Civil Resolution Tribunal

Date Issued: January 25, 2019

File: SC-2017-006318

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mega Cranes Ltd. v. GoGreen Wastewater Ltd. et al*, 2019 BCCRT 104

B E T W E E N :

Mega Cranes Ltd.

APPLICANT

A N D :

GoGreen Wastewater Ltd. and Erling Kjerside

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about payment for crane services. The applicant, Mega Cranes Ltd. (Mega), says the respondent GoGreen Wastewater Ltd. (GoGreen) owes $4,601.92 for its outstanding invoice, plus 30% contractual interest, as discussed

below. The respondent Erling Kjerside is GoGreen's principal. Mr. Kjerside signed a personal guarantee for the applicant's invoices.

2. The respondents deny liability, essentially saying the applicant overcharged for the crane service actually provided. The respondents have paid nothing towards the applicant's invoice for the service in question.

3. The applicant Mega is represented by Kelly Peterson, an employee or principal. The respondents are represented by Mr. Kjerside.

4. For the reasons that follow, I allow the applicant's claims.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.

8. Under 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.

9. I note the applicant's references to holdbacks under the *Builders Lien Act*. I have no jurisdiction under that statute, including whether the respondents complied with it. That said, the applicant's claim is in debt and I have addressed that debt claim below.

ISSUE

10. The issue in this dispute is to what extent, if any, the applicant is entitled to payment of its $4,601.92 invoice, plus 30% contractual interest.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

12. It is undisputed that on May 1, 2017 GoGreen asked Mega to provide crane services on a rental basis. Mr. Kjerside wanted 3 septic tanks moved across the road onto an aviation site, along with a "shack" or "electrical house" and an "electric pool". It is undisputed that the respondents have paid nothing towards the applicant's invoice.

13. Mega's May 1, 2017 quote to GoGreen was for "mobile hydraulic crane service". The quote stated it was for the estimated cost of the crane and operator, based on an hourly rate. In particular, a 75 ton crane, including operator, for $235 per hour ($235 reflects a stated 10% discount on crane time only, if payments are received within 30 days of the invoice). The quote also set out $40 for permits "round trip",

$95 for “truck and B-Train Trailer”, and $250 weekly charge for “storing units in yard”. The quote stated that off-loading units in the yard would attract an additional charge. I find this quote became the parties’ contract.

14. Mega’s contract with GoGreen expressly incorporates the terms in its “Conditions and Terms 24 Hr. Service” form, including:

    a. 30% contractual interest on accounts over 33 days,

    b. Mega reserves the right to interrupt, at any time, the equipment operations if it deems that advisable to protect people or the equipment or property, and in that event the customer is not entitled to compensation,

    c. The customer must never require the crane operator to exceed the cranes’ recognized load capacity,

    d. The customer agrees to pay Mega for all crane services charges including “portal to portal”, overtime, transportation charges, travel, assembling, dismantling, rigging, fuel, and maintenance,

    e. Minimum charges: boom trucks – 3 hours, hydraulic mobile cranes – 4 hours, conventional truck cranes – 8 hours.

15. On May 3, 2017, Mega’s sales person emailed Mr. Kjerside about the plan to move GoGreen’s septic tanks on May 4.

16. On May 4, 2017, Mega emailed Mr. Kjerside that “due to the additional down time and standby time” for the job that morning, it needed to hold an additional $1,000 on his credit card. Mega said that the funds would be released when payment by cheque was received. There is no evidence that any credit charges were ever put through, the evidence shows a total of $2,500 was only pre-authorized.

17. The evidence shows that on May 4, 2017, Mega’s 1st crane operator attended the site and Mr. Kjerside signed the service agreement to authorize the start of work. It is undisputed that the septic tanks were not yet ready as water was still being

pumped out of the hole, which Mega says resulted in stand-by time for the crane due to safety concerns. I accept this evidence which is not particularly disputed.

18. Mega submits that it moved the "shack", which I infer is the electrical house described by Mr. Kjerside, and "several loads of 'stuff'" across the road as requested. I accept this evidence, which is undisputed. Mega submits that the crane lifted one lid off the tank onto the truck. Mega says it attempted to get the slings under the tank but "no one would go into the hole" because it was unsafe. Mr. Kjerside admits in his submission that he was not on site when the crane operator tried to use a sling, but arrived later. I accept Mega's evidence. The parties agree that Kjerside told Mega's crew to go home, and later he arranged to have the water in the hole pumped out. Mega says by signing the service agreement, the respondents released the crane from further services. I agree, based on the parties' contract.

19. While Mr. Kjerside denies ever asking for the tanks to be transported to Mega's yard, the quote and the parties' email exchanges clearly show that he did. Nothing turns on this because Mega's bill is for the work that it did, which ultimately did not include moving the tanks.

20. The respondents also say Mega did not come prepared for the job in that they did not bring a spreader bar. Mega says the site photos Mr. Kjerside sent on May 1, 2017, showing another crane in place, did not show a spreader bar and he never requested one. Based on the evidence before me, I agree with Mega on the issue of the spreader.

