



Civil Resolution Tribunal

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File: SC-2018-008383

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Serbinnenko et al v. Alarmforce Industries Inc. Industries Alarmforce Inc.*,
2019 BCCRT 540

BETWEEN:

Anna Serbinnenko and Emerald Analytics Inc.

APPLICANTS

AND:

Alarmforce Industries Inc. Industries Alarmforce Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is over an unpaid account that went to collections and impacted the credit report of the applicant, Anna Serbinnenko.

2. Ms. Serbinenko runs a business out of her home, Emerald Analytics Inc. (Emerald), the other applicant in this dispute. As discussed below, the applicants contracted with the respondent, Alarmforce Industries Inc. Industries Alarmforce Inc., (Alarmforce) for home security services.
3. Ms. Serbinenko terminated the contract and did not pay final invoice. Alarmforce subsequently sent this to collections. Ms. Serbinenko says the collections wrongfully impacted her personal credit, instead of Emerald's, and submits that her subsequent poor credit score impacted her ability to get a mortgage at a "reasonable" rate.
4. The applicants ask for the following:
 - a. Reimbursement of \$110 for defective equipment;
 - b. Reimbursement of \$400 for the time spent by Emerald's office manager in dealing with the respondent;
 - c. Reimbursement of \$4,490 for excessive interest paid by having to secure a mortgage at a higher rate; and
 - d. Removal of the collections charge from Ms. Serbinenko's credit report.
5. The respondent says the damages sought by the applicants are exaggerated, excessive, too remote and not recoverable at law.
6. The applicants are represented by Ms. Serbinenko, and the respondent is represented by Kyle Elliott, who I infer is a principal or employee.

JURISDICTION AND PROCEDURE

7. 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.

8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
9. 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.
10. Under tribunal rule 9.3(2), 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.

ISSUES

11. The issues in this dispute are:
 - a. Is Ms. Serbinenko entitled to have the collections charge erased from her credit report?
 - b. Is Ms. Serbinenko entitled to reimbursement for excessive interest paid on a mortgage?
 - c. Are the applicants entitled to reimbursement for defective equipment?

- d. Are the applicants entitled to reimbursement for time spent attempting to resolve the dispute with the respondent?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. On July 12, 2010, the applicants and the respondent entered into an agreement for security monitoring services and equipment. Emerald had an office within Ms. Serbinenko's home. In the contract, "Subscriber (1)" is listed as Anna Serbinenko, and "Subscriber (2)" is listed as Emerald Analytics Inc.
14. The initial agreement was for a 36-month term of security monitoring services. The contract terms state that the subscriber is committed to a minimum 36-month term, and if cancellation is requested, full payment of the remaining months of the contract is required.
15. On June 24, 2013, Ms. Serbinenko and Alarmforce signed an agreement to extend the terms of the initial agreement for an additional 36 months, and a charge of \$110.88 was invoiced for the installation of an additional monitor in the home's den. The subscriber on the renewal contract is listed as Anna Serbinenko. No reference is made on the renewal agreement to Emerald.
16. On November 5, 2013, the Ms. Serbinenko wrote to the respondent requesting to cancel all service, stating she was unhappy with the functionality of the service in her home. Alarmforce submits that in response, it provided Ms. Serbinenko with an invoice requesting payment of the monitoring fees remaining for the unexpired term of the agreement.
17. Alarmforce advises that invoice was not paid, so on January 5, 2014 it sent a letter to Ms. Serbinenko requesting full payment of the invoice (totaling \$1,439.88) by

April 28, 2014 or the account would be forwarded to a collections agency without further notice. The account was sent to a third party collections agency in May 2014.

Charge on credit report

18. Ms. Serbinenko asks that the tribunal order the debt be removed from her credit report. However, the tribunal does not have jurisdiction over that requested remedy. The charge on her credit report was not placed by the respondent, but rather a third party collections agency who is not a party to this dispute. I am unable to order a remedy against a non-party.

Increased mortgage interest rate claim

19. Ms. Serbinenko does not dispute that the account went unpaid. She takes issue, however, with the fact that the account was sent to collections against her credit personally, and not against Emerald's credit. It is her position that she was named in the contract solely as a representative of Emerald. Alarmforce submits Ms. Serbinenko was the primary subscriber to the agreement and signed the agreement in her personal capacity, and that Emerald was an additional subscriber only.

20. I am satisfied the security monitoring agreement was for monitoring of the entire home, not just Emerald's office. In July 2010, monitoring equipment was installed on the front door and back door of the home, the living room and the office. In June 2013, the monitoring equipment in the office was upgraded, and additional equipment was added to the den of the home. I find the combination of the placement of the monitoring equipment in the home, the fact that Ms. Serbinenko is listed on the initial agreement as the primary subscriber, and that Emerald is not named on the renewal agreement reasonably leads to the conclusion that Ms. Serbinenko entered into the initial contract with Alarmforce, and the subsequent renewal, in her personal capacity.

21. Ms. Serbinenko is responsible for making sure she read and understood the contract when she signed it. The contract required full payment of the unexpired months before cancellation could occur. She failed to pay the invoice and Alarmforce was entitled to take reasonable steps to collect its payment, including forwarding the account to a third party collections agency. The applicants chose not to dispute Alarmforce's entitlement to the invoice until several years later. Given the burden on the applicants, I find that Ms. Serbinenko has not proved the collections account was improperly charged against her credit.
22. Ms. Serbinenko submitted evidence regarding her credit score with Alarmforce's charge present and the mortgage she was ultimately able to secure, which she says was at a high rate due to her poor credit. As I have found the charge was properly made against Ms. Serbinenko's credit, it follows that any impact on her credit score was a result of her breaching the contract with Alarmforce, and not the fault of the Alarmforce.
23. Based on my findings above, I dismiss the applicants' claims about the damage to Ms. Serbinenko's personal credit score and her inability to secure a mortgage at a "reasonable rate."

Defective equipment claim

24. The applicants claim the \$110.88 paid on June 24, 2013 was for equipment that was defective. However, from the June 24, 2013 invoice, I find the amount paid was an installation charge for an extra monitoring device. The July 12, 2010 contract terms indicate that all equipment was to remain the property of Alarmforce. As such, quite apart from the fact that the applicants' claim appears to be out of time under the *Limitation Act* (given the Dispute Notice was issued on November 16, 2018, more than 2 years after the invoice was paid), I find the money paid was an installation charge and not for ownership of the equipment, and therefore the applicants are not entitled to reimbursement of the amount paid.

Claim for 'time spent'

25. Finally, the applicants asked to be compensated for time spent contacting Alarmforce to resolve the issue, but this is not the sort of expense that the tribunal would order the respondent to pay, even if the applicants were successful. The tribunal does not usually allow parties to recover legal fees, nor does it award compensation for a party's time spent trying to resolve the dispute. I see no reason to deviate from that practice here. The applicants' claim for \$400 in time spent is dismissed.

26. Under the tribunal rules, the successful party is generally entitled to the recovery of their fees. As the applicants were not successful, I find that they are not entitled to reimbursement of their tribunal fees or dispute-related expenses.

ORDER

27. I order the applicants' claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair