



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Houle Electric Limited v. 1032646 B.C. LTD. et al*, 2019 BCCRT 465

B E T W E E N :

H O U L E E L E C T R I C L I M I T E D

A P P L I C A N T

A N D :

1032646 B.C.LTD. and VIVIAN FUNG

R E S P O N D E N T S

R E A S O N S F O R D E C I S I O N

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for electrical services. The applicant, Houle Electric Limited, claims \$2,039.10 in payment for its September 2017 invoice, plus 26.82% yearly contractual interest.
2. The respondent 1032646 B.C.LTD. (corporate respondent), which does business as a retail store called Ammolite & Jade in Richmond BC, says it did not request the applicant's services nor did it sign any contract with the applicant. The corporate respondent says the service was requested by the respondent Vivian Fung, who it says is not part of its company. The corporate respondent says Ms. Fung was a contractor from another company, VMS group. As noted below, Ms. Fung is an interior designer.
3. Ms. Fung was personally served with the Dispute Notice but did not file a Dispute Response and so did not participate in this proceeding. Ms. Fung is therefore in default, as discussed below.
4. The applicant and the corporate respondent are each represented by employees.

JURISDICTION AND PROCEDURE

5. These are the tribunal's formal written reasons. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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.

ISSUE

9. The issue in this dispute is whether either of the respondents owe the applicant \$2,039.10 plus contractual interest, for electrical services rendered.

EVIDENCE AND ANALYSIS

10. 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.
11. In September 2017, the applicant supplied and installed a music relay system and fire alarm devices (together, the systems) at the "Ammolite & Jade" retail store. It is undisputed that the corporate respondent owns the store. I find the evidence shows the applicant's systems were installed at the corporate respondent's location.
12. The applicant says the corporate respondent is currently using and benefitting from the respondent's systems. The applicant says Ms. Fung was acting as the corporate respondent's authorized agent at the time she requested the applicant's services.

13. There is no evidence the corporate respondent directly contacted the applicant, as the evidence shows the services were only requested by Ms. Fung. All communications were with Ms. Fung. The corporate respondent denies being aware that any services were being ordered or installed. The corporate respondent denies that Ms. Fung acted on their behalf and says she did not have their authority to represent it in entering into an agreement with the applicant.
14. I will first address the corporate respondent's liability. The issue here turns on the law of agency and whether Ms. Fung had apparent authority to enter into contracts on the corporate respondent's behalf, such that the corporate respondent should be held responsible. As noted, the corporate respondent denies Ms. Fung had such authority.
15. On August 23, 2017, the applicant sent a letter to "Ammolite & Jade" at what I find was likely the Richmond location, without any attention line. In it, the applicant stated it was pleased to submit its quotation for the services at issue. The quote was for \$1,942 plus GST, which equals \$2,039.10.
16. The applicant's September 8, 2017 invoice #134532 was addressed to "Ammolite & Jade" at the Richmond address. The invoice is for \$2,039.10, the amount claimed in this disputed. On its face, it notes "Requested by: Vivian Fung". A waybill also notes Ms. Fung as the contact person for "Ammolite & Jade".
17. While the corporate respondent says Ms. Fung was a contractor for another company, it offered no explanation of how Ms. Fung came to be making arrangements with the applicant and having systems installed on the corporate respondent's property.
18. The applicant provided some email threads between it and Ms. Fung, whose email signature shows her to be with "Architect + Design services @ VMS Group". At one point, Ms. Fung referenced information she had received from the "store manager" about the timing of the applicant's installation. Other documentation shows Ms. Fung was part of the "Ammolite & Jade" location's construction or renovation and

part of that work involved the applicant's services, requested and coordinated by Ms. Fung.

