



# Civil Resolution Tribunal

Date Issued: August 26, 2019

File: SC-2019-001641

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DeGirolamo v. Polar Bear Ice Services Inc.*, 2019 BCCRT 1013

B E T W E E N :

DAVID DEGIROLAMO

**APPLICANT**

A N D :

POLAR BEAR ICE SERVICES INC., GURVINDER KAMBOW, and  
NANAK TRADING INC.

**RESPONDENTS**

AND:

DAVID DEGIROLAMO

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This is a dispute over payment for consulting services.
2. The respondent, Gurvinder Kambow, hired the applicant, David DeGirolamo, to create a production design plan for the respondent, Polar Bear Ice Services Inc. (Polar Bear) for \$5,000.00. Mr. DeGirolamo says he completed the required design plan but received only half his fees as a deposit. Mr. DeGirolamo claims the outstanding balance of \$2,625.00 inclusive of GST.
3. Mr. Kambow says that Mr. DeGirolamo did not provide any service “whatsoever”. On that basis, Mr. Kambow denies the claim. As the sole applicant in a counterclaim, Mr. Kambow seeks a refund of the \$2,625.00 deposit that the respondent, Nanak Trading Inc. (Nanak), paid to Mr. DeGirolamo.
4. The corporate registry searches are not before me. However, I infer from the parties’ submissions that Mr. Kambow owns both corporations, Polar Bear and Nanak. Even though they are separate legal entities, Polar Bear and Nanak did not file a Dispute Response. Only Mr. Kambow filed a Dispute Response.
5. As I discuss below, one of the main issues in this dispute is whether Mr. Kambow acted as an agent for the corporations or entered into the contract in his personal capacity.
6. Mr. DeGirolamo and Mr. Kambow are each self-represented.

## **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* (CRTA). 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. Some of the evidence in this dispute amounts to a “he said, he said” scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
9. 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.
10. 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.
11. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
  - 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**

12. The issues in this dispute are whether Mr. DeGirolamo performed the consulting services as agreed and,
  - a. if so, to what extent, if any, the respondents are liable to pay Mr. DeGirolamo the balance of \$2,625.00 for his fees?
  - b. if not, to what extent, if any, Mr. Kambow is entitled to a refund of the \$2,625 deposit?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, Mr. DeGirolamo as the applicant, bears the burden of proof, on a balance of probabilities. In the counterclaim, Mr. Kambow has the same burden.
14. The parties never entered into a written contract. I find the evidence is vague as to which respondent was a party to the contract. However, I find the evidence is clear that in January 2019, Mr. Kambow and Mr. DeGirolamo met in person. Also, that Mr. Kambow agreed to pay Mr. DeGirolamo a total of \$5,000.00 plus GST to provide a production design plan for Polar Bear's distribution plant. Further, that Mr. Kambow paid Mr. DeGirolamo the deposit by cheque through Nanak.
15. The evidence establishes that Mr. DeGirolamo worked on the project through February 2019. Mr. DeGirolamo provided a copy of his preliminary and completed design plans and his correspondence, including emails and call logs. On February 22, 2019 Mr. DeGirolamo emailed Mr. Kambow the finished design plan and requested payment. Mr. Kambow refused to pay. I infer from the emails that Mr. Kambow was closing Polar Bear's plant and might not have required the plan.
16. As there was no suggestion of quality concerns, I find Mr. DeGirolamo fulfilled the contract when he delivered the design plan to Mr. Kambow. I find he is entitled to

retain the deposit and be paid the remaining balance of \$2,625.00 inclusive of GST. Therefore, I dismiss Mr. Kambow's counterclaim for reimbursement of his deposit.

17. Polar Bear and Nanak did not file Dispute Responses or participate in any stage of the dispute process, despite being served. Since they do not deny liability, and Mr. DeGirolamo performed the services for Polar Bear's distribution plant and Nanak had paid the deposit, I find they are jointly and severally liable to pay Mr. DeGirolamo a total of \$2,625.00 plus interest.
18. I do not know the companies' current status. Therefore, I do not know whether Polar Bear and Nanak each remain active companies. If either or both of these corporations are dissolved, then it will be for the applicant to determine how to address that situation.
19. As for whether Mr. Kambow is personally liable, I have considered whether he was meant to be bound by the terms of the contract as an individual or whether he was only acting as an agent. As mentioned, the evidence does not specifically say who were the parties to the contract and there is no written contract. On the balance of the evidence, I find Mr. Kambow meant to be bound by the contract terms in his personal capacity. In forming the contract, the correspondence was strictly between Mr. Kambow and Mr. DeGirolamo. The contract was a verbal agreement between Mr. Kambow and Mr. DeGirolamo. Further, in his Dispute Response, Mr. Kambow did not deny the claim on the basis that he was only acting as agent. He provided no submissions disputing this central liability issue.
20. A contract is formed through an offer, acceptance and consideration. I find Mr. Kambow and Mr. DeGirolamo met these conditions. Mr. Kambow paid Mr. DeGirolamo the deposit through his company Nanak in exchange for Mr. DeGirolamo agreeing to produce a design plan, and on the further agreement that Mr. Kambow would pay Mr. DeGirolamo in full on receipt of the final plan. Mr. DeGirolamo expressly submitted that he delivered the final plan to Mr. Kambow and for payment from Mr. Kambow. This is supported by the email evidence. Mr. Kambow declined to provide any submissions specific this email, though I find he

had the opportunity to do so. I find Mr. DeGirolamo has established on a balance of probabilities that Mr. Kambow breached the contract when he failed pay him on receipt of the final design plan. I find Mr. Kambow is personally liable to pay the balance of \$2,625.00 plus interest.

21. The *Court Order Interest Act* applies to the tribunal. I find Mr. DeGirolamo is entitled to pre-judgement interest on the remaining balance of \$2,625.00 from February 22, 2019, the date he supplied Mr. Kambow with the finished design plan. This equals \$26.08.
22. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. In addition to the \$125 in tribunal fees, Mr. DeGirolamo claims \$40.83 in mileage for his personal service of the Dispute Notice on the respondents and \$700.00 for his time, (\$200 in serving the respondents and \$500 in dealing with this dispute). Mr. DeGirolamo's mileage claim is based on driving about 70 kilometers at a rate of \$0.58 per km, which he says is the Canada Revenue Agency's kilometer rate. As the successful party, I will allow Mr. DeGirolamo's claim for \$40.83 in mileage, which I find was reasonably incurred. The tribunal typically does not award expenses for a party's time in dealing with a dispute, consistent with its practice to not award legal fees except in extraordinary cases. This is not an extraordinary case. I see no reason to deviate from the tribunal's practice. I decline to award any amount for Mr. DeGirolamo's time. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$40.83 in dispute-related expenses.
23. As the unsuccessful party, I find that Mr. Kambow is not entitled to any reimbursement of fees and dispute-related expenses incurred through his counterclaim.

## ORDERS

24. Within 30 days of the date of this decision, I order Polar Bear Ice Services Inc., Nanak Trading Inc. and Gurvinder Kambow, to pay Mr. DeGirolamo a total of \$2,816.91, broken down as follows:
  - a. \$2,625.00 as payment for the debt,
  - b. \$26.08 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$165.83, for \$125.00 in tribunal fees and \$40.83 for dispute-related expenses.
25. Mr. DeGirolamo is entitled to post-judgment interest, as applicable.
26. Mr. Kambow's counterclaims are dismissed.
27. Under section 48 of the CRTA, 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.
28. Under section 58.1 of the CRTA, 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.

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Trisha Apland, Tribunal Member