



Civil Resolution Tribunal

Date Issued: April 9, 2019

File: SC-2018-007355

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Exopest LTD v. Coppard*, 2019 BCCRT 439

B E T W E E N :

Exopest LTD

APPLICANT

A N D :

Peter Coppard

RESPONDENT

A N D :

Shu Lan Wang

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Exopest LTD (Exopest) says it provided pest control service to the respondent Peter Coppard, who failed to pay.
2. Mr. Coppard disagrees. He says he is a property manager. He says Exopest was hired by another property manager at the same brokerage, Jan Bayer, to provide pest control services at a property (the property) owned by the respondent in the third-party claim, Shu Lan Wang. Mr. Coppard says he is not personally liable for the pest control invoice. He asks that the claim against him be dismissed.
3. I note that Jan Bayer was added as an applicant in the third-party claim during the exchange of pleadings. However, this was an error, since a third-party claim, by definition, can only be made by an existing respondent. As a result, I have not included Mr. Bayer in the style of cause. Nothing turns on this distinction since, for the reasons given below, I have ordered Mr. Wang to pay Exopest's invoice and dismissed all other claims.
4. When Mr. Bayer left the realty brokerage (brokerage), he asked Exopest to send the invoice to Mr. Coppard's attention there.
5. The property was in such poor condition that the brokerage had to cancel the new lease and return the tenants' deposits. As a result, there were insufficient funds in Mr. Wang's property account to pay the Exopest invoice from it. The brokerage sent the invoice to Mr. Wang, who refused to pay because the invoice exceeded the estimate given.
6. Exopest claims \$726.25, which it says is \$551.25 for services rendered and an "equipment fee" of \$100.
7. Mr. Wang says he terminated his property management contract with the brokerage in June 2017, which I find it after Exopest provided its service and issued its invoice, in late May 2017. Mr. Wang says he paid off all arrears at that time, via a cheque for over \$2,600. He says that Mr. Bayer promised there would be "no additional

arrears” and that “everything was settled.” Mr. Wang says Mr. Bayer told him pest control would be \$250, and he thought this cost was included in the arrears paid. Mr. Wang says any dispute here is between Mr. Coppard and Mr. Bayer. Mr. Wang asks that the claim against him be dismissed.

8. Exopest is represented by employee or principal Kashif Naseer. Mr. Coppard is self-represented. Shu Lan Wang is represented by his son, Chuang Ning.

JURISDICTION AND PROCEDURE

9. 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.
10. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a “he said, he said” scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
11. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

12. 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.
13. 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;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

14. The issue in this dispute is whether Mr. Coppard or Mr. Wang must pay the \$726.25 claimed by Exopest.

EVIDENCE AND ANALYSIS

15. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. In the third-party claim, the burden is on the third-party applicant. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
16. The law of agency applies to the property management scenario involved in this dispute. When an agent (Mr. Bayer and later Mr. Coppard) acts with actual (or presumed) authority on behalf of an undisclosed principal (property owner, Mr. Wang), the contractor providing the service (Exopest) can sue the agent on the contract. When the contractor learns of the principal, it can choose whether to proceed against the agent or the principal. When Exopest learned about Mr. Wang being the principal, it elected to proceed against Mr. Coppard only. However, Mr.

Coppard filed a third party claim against Mr. Wang and, for the reasons given below, I find that Mr. Wang is liable to pay Exopest's invoice.

17. In May 2017, Mr. Bayer was Mr. Wang's agent for obtaining pest control services from Exopest for his property. Mr. Bayer informed Mr. Wang that the service was needed to deal with rodents in the basement and fireplace.
18. Although Mr. Wang says he was given an estimate of \$250, Mr. Coppard says the estimate provided was around \$300. I find that Mr. Wang agreed to an estimate of about \$250, based on the text message sent by Mr. Bayer to Mr. Coppard. At that time, the rodent issues were thought to be confined to the basement and fireplace. I find that Mr. Wang agreed to have the pest control work done, based on his own admission that Mr. Bayer was supposed to be ensuring that the property was managed, and services performed on it.
19. On May 17, 2017, Exopest emailed Mr. Coppard and said that, based on inspection of the property that day, rat and squirrel problems had been identified in the attic and fireplace. Exopest asked for permission to do the pest control work needed.
20. On May 17, 2017 Mr. Coppard replied agreeing to Exopest's request. I find that because this was the first mention of squirrels, and the first mention of the attic, in the documentary evidence, it was implied that the pest control work required more scope and might exceed the initial \$300 estimate.
21. On May 18, 2017, Mr. Bayer texted Mr. Coppard saying that the tenants said there were squirrels living in the fireplace as "another issue", and that it would cost around \$250 to have them exterminated. In other words, the approximate estimate was now the initial \$250 plus the \$250 for the squirrels, for a total of around \$500.
22. On May 18, 2017 Exopest invoiced Mr. Coppard for \$551.25 for pest control work at the property. The charges were broken down as:
 - a. \$300 for installation of 4 rat bait stations outside the house and 8 rat traps inside the attic,