19. On balance, I find the evidence shows Ms. Fung was the corporate respondent's interior designer in charge of the construction job site at the Ammolite & Jade retail store, which as noted above is owned by the corporate respondent. More on Ms. Fung's role below.
20. So, was Ms. Fung the corporate respondent's agent? If so, did she have actual or reasonably implied authority to act on the corporate respondent's behalf?
21. The corporate respondent denies Ms. Fung had any authority to represent them in the agreement with the applicant and says Ms. Fung never contacted the corporate respondent about the applicant's systems.
22. None of the applicant's documentation with Ms. Fung is on the corporate respondent's letterhead nor did she use an email address appearing to be associated with the corporate respondent. Rather, as noted above, I find it was apparent Ms. Fung was an independent contractor working for a different company. I find on balance the applicant has not proved Ms. Fung was acting as the corporate respondent's agent or that she had the corporate respondent's apparent authority to contract on its behalf.
23. Instead, I find the evidence before me shows Ms. Fung ordered the services for her client, the corporate respondent, and she failed to pay for them. It would not have been unreasonable for the applicant to expect Ms. Fung to pay for the applicant's invoice and then claim reimbursement from the corporate respondent under their own arrangements. The corporate respondent says given the nature of the applicant's systems, that they were all electrical wiring hidden in the infrastructure, it was not aware the systems were there. On balance, I find the applicant has not proved otherwise. All of these circumstances support the conclusion that the corporate respondent is not liable to pay the applicant's invoice.

24. However, that is not the end of the matter. I find the corporate respondent has the applicant's systems, as described in its invoice. Again, more on this below.
25. I will deal with Ms. Fung's liability next. The applicant filed a Proof of Notice that it personally served Ms. Fung on November 19, 2018. As noted above, Ms. Fung failed to file the required Dispute Response and so she is in default. When a party is in default, liability is generally assumed, meaning the applicant's position is accepted as correct. Given her default status and the evidence before me, I find Ms. Fung is liable for the applicant's claim. I also note the amount of the invoice or the quality of the goods was not questioned by the corporate respondent. I order Ms. Fung to pay the applicant \$2,039.10 for the invoice.
26. I also order Ms. Fung to pay 26.824% annual contractual interest, as provided on the applicant's September 8, 2017 invoice, payable from that date as the invoice was due on receipt. This equals \$876.65.
27. I note the applicant's alternative request that it be permitted to retrieve its systems from the corporate respondent's location, if it is not paid. The corporate respondent did not address this requested remedy in its arguments, other than to essentially say it does not know if the systems are in place or not. I have found the systems were installed on the corporate respondent's property, as set out in the applicant's invoice and as ordered by Ms. Fung.
28. I am mindful that Ms. Fung is in default and that the corporate respondent has had the benefit of the applicant's systems. I find the appropriate solution, bearing in mind the tribunal's mandate that includes proportionality, is to order the corporate respondent to make the systems available to the applicant for removal during regular business hours if Ms. Fung has not paid the amount ordered in this decision. I have addressed the relevant timing in my Orders below.
29. In accordance with the Act and the tribunal's rules, I find that Ms. Fung must reimburse the applicant \$125 in tribunal fees and \$110 in dispute-related expenses related to personal service of the Dispute Notice on the respondents. Apart from my

order about permitting the removal of the systems if Ms. Fung does not pay, the applicant's claims against the corporate respondent are dismissed.

ORDERS

30. Within 30 days of this decision, I order the respondent Ms. Fung to pay the applicant a total of \$3,120.75, broken down as follows:
 - a. \$2,039.10 in payment of the applicant's invoice 134532,
 - b. \$876.65 in contractual pre-judgment interest at 26.824% per year, and
 - c. \$235, for \$125 in tribunal fees and \$110 in dispute-related expenses.
31. If 45 days after this decision Ms. Fung has not paid the applicant as ordered above, I order the corporate respondent to make the applicant's systems, as set out in the September 8, 2017 invoice #134532, reasonably available for removal during regular business hours. The corporate respondent and the applicant are to bear their own expenses associated with the systems' removal.
32. The applicant is entitled to post-judgment interest from Ms. Fung as applicable.
33. 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.

34. 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