21. Mega says that overhead high-voltage wires and other site considerations required a larger 200 ton crane to be dispatched to the site, which the 2nd crane operator brought. The respondents say Mega supplied a crane too big for the job, and thus they should not have to pay for the increased cost. I find the respondents are bound by the contract, which includes the term about safety, as discussed above. Further, Mr. Kjerside signed the agreement after the second larger crane arrived, and never

expressed any concern about the associated charge until after this tribunal proceeding began.

22. Mega invoiced GoGreen a total of $4,601.92 (the amount claimed in this dispute), broken down as follows:

    a. **May 5, 2017, invoice # MC139979 for $4,029.32**. This reflected 11.75 hours for a 75 ton crane service at $260 per hour, reduced to $234 per hour "if paid within terms", less a $195 credit, plus fuel charges, 4 hours of operator overtime at $45 per hour, $665 for 7 hours of truck service, plus permit and tax. I find that Mega's timesheets for the May 4, 2017 job support the invoice. I infer the $234 is a typo error, and should read $235, as per the earlier quote.

    b. **October 31, 2017, invoice # IN131190 for $572.60**. This invoice is for "service charges" and refers to MC 139979. This is actually an invoice for interest, and the invoice states it covers the period between June 4 and October 31, 2017.

23. It is undisputed that on May 7, 2017 Mr. Kjerside signed a personal guarantee to pay Mega's accounts. I note this was signed after the May 4 work was completed and after the May 5, 2017 invoice was issued. Mr. Kjerside made no objection about the invoice.

24. After the respondents had pumped out the water, they arranged for another company PT to move the tanks. PT's invoice was for $1,370.51, broken down as 5.75 hours at $227 per hour, plus tax. Contrary to Mr. Kjerside's submission, the fact that PT charged less is not determinative. There is no dispute that the respondents agreed to Mega's terms and conditions. In any event, PT's hourly rate is similar to Mega's, and PT did not have the stand-by time. Further, Mega's invoice did not charge for a 200 ton crane, it charged for a 75 ton crane.

25. This tribunal proceeding began on November 6, 2017, when the Dispute Notice was issued. On November 22, 2017, Mr. Kjerside gave Mega 9 post-dated cheques for

$500 each to pay invoice MC 139979 dated between March 24 and November 2018. Mega objected to the delay in payment.

26. In all of their 6 or more promises to pay between June 27 and December 9, 2017, the respondents never objected to Mega's invoice or the quality of the service provided. The respondents did not file their Dispute Response until June 2018, and it appears the parties were negotiating in the interim. The evidence shows that those negotiations failed because Mr. Kjerside failed to honour his payments.

27. In particular, on March 26, 2018, Mr. Kjerside contacted Mega and asked "where are we with our agreement?" and on March 27, 2018 Mega responded that it would deposit the first post-dated $500 cheque that day. On March 29, 2018, Mr. Kjerside put a stop payment order on the March 24, 2018 cheque. On April 10, 2018, Mr. Kjerside indicated that once he had another project "on track", he would pay, and he apologized "for the inconvenience".

28. I find the applicant Mega provided the services as agreed. I find Mega was entitled to stop the crane service on May 4, 2017 given the undisputed safety concern about the water in the hole. The stand-by time is essentially undisputed and I find it is proven by the applicant's records in evidence. I consider it significant that the respondents never objected to Mega's invoices until after this dispute was filed, despite numerous promises to pay in the interim. I find the respondents' failure to pay relates to their financial circumstances, and not to the applicant's services.

29. I find the applicant is entitled to payment of its May 5, 2017, invoice # MC139979 for $4,029.32. The respondents are jointly and severally liable, given the undisputed personal guarantee given by Mr. Kjerside, which he gave after the May 4, 2017 work was done by Mega.

30. As referenced above, the applicant claims 30% annual contractual interest, as provided for in its agreement. The tribunal's monetary limit is $5,000. I have recently issued a decision that contractual interest must together with the principal debt fall within the tribunal's monetary limit (see *EASYFINANCIAL SERVICES INC. v.*

Rosvold, 2019 BCCRT 68). I find the same analysis applies to this case. The applicant has advised that it wishes to abandon any claims in excess of $5,000, excluding tribunal fees and dispute-related expenses.

31. The applicant's October 31, 2017 invoice # IN131190 for $572.60 is for contractual interest on the invoice MC139979, up until October 31, 2017. My calculation of contractual interest from the MC139979 invoice's June 4, 2017 due date to the date of this decision is $1,987.07. With the $4,029.32 principal, this totals $6,016.39. Given my conclusion above that contractual interest must fall within the $5,000 limit, I reduce the applicant's award to $5,000.

32. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute I find it is entitled to reimbursement of $175 in tribunal fees and $31 in dispute-related expenses related to a company search and serving the respondents.

ORDERS

33. Within 14 days, I order the respondents to pay the applicant a total of $5,206, broken down as follows:

    a. $4,029.32, as payment of the applicant's invoice MC 139979,

    b. $970.68 in interest, and

    c. $206, for $175 in tribunal fees and $31 in dispute-related expenses.

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

35. 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.

36. 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.

Shelley Lopez, Vice Chair