



Civil Resolution Tribunal

Date Issued: December 4, 2019

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SC-2019-006129

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Beschea v. West Coast Tank Recovery Inc.*, 2019 BCCRT 1364

B E T W E E N :

RADU BESCHEA

APPLICANT

A N D :

WEST COAST TANK RECOVERY INC.

RESPONDENT

A N D :

TOTAL SITE SERVICES LTD.

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Radu Baschea, hired the respondent, West Coast Tank Recovery Inc. (WCTR), to remove an oil tank on his property. WCTR says that it hired the respondent by third party claim, Total Site Services Inc. (TSS), as a subcontractor on the job. WCTR says that TSS damaged the sidewalk in front of the applicant's house when removing a disposal bin. The City of Burnaby (City) charged the applicant \$2,211.76 to repair the damage. The applicant wants WCTR to reimburse this amount.
2. In a third party claim, WCTR says that TSS should be responsible for the repair costs because it caused the damage. WCTR asks that I order TSS to reimburse the applicant directly.
3. TSS says that WCTR has claimed against the wrong company. TSS denies that it caused the sidewalk damage.
4. The applicant is self-represented. WCTR is represented by Lucas Wouters, who I infer is an employee or principal. TSS is represented by Satinderjit Wahlla, who is TSS's principal.

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* (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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear

this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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 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

9. The issues in this dispute are:
 - a. Does WCTR have to reimburse the applicant for the cost of the sidewalk repair?
 - b. If so, does TSS have to reimburse WCTR for the costs?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. This means that he must prove that his position is more likely than not correct. WCTR must prove its third party claim against TSS to the same standard. I have read all of parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.

11. In 2015, the applicant hired WCTR to remove an oil tank. WCTR hired another company as a sub-trade to remove disposal bins. During the removal of a bin, the sub-trade damaged a City sidewalk. I address in more detail below whether the sub-trade was TSS, as WCTR alleges, or another company, as TSS alleges.
12. On July 31, 2015, WCTR wrote a “Letter of Assurance” about the incident, addressed “to whom it may concern”. The letter said that “Total Site Services operating under ‘West Coast Bins’ acknowledges and accepts responsibility for the damage to the sidewalk”. The letter also said that TSS had assured WCTR that TSS would pay the cost in full and that WCTR would pay the invoice if TSS failed to do to so.
13. On August 26, 2015, the owner of TSS at the time, HG, also wrote a letter “to whom it may concern”. The letter is on TSS letterhead. HG said that WCTR and TSS “will share the costs incurred for the damage to the sidewalk and curb”.
14. The applicant says that the City repaired the sidewalk in July 2017. On July 31, 2017, the City sent “Tuscan Developments Inc.” an invoice for \$2,211.76 for the repairs. The applicant says that it demanded that WCTR and TSS pay the invoice, but neither did.
15. WCTR does not dispute any of the above facts alleged by the applicant.
16. On its face, the invoice suggests that Tuscan Developments Inc., not the applicant, should be seeking reimbursement. The applicant does not explain the relationship between him and Tuscan Developments Inc. However, WCTR did not raise this issue. Also, in a demand letter to TSS, WCTR admitted that it owed the repair costs to the homeowner, who I take to be the applicant. With that, I infer that the applicant was ultimately responsible for the cost to repair the sidewalk, even though the initial invoice was made out to a corporation.
17. I find that WCTR must reimburse the applicant for the City’s invoice. Even though WCTR did not cause the damage, I find that WCTR accepted full responsibility for the damage in its Letter of Assurance. I find that the applicant is entitled to rely on

the Letter of Assurance. I find that the issue of whether another entity should reimburse WCTR for the cost of the repairs, as alleged in WCTR's third party claim, is not the applicant's concern. Accordingly, I order WCTR to pay the applicant \$2,211.76.