- b. \$225 for blocking off two entry points and installing a one-way trap for the squirrel, and
 - c. \$26.25 in tax.
- 23. On May 19, 2017, Mr. Coppard sent the invoice to another person within the brokerage for payment.
- 24. On September 19, 2017, Mr. Coppard emailed Exopest saying he did not take over management of the property after all. He explained that due to the poor condition of the property, the property management agreement had been cancelled, and funds were returned to the tenants. He continued by explaining that, the brokerage had “no funds to pay service providers at this time” but that Mr. Bayer was “still working on obtaining funds directly from the owner.”
- 25. Exopest argues that Mr. Coppard is their “customer” because he gave them the go ahead to do the work. While I find that Mr. Coppard authorized the work on May 17, 2017, I find that he did so as agent for Mr. Wang, property owner, and not on his own behalf. I dismiss the claim against Mr. Coppard personally.
- 26. Mr. Wang was the recipient of the pest control services.
- 27. I have found that Mr. Wang authorized his agents at the brokerage to agree to Exopest’s work.
- 28. Mr. Wang argues that his agreement with the brokerage was that expenditures over \$200 had to be approved by the owner. No one filed a copy of the property management agreement in evidence. I do not find that this \$200 limit was proven and, in any event, I have found that Mr. Wang agreed to pest control work for approximately \$250 and his agent then agreed to work that might exceed this amount, under implied authority.

29. I find that Mr. Wang is responsible to pay Exopest for its invoice of \$551.25. Although the work was somewhat more expensive than the estimate, I have found that more pest problems were identified than were first predicted.
30. I also find that the work was completed, and the invoice issued, during the term of the property management agreement between Mr. Wang and the brokerage. I find it was an implied term of that agreement that the brokerage would manage the property to a reasonable standard, which would include appropriate pest control services.
31. Despite his assertion, Mr. Wang provided no documents to prove that he had paid all arrears when that property management agreed was ended, or that Mr. Bayer told him “everything was settled”. Mr. Wang did not prove that the Exopest invoice was among the items covered in any arrears payment. I find that he did not pay for the Exopest invoice.
32. I dismiss the claim for a \$100 equipment fee, because Exopest did not prove this claim.
33. I order that Mr. Wang pay Exopest’s invoice of \$551.25 for pest control, within 15 days of this decision. I will calculate prejudgment interest from June 18, 2017, which is 30 days after the invoice was issued.
34. To summarize, I dismiss Exopest’s claim against Mr. Coppard. I find that Mr. Coppard was successful in his third-party claim against Mr. Wang, resulting in my order.
35. 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 Exopest is entitled to reimbursement of \$125 in tribunal fees, to be paid by Mr. Wang since Exopest had to bring a dispute to obtain payment. I do not allow Exopest’s claim for \$50 in dispute-related expenses, because this was money spent

to serve the Dispute Notice on Mr. Coppard, against whom it did not prove a valid claim.

36. Mr. Coppard was also successful and paid \$125 in tribunal fees and \$29 in dispute-related expenses, to serve the third-party Dispute Notice, which I find reasonable. I order that Mr. Wang pay these tribunal fees as well.

ORDERS

37. Within 30 days of the date of this decision, I order Mr. Wang to pay Exopest a total of \$837.82, broken down as follows:

- a. \$551.25 in payment for services rendered,
- b. \$7.57 in pre-judgment interest under the *Court Order Interest Act* from June 18, 2017 to the date of this decision, and
- c. \$279, made up of \$250 for tribunal fees and \$29 for dispute-related expenses.

38. Exopest is entitled to post-judgment interest, as applicable.

39. 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.

40. 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.

Julie K. Gibson, Tribunal Member