



# Civil Resolution Tribunal

Date Issued: March 6, 2019

File: SC-2018-004571

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EarthStar LED v. OMNICOM CANADA CORP. dba DDB Canada.*,  
2019 BCCRT 265

B E T W E E N :

EarthStar LED

**APPLICANT**

A N D :

OMNICOM CANADA CORP. doing business as DDB Canada.

**RESPONDENT**

A N D :

Northern L.E.D. Ltd.

**RESPONDENT BY THIRD PARTY NOTICE**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The applicant EarthStar LED (Earthstar) says the respondent OMNICOM CANADA CORP. doing business as DDB Canada. (DDB) owes it \$2,478 for supply of lighting materials and installation (Services).
2. In its third party notice against Northern L.E.D. Ltd. (Northern), DDB originally said Northern directly or through its Chief Operating Officer and agent Jason Hall, appropriated DDB's payment that was intended for Earthstar. In particular, DDB says Northern represented to DDB that it was the same entity as Earthstar or that Northern had provided the Services when Northern knew that Earthstar had provided them. DDB says at all material times all of its dealings about the Services were with Mr. Hall. Later, DDB argues that Northern was entitled to the payment.
3. Earthstar is represented by John Huska, a principal or employee. DDB is represented by Sarah Chung, a principal or employee, and Northern is represented by Wosim Tahan, a principal or employee. For the reasons that follow, I find the claims in this dispute must all be dismissed.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.

6. 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.
7. 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.

## **ISSUE**

8. The issue in this dispute is whether Earthstar is owed \$2,478 for the Services, and if so, from whom.

## **EVIDENCE AND ANALYSIS**

9. 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.
10. All parties agree that the verbal contract for the Services was between Earthstar and DDB, with Earthstar's then employee Jason Hall acting as Earthstar's agent. It is also undisputed that Jason Hall was employed by Earthstar at that time and negotiated the contract. It is undisputed that Earthstar has not been paid for the Services.
11. Earthstar says on May 1, 2017 it invoiced DDB \$2,478 for the Services. This invoice was issued by Mr. Hall when he was still working at Earthstar. All parties agree that DDB did not pay this invoice.

12. On May 16, 2017, Mr. Hall left Earthstar and started working with Northern, although it is undisputed that DDB did not learn this until August 8, 2017.
13. All parties agree that at Mr. Hall's June 14, 2017 direction, on July 10, 2018 DDB paid Northern \$2,878.40 for the Services. DDB says that Mr. Hall told DDB that there had been a change of ownership and that the Services had been completed by Northern. I accept the undisputed evidence that Mr. Hall said these things. However, Earthstar disputes these statements and denies that Northern is a successor company to Earthstar.
14. Mr. Hall sent DDB a second invoice dated May 25, 2017 for \$2,878.40, and on its face asked that payment be sent to Northern. It is undisputed that Mr. Hall was the individual with whom DDB had contact for arrangement of the Services and payment for them.
15. I find that at all material times, Mr. Hall acted as the actual and ostensible (apparent) agent for both Earthstar and, later, Northern. This means that DDB reasonably believed that Mr. Hall had authority to provide directions on behalf of Earthstar, including that DDB should pay Northern for the Services.
16. According to a "statement of facts" before me, all parties agree that DDB erroneously paid the invoice in full to Northern as they did not at the time know that Mr. Hall was no longer Earthstar's employee.
17. Northern submits that Earthstar owed many invoices to Northern and refused to pay. Out of concern for those other debts, as he was quitting Earthstar and moving to Northern, Mr. Hall asked DDB to issue payment for the Services to Northern, given that Mr. Tahan says Northern actually provided the Services.
18. The parties' central disagreement is whether Northern did the work at issue. Earthstar disputes that Northern did, though I note Earthstar at one point says that as of May 1, 2017, "it is possible" Mr. Hall subcontracted Northern to install the lights as part of the Services.

19. However, the significant point in this dispute is that there is before me no claim directly between Earthstar and Northern or between Earthstar and Mr. Hall.
20. While Earthstar alleges Mr. Hall fraudulently claimed there was a change of ownership from Earthstar to Northern, as noted above in this dispute Earthstar makes no claim against Mr. Hall. The fundamental point here is that DDB reasonably relied on Mr. Hall's information, and Earthstar does not suggest DDB should have known otherwise. Here, I note Earthstar's own submission that Mr. Hall had "fraudulently tricked DDB into paying the wrong company".
21. Given these circumstances, I find Earthstar's claim against DDB must be dismissed. Again, this is because it is undisputed that Mr. Hall had the actual and ostensible authority to act on Earthstar's behalf. Mr. Hall directed DDB to make the payment to Northern for the Services and DDB followed that direction. Given this, I do not need to decide whether it was Earthstar or Northern who actually performed the Services. Mr. Hall's direction on Earthstar's behalf that DDB should pay Northern means Earthstar's claim as against DDB cannot succeed.
22. Given my conclusion that Earthstar's claim against DDB must fail, I do not need to address DDB's third party claim against Northern. It is also dismissed.
23. Nothing in this decision prevents Earthstar from pursuing its claims as against Northern or Mr. Hall, subject to any applicable limitation period. I have not considered the merits of any such claims.
24. In accordance with the Act and the tribunal's rules, I find Earthstar was unsuccessful in this dispute and therefore not entitled to reimbursement of tribunal fees or dispute-related expenses. I say the same for DDB who was unsuccessful in its third party claim.

## **ORDERS**

25. I order Earthstar's claims against DDB dismissed.

26. I order DDB's third party claims against Northern dismissed.

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Shelley Lopez, Vice Chair