18. Turning to WCTR's third party claim, does TSS have to reimburse WCTR for the repair costs? WCTR says that it hired TSS to provide disposal bin drop-off and pickup services at the site. WCTR says that a TSS driver damaged the sidewalk, so TSS should be responsible for the cost to repair.
19. TSS says that it is not the correct party. TSS says that another company, West Coast Bins Ltd. (WCB), was responsible for the damage.
20. TSS says that HG passed away in 2016. TSS says that Mr. Wahlla purchased TSS from HG's spouse, SG, in 2018. TSS says that before Mr. Wahlla purchased TSS, TSS and WCB were related companies.
21. TSS provided BC Registry reports for both TSS and WCB. They show that WCB is currently owned by SG. They also show that WCB and TSS both existed before 2015. I find that at the time of the sidewalk damage, HG was involved with both TSS and WCB.
22. The burden is on WCTR to prove that it had a contract with TSS and that TSS was the company who damaged the sidewalk. While the letter from TSS is evidence in support of WCTR's claim, I find that it is not enough. As TSS points out, there are 2 letters from TSS, on different letterhead and in different fonts, only one of which is signed. TSS provided evidence that could suggest that the signature on the signed letter was not HG's. I am not prepared to find that this is evidence of fraud or wrongdoing, as TSS alleges. However, it is a well-established legal principle that when a person alleges a contract with a deceased person, the court (or tribunal) must be careful and skeptical. This is especially so where the person alleging the contract has an interest in the outcome of the dispute. See *Johl Estate v. Purewal*, 2015 BCSC 2331.

23. WCTR has an interest in the tribunal accepting TSS's letter as evidence of TSS's commitment to pay at least some of the repair costs. Despite this, WCTR does not provide any supporting evidence, such as an invoice or contract showing that it hired TSS to remove the bin. WCTR also did not make any submissions in reply to TSS's argument that it was WCB that damaged the sidewalk. I also note that TSS provided a demand letter from WCTR dated July 22, 2019. In that letter, WCTR said that it had a notarized statement from the applicant confirming that a TSS-branded truck damaged the sidewalk, but WCTR did not give that alleged statement to TSS or provide it as evidence in this dispute.
24. Based on the Letter of Assurance, it seems that WCTR treated TSS and WCB as the same entity by calling it "Total Site Services (West Coast Bins)". WCTR repeats this error in a March 20, 2019 demand letter to TSS in which it also refers to "Total Site Services (West Coast Bins)". This evidence suggests that WCTR was not clear about whether it had hired WCB or TSS.
25. For these reasons, I find that WCTR has not proven that TSS agreed to reimburse WCTR for the cost of the sidewalk repairs. I also find that WCTR has not proven that it hired TSS to remove the bin or that TSS damaged the sidewalk. I therefore dismiss WCTR's third party claims.
26. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant claims interest only from January 2019, when he contacted WCTR about the City's invoice. Although the applicant may have been entitled to interest from the date of the invoice, I find that it would be inappropriate to award the applicant interest that the applicant has not claimed. I find that the applicant is entitled to pre-judgement interest on the debt from January 31, 2019, to the date of this decision.
27. The applicant submits that he is entitled to "interest fees on the trades hold-back amount" in the amount of \$1,580. The applicant does not explain this submission further. The interest rates under the COIA are set by the Supreme Court of British Columbia (BCSC), and the tribunal has no discretion to award a higher amount unless the parties have a contract about interest. There is no evidence of such a

contract. Based on the rates set by the Court, I find that the applicant is entitled to pre-judgment interest on the debt of \$36.28.

28. 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. I see no reason in this case not to follow that general rule. The applicant claimed \$654 in tribunal fees and dispute-related expenses, broken down follows:

- a. \$325.40 for “expenses for claim filing [tribunal] claim”,
- b. \$128.60 for “expenses for documentation requested by WCRT”, and
- c. \$200 for legal fees.

29. The applicant paid \$125 in tribunal fees. As for dispute-related expenses, the applicant only provided a receipt for registered mail, which was \$11.97. I find that he has not proven any of his other claims for dispute-related expenses.

30. Even if the applicant had provided an invoice or receipt, I would not have awarded him the cost of legal fees. Tribunal rule 9.4(3) says that a party is not entitled to be reimbursed for legal fees unless there are extraordinary circumstances. I find that there is nothing extraordinary about this dispute.

31. Therefore, I find that the applicant is entitled to \$125 in tribunal fees and \$11.97 in dispute-related expenses. I dismiss his claim for other dispute-related expenses.

32. Because WCTR’s third party claim was unsuccessful, I dismiss its claim for tribunal fees and dispute-related expenses. TSS did not claim any tribunal fees or dispute-related expenses.

ORDERS

33. Within 28 days of the date of this order, I order WCTR to pay the applicant a total of \$2,385.01, broken down as follows:

- a. \$2,211.76 in debt
 - b. \$36.28 in pre-judgment interest under the COIA, and
 - c. \$136.97 for \$125 in tribunal fees and \$11.97 in dispute-related expenses.
34. The applicant is entitled to post-judgment interest, as applicable. I dismiss the applicant's remaining claims.
35. I dismiss WCTR's third party claims.
36. 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.
37. 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.

Eric Regehr, Tribunal Member