Civil Resolution Tribunal

Date Issued: May 6, 2019

File: SC-2018-006080

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *RMC Ready-Mix Ltd. v. Huang,* 2019 BCCRT 537

B E T W E E N :

RMC Ready-Mix Ltd.

APPLICANT

A N D :

Raymond Huang

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for deliveries of ready-mix concrete provided by the applicant, RMC Ready-Mix Ltd., to the respondent, Raymond Huang. The applicant claims $3,377.92 for 2 deliveries made on July 20 and 21, 2016, following which the

respondent disputed the Visa charge he had previously authorized. The applicant also claims 12% contractual interest, plus "lien fees" of $550.

2. The respondent says he only authorized an approximate total of $2,900 for the concrete. When he saw the $3,377.92 charge put through on his Visa, he disputed the charge and it was reversed by the credit card issuer.

3. The applicant is represented by Philip Rimes, who I infer is a principal or employee. The respondent is self-represented. For the reasons that follow, I refuse to resolve the applicant's claims because I find they were started out of time.

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. 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.

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 9.3(2), 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 is whether the respondent owes the applicant $3,377.92 plus 12% contractual interest for concrete services and $550 for “lien’ fees.

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. The evidence shows that on July 20, 2016, the respondent ordered 10.4 cubic meters of concrete. The respondent gave the applicant his Visa credit card information to pre-authorize his payment for the deliveries. The applicant processed the pre-authorization, which was not a charge to the respondent’s Visa.

11. On July 21, 2016, the applicant made the 2 deliveries as ordered by the respondent. The applicant’s delivery “tickets” show the $3,377.92 that was pre-authorized on the respondent’s card., along with the amount and type of concrete.

12. The applicant’s July 21, 2016 invoice matches the pre-authorization charge for $3,377.92. While the respondent argues that he only authorized an “approximate total of $2,900” with taxes and delivery included, he has provided no evidence in this dispute to support this assertion, despite being given the opportunity to do so.

13. The applicant processed the respondent’s credit card for the $3,377.92, but as discussed further below on July 24, 2016 the respondent filed a dispute with Visa.

Limitation Act

14. I invited the parties to provide submissions about whether the applicant's claim was started out of time. For the reasons that follow, I find the applicants' claims were not started in time.

15. The *Limitation Act* applies to the tribunal. The *Limitation Act* sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be commenced more than 2 years after the day on which it is "discovered".

16. Section 8 of the *Limitation Act* says a claim is "discovered" on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

17. The tribunal issued the Dispute Notice on August 17, 2018, which is what stopped the running of time in this dispute. This means that if the applicant's claim arose before August 17, 2016, it was filed out of time, unless it was postponed within the specific exceptions set out in the *Limitation Act*, which do not apply here. Specifically, while the applicant says the respondent promised to pay the outstanding concrete invoice on September 6, 2016, there is nothing in writing to that effect as required by section 24(6) the *Limitation Act* in order to postpone the running of time.

18. The applicant charged the respondent's Visa for the full amount, $3,377.92, on July 22, 2016. On July 24, 2016, the respondent filed a charge-back dispute, saying the applicant was not authorized to make the charges.

19. I asked the parties for submissions as to whether the applicant's claim was "discovered" on July 24, 2016, when the respondent disputed the charges.

20. The documents show that Visa processed the charge-back on Friday August 12 and the applicant's now-retired staff person printed it on August 17 (based on a date-stamp on the print-out copy provided in evidence). The applicant therefore says their claim could not have reasonably been discovered before August 17.

21. On balance, I disagree. The fact that the staff person did not print it until August 17 does not mean it was not reasonably discoverable between August 12 and August 16. The applicant has not provided an explanation as to why their staff did not see the Visa charge-back on August 12, or on Monday August 15 or Tuesday August 16.

22. I find the charge-back put the applicant on notice that the respondent was refusing to pay and that this was when the applicant discovered they had a claim against the respondent. I find the applicant's claim was reasonably discoverable before August 17, because the Visa charge-back was there to be seen by the applicant.

23. Given my conclusions above, I find the applicant's claim was not started in time. As such, under section 10 of the Act, I refuse to resolve the applicant's claim as the tribunal lacks jurisdiction to resolve it, because it was started out of time. I have therefore not considered the merits of the applicant's claims.

24. As the applicant was unsuccessful in this dispute, in accordance with the Act and the tribunal's rules I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

25. Under section 10 of the Act, I refuse to resolve the applicant's dispute because the tribunal does not have jurisdiction to resolve it.

Shelley Lopez, Vice Chair