



Civil Resolution Tribunal

Date Issued: May 30, 2019

File: SC-2018-007341

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vigini v. Titan Slegg GP Inc.*, 2019 BCCRT 661

BETWEEN:

Denis Vigini

APPLICANT

AND:

Titan Slegg GP Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for building supplies.
2. The applicant, Denis Vigini, was having a home built on his property. The respondent, Titan Slegg GP Inc., is a building materials supplier. The applicant says

the respondent demanded payment of \$2,183.88 for an invoice he did not owe, as the purchase was made by someone else. The applicant says the respondent put a builders' lien on his property at a time when he was arranging further bank financing for the build, so he had to pay the invoice in order to remove the lien. The applicant seeks reimbursement of \$2,183.88 for the invoice, \$391.51 for legal fees incurred to remove the lien, and \$750 for loan interest and construction delay resulting from the lien.

3. The respondent denies the applicant's claims. It says the applicant assumed responsibility for the purchase when he paid the invoice.
4. The applicant is self-represented. The respondent is represented by Kobe Perneel, a principal or employee.

JURISDICTION AND PROCEDURE

5. 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.
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 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.

ISSUES

9. The issues in this dispute are:
 - a. Must the respondent refund the applicant \$2,183.88 for the invoice?
 - b. Is the applicant entitled to reimbursement of \$391.51 in legal fees to remove the lien?
 - c. Is the applicant entitled to \$750 for loan interest and construction delays?

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 addressed the evidence and arguments to the extent necessary to explain my decision.
11. The tribunal does not have jurisdiction to order remedies set out in the *Builders Lien Act* (BLA), or to make findings about whether parties complied with the requirements of the BLA: *Mega Cranes Ltd. v. GoGreen Wastewater Ltd. et al*, 2019 BCCRT 104, a tribunal decision that is not binding on me but which I find useful. As set out in the BLA, only the BC Supreme Court has that authority.

12. The remedies requested by the applicant do not arise directly from the BLA. However, I find I must dismiss the applicant's damages claims, for the following reasons.
13. The contested invoice shows that on March 14, 2018, \$2,183.88 in building supplies were purchased by someone named "Haydn". The applicant says Hadyn was hired to hang drywall only, and did not do drywall mudding, which the supplies listed on the invoice were for.
14. The applicant admits the invoiced supplies were delivered to his building site. However, he also says he never received them. The applicant says he did not place the order from the respondent, it was delivered to his address in error, and he did not see or use the supplies. The applicant says that Haydn paid for the supplies using his own debit card, and the transaction was not part of the applicant's account.
15. The respondent says that while the invoice says it was paid by debit, Haydn's debit card was actually declined. The respondent says it could not contact Haydn, so proceeded to file the builders' lien. Documents show the lien was filed on April 27, 2018.
16. The applicant says he never owed the respondent for the invoice, and seeks a refund of \$2,183.88.
17. I find the applicant has not proved this claim. He admits that the building supplies were delivered to his jobsite, and he admits that he paid the invoice amount so the respondent would remove the lien. Most significantly, I rely on the reasoning in *Willow Spring Construction (B.C.) Ltd. v. 3423 Hastings Ltd.*, 2008 BCPC 370.
18. In *Willow Spring*, the BC Provincial Court considered a case where a builders' lien had been placed on a property and then removed upon partial payment of the claimed debt. The builder then sued in provincial court, seeking payment of a remaining portion of the debt. In paragraph 52, the judge wrote that the BLA provides the appropriate process and forum for disputes such as these to be

properly adjudicated, and that the BC Supreme Court is the only court through which builders' liens can be enforced or discharged. Judge Romilly wrote that the parties should have availed themselves of that process if they considered the matters about the lien not fully settled between them. He noted that section 23 of the BLA allows for the contested debt to be paid to the court in trust, pending resolution of the matter, and section 30 of the BLA allows for a defendant to file a counterclaim when an action is commenced to enforce the claim, either at the instigation of the lien claimant or the owner. In paragraph 54, Judge Romilly concluded that in paying the debt, the defendant property owner effectively acknowledged that the money was owed to the builder, and could not then sue for return of that money. He explained this as follows:

It strikes me that paying out the lien without availing itself of the remedies offered by the *Builders' Lien Act*, implies an acknowledgement that the money was duly owed to the Contractor, and that the work was performed in accordance with their Contract. I find that the Defendant cannot now claim that either the money was improperly paid out or that it is entitled to some return of the monies in the guise of a counterclaim in this Court.

19. In summary, Judge Romilly found that if either party wanted to contest the debt giving rise to the lien, they needed to do that using the Supreme Court process laid out in the BLA. This precedent decision from the BCPC is binding on the tribunal, and I adopt it. Although it dealt with a previous version of the BLA, I find the substance of the cited provisions has not changed, and the same reasoning applies in this dispute.
20. In this dispute, the applicant submits that he had no choice but to pay the respondent's invoice, as he had to remove the lien to secure financing and advance the construction. That is incorrect. As noted in *Willow Spring*, the BLA includes provisions in sections 23 and 24 where a party can pay the contested debt to the court. The court will then remove the lien against the property and hold the money, pending final determination of the debt claim.

21. The applicant chose not to use the section 23 process. Following *Willow Spring*, I find he cannot now successfully claim for reimbursement of the invoice payment. By paying the claimed debt underlying the lien, and not following the BLA process, the applicant effectively acknowledged the debt. He cannot now claim damages from the respondent based on allegedly being forced to pay that same debt.
22. For these reasons, I deny the applicant's claim for reimbursement of \$2,183.88 for the invoice.
23. For the same reasons, I deny the applicant's claim for \$391.52 in legal fees incurred to remove the builder's lien. Also, I would not order reimbursement of those fees in any event. First, the copy of the lawyer's invoice provided by the applicant contains no date, and no particulars explaining what the fees were for, or what work was performed. There is nothing on the invoice to confirm that the fees relate to a builders' lien or debt claim.
24. Second, tribunal rule 9.4(3) says that except in extraordinary cases, the tribunal will not order payment of legal fees in small claims disputes.

Loan Interest and Construction Delays

25. The applicant claims \$750 for loan interest and construction delays resulting from the lien.
26. Section 10(1) of the Act says the tribunal must refuse to resolve a claim that it considers is not within its jurisdiction. I find the applicant's claim for compensation for loan interest and construction delays is a remedy flowing directly from the lien itself. As previously explained, builders' liens and remedies under the BLA are within the exclusive jurisdiction of the BC Supreme Court. For that reason, I find the tribunal does not have jurisdiction over this claim, and must refuse to resolve it.
27. Also, I would not order the requested remedy even if I found I had jurisdiction to do so. The applicant, who bears the burden of proof in this dispute, has not proved that any actual delay occurred. While he asserts that this is the case, he provided no

evidence such as worker timesheets to support this claim. The only evidence he provided was a mortgage statement, which shows no delay or extra charges.

28. For all of these reasons, I deny the applicant's claims for the debt and for legal fees. I refuse to resolve his claim for compensation due to lien-related loan interest and construction delays.

29. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

30. I dismiss the applicant's claims for repayment of debt and legal fees. I refuse to resolve the applicant's claim for compensation for loan interest and construction delays. I dismiss this dispute.

Kate Campbell, Tribunal Member