence set out above. There is no suggestion the carpet and underlay was not provided as ordered. There is no suggestion T was not authorized to act on the respondent's behalf. I find the applicant has proved the respondent is responsible for payment, as the respondent was the party that contracted with the applicant for that carpet and underlay. The fact that the respondent's client had not yet paid is not an issue for the applicant and is not a basis not to pay the applicant.
19. The applicant is entitled to payment of the outstanding invoice balance of \$1,501.45. While the applicant's invoice indicates 24% annual interest, the applicant only claims 3.2% annual interest (\$48.57 as of April 16, 2018), and so I order that lesser 3.2% rate, from April 27, 2017, as set out in my order below.
20. In accordance with the Act and the tribunal's rules, as the applicant was successful I find it is also entitled to reimbursement of the \$125 paid for tribunal fees.

ORDERS

21. Within 14 days, I order the respondent to pay the applicant a total of \$1,688.32, broken down as follows:
 - a. \$1,501.45 as payment of the applicant's invoice CG700282,
 - b. \$61.87 in pre-judgment interest at 3.2% per annum, and
 - c. \$125 in tribunal fees.
22. The applicant is entitled to post-judgment interest under the COIA, as applicable.
23. 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.
24. 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 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.

Shelley Lopez, Vice Chair