



Civil Resolution Tribunal

Date Issued: February 15, 2019

File: SC-2018-003414

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Whirlwind Cleaning et al v. Zarowski*, 2019 BCCRT 186

B E T W E E N :

Whirlwind Cleaning and Eric Leighty

APPLICANTS

A N D :

Robert Zarowski

RESPONDENT

A N D :

Whirlwind Cleaning and Eric Leighty

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about cleaning services. The applicants, Whirlwind Cleaning (Whirlwind) and Eric Leighty (Mr. Leighty), say the respondent, Robert Zarowski (Mr. Zarowski) owes them \$1,638 for cleaning services.
2. The respondent does not deny that he owes the applicants some amount for cleaning services, but he counterclaims against the applicants for \$2,053.20 in non-registered GST charges and \$387.03 in cleaning deficiencies. After offsetting these amounts the respondent says the applicants owe him \$802.23.
3. In response to the counterclaim Mr. Leighty says Whirlwind has always had a valid GST number, but that any issues with the validity of its GST number are between Whirlwind and the Canada Revenue Agency (CRA) and do not concern Mr. Zarowski. Whirlwind did not provide a separate response to Mr. Zarowski's counterclaim.
4. Whirlwind is represented by an employee or principal. Mr. Leighty and Mr. Zarowski are both self-represented.

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*. 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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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.

ISSUES

9. The issues in this dispute are:
 - a. What amount, if any, is Mr. Zarowski required to pay the applicants for cleaning fees, and should that amount be reduced to account for cleaning deficiencies?
 - b. Are the applicants required to pay Mr. Zarowski \$2,053.20 for GST they charged him, on the basis that the applicants' GST number was not registered?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct. Here, this means the applicants must prove their claim and Mr. Zarowski must prove his counterclaim.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

What amount, if any, is Mr. Zarowski required to pay the applicants for cleaning fees, and should that amount be reduced to account for cleaning deficiencies?

12. It is undisputed that the applicants provided cottage cleaning services to Mr. Zarowski for many years. In September and October 2017, the applicants sent Mr. Zarowski invoices totaling \$1,638 for cleaning services provided in August and September 2017, which he has not paid.
13. Mr. Zarowski does not specifically deny that he owes the applicant for cleaning services, but he says the amount the applicants owe him for cleaning deficiencies and unvalidated GST charges exceeds the \$1,638 the applicants are claiming.
14. Mr. Zarowski says the applicants owe him a total of \$387.03 in cleaning deficiencies, broken down as follows:
 - a. \$136.50 for a deficient carpet shampoo on August 2, 2017
 - b. \$136.50 for a deficient cottage clean on September 28, 2017
 - c. \$114.03 for damaged or missing towels, linens and bed skirt
15. Mr. Zarowski submitted an October 2017 email exchange with the applicants in which he outlines concerns with the linens, however I find these emails alone are insufficient proof that any of the linens were damaged or missing. The applicants submitted photographs of bedrooms in Mr. Zarowski's cottage which they say were taken immediately after shampooing the carpets. The carpets in the photograph appear to be clean. Mr. Zarowski says one of these photographs shows a stain on a bed skirt, and I agree. However, there is no other evidence or explanation as to the context of this stain. There is no evidence that the applicants guaranteed stain removal, as opposed to making a reasonable cleaning effort. There is no cleaning contract in evidence, so the nature and extent of the cleaning services the applicants were required to provide is unclear. In the email exchange the applicants expressed concern about not having enough time to properly clean the cottage, including stains, in between cottage guests. The applicants also said they worked

very hard to shampoo the carpets, and Mr. Zarowski's response was, "your efforts are appreciated." On balance, I find Mr. Zarowski has not substantiated his claims for cleaning deficiencies.

16. It is undisputed that at some point in 2017 the applicants left the patio at Mr. Zarowski's cottage unlocked and left a window open, which the applicants called an oversight, and for which they apologized to Mr. Zarowski. He says this was a breach of the parties' cleaning agreement, however there is no written agreement in evidence, nor is there any evidence Mr. Zarowski incurred damages as a result of the applicants' oversight. I dismiss this claim. I find that Mr. Zarowski must pay the applicants \$1,638 for cleaning services. The applicants are entitled to pre-judgment interest under the *Court Order Interest Act* calculated from October 7, 2017, which is the date of the latest invoice.

Are the applicants required to pay Mr. Zarowski \$2,053.20 for GST they charged him, on the basis that the applicants' GST number was not registered?

17. Mr. Zarowski says the applicants have charged him \$2,053.20 in GST from 2009 to 2017 without a valid registered GST number, in violation of CRA rules. He says there is "no way" the applicants remitted the GST charges to CRA during that time but provided no proof of this allegation.
18. Mr. Zarowski says the applicants tried to cover up this practice by backdating its invoices with an alternate GST number that was only valid as of March 9, 2017, and that this GST number was not indicated on any of the invoices the respondent received. However, I cannot tell from the invoices in evidence whether any of them have been "backdated" as Mr. Zarowski suggests.
19. Mr. Zarowski submitted various GST/HST Registry search results he performed on various dates, however many of these searches had errors or insufficient information. One of the searches indicates that one of the GST numbers was registered on March 9, 2017. Another search indicates that a different GST number

was not registered on October 23, 2017. However, these searches do not specify the duration of time the numbers were valid.

20. Mr. Leighty denies that the applicants charged GST without a valid GST number. He says the applicants have always had a valid GST number, and that at one point the GST number changed when the business changed from a sole proprietorship to a partnership. He also says Mr. Zarowski has no standing to claim against the applicants for any alleged breach of the *Income Tax Act* or the *Excise Tax Act*, and that any issues with the applicants' GST number are between the applicants and the CRA.
21. In the absence of any evidence that the applicants failed to remit the GST charges, I find that any issues relating to the applicants' GST number registration are between them and CRA. I find Mr. Zarowski is not entitled to repayment of the GST charges, and I dismiss this counterclaim.
22. I note that even if Mr. Zarowski was entitled to repayment of the GST charges, which I have found he is not, a significant portion of his claim would be statute-barred under both the previous *Limitation Act* and the new *Limitation Act* which became effective June 1, 2013.
23. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The applicants were successful, so I find they are entitled to reimbursement of \$125 in tribunal fees. They did not claim any dispute-related expenses. As Mr. Zarowski was unsuccessful in his counterclaim, I dismiss his claim for reimbursement of tribunal fees.

ORDERS

24. Within 14 days of the date of this order, I order Mr. Zarowski to pay the applicants a total of \$1,791.45, broken down as follows:

- a. \$1,638.00 as payment of the applicants' cleaning invoices,
- b. \$28.45 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in tribunal fees.

25. The applicants are entitled to post-judgment interest, as applicable.

26. Mr. Zarowski's counterclaim is dismissed.

27. 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.

28. 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.

Sarah Orr, Tribunal Member