



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wendy Hesketh Inc. v. Broken Back Mining Supplies Ltd.*, 2018 BCCRT
589

B E T W E E N :

Wendy Hesketh Inc.

APPLICANT

A N D :

Broken Back Mining Supplies Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Michael J. Kleisinger

INTRODUCTION

1. The applicant, Wendy Hesketh Inc., seeks payment for accounting services it provided to the respondent, Broken Back Mining Supplies Ltd. For the following

reasons, I find the respondent must pay the applicant's invoice with contractual interest.

2. The principals of each company represent the parties to this dispute.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). 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.
4. I decided to hear this dispute through written submissions. I found that there were no significant issues of credibility or other reasons that might have required an oral hearing.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money; and
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issue in this dispute is whether the respondent should pay the applicant's invoice with contractual interest.

EVIDENCE AND ANALYSIS

8. Wendy Hesketh is a Certified Professional Accountant who provides accounting services through the applicant company. Clint Batchelor and Allen Walls are directors of the respondent mining supply company.
9. On December 21, 2016, through an engagement letter, the applicant offered to prepare the respondent's financial statements, income tax returns and perform other bookkeeping services, as required. The engagement letter stated that payments were due when billed and that overdue accounts would be subject to an interest charge of 1% per subsequent month. Both parties signed the engagement letter. The respondent paid a \$500 deposit, as agreed.
10. Over the following months, the applicant provided various bookkeeping and accounting services. The applicant and respondent both attempted to input the respondent's finances into a new computer accounting program, which proved more troublesome than the parties anticipated. That said, I find the applicant completed all of the services it offered to the respondent.
11. On June 19, 2017, after completing the respondent's financial statements and corporate tax returns, the applicant gave the respondent an invoice for \$2,172.25.
12. Although the respondent did not immediately pay the invoice, its principals repeatedly expressed their intention to do so. For example, on July 29, 2017, after Ms. Hesketh inquired about payment, Mr. Batchelor said that the company expected an influx of funds in the near future and would "very shortly have you all caught up." Despite repeated requests for payment, and corresponding promises to pay, the respondent did not pay the invoice.

13. On August 21, 2017, Ms. Hesketh notified the respondent that if it did not pay, she would refer the matter to collections. In response, Mr. Batchelor stated, for the first time, that the respondent was dissatisfied with the applicant's services. That said, Mr. Batchelor confirmed the respondent would pay the invoice, in full, by mid-September. Ms. Hesketh agreed to wait until September 15, 2017.
14. On September 12, 2017, Ms. Hesketh warned that she would send the matter to collections if the respondent did not pay the invoice by September 15, 2017.
15. The respondent did not pay. Rather, on September 20, 2017, it filed a complaint against Ms. Hesketh with her regulatory body. The respondent's complaints were the same as it made in this dispute, namely, that the applicant took too long to perform the services, that the troubles with the accounting software were the applicant's fault, and that the applicant did not act professionally.
16. On November 20, 2017, the regulator informed the parties that there was insufficient evidence to support the respondent's allegations. The regulator declined to investigate the matter further because it found:
 - (a) The respondent's bookkeeping and its inexperienced bookkeeper contributed to the delays and costs associated with Ms. Hesketh's work;
 - (b) The complaint was primarily a fee dispute which the regulator does not investigate unless there are allegations of significant misconduct; and
 - (c) The final invoice did not differ materially from the applicant's initial estimate.

Position of the Parties

17. The applicant says it should be paid for the services performed including contractual interest of 1% per month.
18. The respondent says it is justified in not paying the invoice because:
 - (a) In its view, the applicant took 6 months to do a 1-month job.

- (b) The applicant told the respondent to purchase and use inappropriate bookkeeping software. This led to significant delays and much time spent by the respondent's staff to input information.
- (c) Ms. Hesketh took holidays during times the respondent says she should not have.
- (d) Ms. Hesketh was unnecessarily aggressive in pursuing payment of the invoice.

Discussion

- 19. The parties had a contract. The applicant agreed to perform various accounting services and the respondent agreed to pay for those services. Unless the applicant breached the contract or acted negligently, the respondent should pay the invoice.
- 20. Before August 21, 2017, there is no evidence that the respondent complained to the applicant about the cost or quality of the services, or the length of time the applicant took to perform the services. Only after the applicant threatened to take the overdue invoice to a collections agency did the respondent mention these concerns.
- 21. From my review of the evidence, the respondent received all of the accounting services for which it bargained. I am not persuaded that the applicant breached any term of the contract. Similarly, the respondent has not shown that the applicant acted negligently. The tribunal is not in a position to determine whether the applicant's actions fell below the standard expected of a professional accountant without evidence from others in the industry. The respondent has not provided any evidence from other accounting professionals to support its allegations that the applicant took too long, charged too much, or did not provide adequate services. The only independent evidence about the appropriateness of the applicant's actions in this case is the letter from Ms. Hesketh's regulator. The regulator found no fault with her conduct.

22. On the evidence, I am unable to find that the applicant did anything that would entitle the respondent to avoid paying the invoice. I find the applicant has proved it is entitled to payment.

Decision

23. I find that the applicant is entitled to \$2,172.25 for the unpaid invoice. As a term of the contract, the respondent is also responsible for 1% monthly interest for the unpaid invoice. I calculate the contractual interest to be an additional \$334.94. As the successful party, the applicant is also entitled to \$125.00 for the tribunal fees it paid.

ORDERS

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,632.19, consisting of the following:
 - a. \$2,172.25 for the unpaid invoice;
 - b. \$334.94 for contractual interest; and
 - c. \$125.00 for tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

Michael J. Kleisinger, Tribunal Member