



Civil Resolution Tribunal

Date Issued: March 8, 2019

File: SC-2018-004641

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Prostar Painting & Restorations v. Nu-Westech Engineering Limited et al*,
2019 BCCRT 277

B E T W E E N :

Prostar Painting & Restorations

APPLICANT

A N D :

Nu-Westech Engineering Limited and The John Howard Society of the
Lower Mainland of British Columbia

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about painting services. The applicant, Prostar Painting & Restorations, says the respondent Nu-Westech Engineering Limited (Nu-Westech)

hired it as a subcontractor to provide painting services to the respondent The John Howard Society of the Lower Mainland of British Columbia (JHS).

2. The applicant says Nu-Westech has paid it only 50% of its invoice for the painting services, and it wants the respondents to pay the \$4,122.56 balance of the invoice, plus \$707.68 in contractual interest. JHS says the applicant's contract was with Nu-Westech, not JHS, and that the applicant does not have a legal claim against JHS. As discussed further below, Nu-Westech did not participate in the dispute resolution process despite being served with the Dispute Notice.
3. The applicant and JHS are each represented by employees or principals.

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*. 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. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Are the respondents required to pay the applicant the \$4,122.56 balance of its invoice?
 - b. Are the respondents required to pay the applicant \$707.68 in contractual interest on the outstanding invoice amount?

EVIDENCE AND ANALYSIS

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

Are the respondents required to pay the applicant the \$4,122.56 balance of its invoice?

11. The applicant says Nu-Westech hired them to complete a painting job on an hourly basis, and that Nu-Westech provided the paint. After completing the work, the applicant says it submitted an initial invoice to Nu-Westech, the amount of which Nu-Westech disputed. The applicant says it subsequently submitted a revised final invoice to Nu-Westech. Neither the initial or final invoice are in evidence, however the applicant submitted an email it sent to Nu-Westech which includes a statement dated April 30, 2018. That statement indicates the final invoice was dated June 9, 2017 for a total of \$8,245.13, and that Nu-Westech paid the applicant \$4,122.57 on

March 7, 2018. This left a \$4,122.56 balance, the principal amount claimed in this dispute.

12. The applicant submitted an email it received from Nu-Westech in October 2017 in which Nu-Westech says “you will get paid.” The email implies that Nu-Westech was waiting on payment from JHS before it could pay the applicant. The applicant says that if JHS has not paid Nu-Westech the amount of its contract with them, then JHS should pay the applicant.
13. JHS says it does not have a contractual relationship with the applicant and that it had nothing to do with hiring the applicant or the agreement between the applicant and Nu-Westech. The applicant does not dispute this. JHS says it had a contract with Nu-Westech, which it has paid in full. The only evidence disputing this is email correspondence from Nu-Westech in October 2017, however since this email is almost a year and a half old and Nu-Westech did not participate in this dispute, I prefer JHS’ evidence on this point. I find the applicant has no contractual relationship with JHS, and therefore there is no legal basis on which JHS is required to pay the applicant’s invoice. I dismiss the applicant’s claim against JHS.
14. As noted above, Nu-Westech did not provide a Dispute Response or participate in the dispute resolution process despite being properly served with the Dispute Notice. Nu-Westech is therefore in default, and its liability is assumed. On the evidence before me I am also satisfied that the applicant provided painting services to Nu-Westech and that Nu-Westech owes the applicant the balance of the invoice. I find Nu-Westech must pay the applicant the \$4,122.56 balance of the invoice.

Are the respondents required to pay the applicant \$707.68 in contractual interest on the outstanding invoice amount?

15. The applicant did not submit the initial or final invoice, however the April 30, 2018 statement indicates it is due upon receipt and that there is a 2 percent monthly interest charge calculated on all amounts over 3 weeks old. The applicant also submitted 2 invoices for an unrelated contract which indicates the same interest

rate. Both documents are in the same format. I am satisfied that the applicant has a standard invoice which includes a term for contractual interest at 2 percent per month.

16. However, section 4 of the federal *Interest Act* says that when an interest rate in a contract is expressed as a rate or percentage for any period less than one year, and if the contract does not contain an express statement of the equivalent yearly interest rate or percentage, the maximum allowable interest rate is 5 percent per year. Neither the April 30, 2018 statement nor the other invoices in evidence indicate an equivalent annual interest rate. Therefore, I find the maximum interest rate the applicant may charge is 5 percent per year.
17. The applicant's revised invoice is dated June 9, 2017, and therefore interest began accruing on July 1, 2017. I find Nu-Westech must pay the applicant \$347.88 in contractual pre-judgment interest on the outstanding invoice amount.
18. 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. I find Nu-Westech must reimburse the applicant \$175 for tribunal fees. The applicant has claimed \$52.40 in dispute-related expenses for courier fees. Although the applicant did not provide a receipt of these fees, I find they are reasonable in the circumstances. I find Nu-Westech must reimburse the applicant \$52.40 for dispute-related expenses.

ORDERS

19. Within 14 days of the date of this order, I order Nu-Westech to pay the applicant a total of \$4,697.84, broken down as follows:
 - a. \$4,122.56 as payment of the balance of the applicant's invoice,
 - b. \$347.88 in contractual pre-judgment interest, and

c. \$227.40 for \$175 in tribunal fees and \$52.40 for dispute-related expenses.

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

21. I dismiss the applicant's claims against JHS.

22. 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.

23. 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