



Civil Resolution Tribunal

Date Issued: December 18, 2019

File: SC-2019-004546

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *7M Contracting Ltd. v. Buckham Holdings Ltd.*, 2019 BCCRT 1426

B E T W E E N :

7M CONTRACTING LTD.

APPLICANT

A N D :

BUCKHAM HOLDINGS LTD.

RESPONDENT

A N D :

7M CONTRACTING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about payment for construction materials.
2. On June 15, 2018, the applicant and respondent by counterclaim 7M Contracting Ltd. (7M) agreed to let the respondent Buckham Holdings Ltd. (Buckham) use its Home Depot credit card account to buy construction materials. Buckham charged \$29,562.83 to 7M's Home Depot account, but then failed to repay the full amount. 7M says Buckham made a partial payment on January 18, 2019, but that \$1,318.65 is still owing.
3. Buckham says it could have repaid 7M for the Home Depot bill on June 15, 2018 but refused because 7M would not provide receipts for Buckham to review. Buckham says it first received an invoice on July 1, 2018, made out to the wrong company. Buckham says it received a corrected invoice on July 4, 2018. By then, Buckham says it was unable to pay due to other financial commitments.
4. On December 1, 2019, Buckham says it paid 7M's invoice in full. Buckham asks that the dispute be dismissed.
5. In its counterclaim, Buckham says that 7M agreed to pass along a 10% contractor discount on the purchase. Buckham says 7M only passed on a \$500 discount, not the agreed 10%. Buckham counterclaims for \$1,282.97, which it says is its overpayment.
6. 7M says Buckham did not overpay. 7M denies agreeing to pass on any discount to Buckham.
7. Buckham is represented by business contact Blake Buckham. 7M is represented by business contact Leilani Matusza.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
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:
 - a. Whether 7M is entitled to the claimed \$1,318.65 it says Buckham owes in interest on the amount paid for building supplies?
 - b. On the counterclaim, whether Buckham is entitled to a refund of \$1,282.97, for what it describes as an overpayment when 7M failed to pass along a 10% discount.

EVIDENCE AND ANALYSIS

13. In this civil claim, 7M bears the burden of proving its claim on a balance of probabilities. In the counterclaim, Buckham bears this same burden. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
14. Based on the statement of JR, a Home Depot sales associate, I find that, on June 15, 2018, Ms. Matusza attended at Home Depot to buy a large list of building materials for Mr. Buckham.
15. JR writes, and I accept that it took almost 8 hours to put together the large order of materials, for her and Ms. Matusza working together. JR states that Mr. Buckham was not available most of the time, nor when it was time to pay. Ms. Matusza had to request a credit limit increase on 7M's Home Depot credit card. Ms. Matusza then paid for the full order.
16. On July 1, 2018, 7M sent Buckham a June 15, 2018 invoice for \$29,562.83, broken down as building materials purchased by 7M on Buckham's behalf for a project in Fort Nelson, plus GST, less a \$500 discount.
17. The invoice specifies interest of 2% per month on overdue accounts. No annual interest rate is specified.
18. Based on the evidence from both parties, I find that the parties' agreement was that 7M would buy the materials and Mr. Buckham would pay them back immediately.
19. In the counterclaim Buckham submits that 7M agreed to pass along a 10% Home Depot discount on the materials to it, but then only gave it a \$500 discount.
20. Mr. Buckham provided a statement from AK, who I infer is his friend. AK writes that she spoke to Mr. Buckham by phone on June 14, 2018. AK says Mr. Buckham told her that 7M agreed to pass on a 10% contractor's discount to him. This evidence is hearsay. It is also inconsistent with the email communications between Buckham and 7M.

21. Because Mr. Buckham did not raise the 10% discount as an issue on the many occasions 7M requested payment in writing, I prefer 7M's evidence on this point.
22. I find that the parties agreed that 7M would buy the materials on its Home Depot credit card. I find that there was no agreement to pass along any discount. 7M says, I find, that it passed along a \$500 discount to Buckham, based on the large volume of the order. For these reasons, I dismiss Buckham's counterclaim on the issue of alleged overpayment relating to the 10% discount.
23. When Mr. Buckham was unable to pay for the \$29,562.83, 7M issued the invoice and informed Mr. Buckham that they would charge 2% interest monthly on the overdue amount. Based on their communications, I find that Mr. Buckham acceded to those terms because it was not able to pay.
24. I find that the June 15, 2018 invoice is the contract between the parties.
25. On July 4, 2018 Mr. Buckham wrote back asking that the invoice be changed to address Buckham Holdings Ltd., instead of a numbered company.
26. On July 4, 2018, 7M sent back the invoice, which was still made out to the numbered company. While the invoice may not have been correctly addressed at first, I find that Mr. Buckham understood that he was to make payment as soon as he was able.
27. Between July 2018 and January 2019, 7M sent Buckham a series of invoices for the principal amount plus accruing interest.
28. On January 18, 2019, Buckham paid a total of \$32,639.76 to 7M, made up of materials charges of \$29,562.83, with the balance being interest.
29. I find that Buckham paid the principal owing for the supplies. The only remaining issue is the claim for accrued interest.
30. 7M's invoices provide for 2% monthly interest on the overdue amounts. Section 4 of the federal *Interest Act* says that when an interest rate in a contract is expressed as

a percentage for less than a 1-year period, without stating the yearly equivalent, the maximum allowable interest rate is 5% per year. I find that parties cannot contract out of this mandatory legislation. In making this finding, I adopt the persuasive though non-binding reasoning in *Kelwood Financial Services Inc. DBA Speedy Cash v. Garrett* 2019 BCCRT 568 at paragraphs 17-18.

31. I find that Buckham owes 7M 5% annual interest on the \$29,562.83 from June 15, 2018 to January 18, 2019, when the principal was paid. This equals \$878.78.
32. I find that 7M was entitled to be paid \$29,562.83 plus \$878.78 in interest.
33. Since Buckham paid \$32,639.76, I find that 7M must now refund Buckham \$2,198.15, being the difference between Buckham's payment and the amount owed, within 30 days.
34. The *Court Order Interest Act* applies to the tribunal. Buckham is entitled to pre-judgment interest on the \$2,198.15 from January 18, 2019 the date of the payment to the date of this decision. This equals \$39.34.
35. 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. Because the parties had divided success, I order each party to bear their own tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

36. Within 30 days of the date of this order, I order 7M to pay Buckham a total of \$2,237.34, broken down as follows:
 - a. \$2,198.00 as reimbursement for overpayment,
 - b. \$39.34 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. Buckham is entitled to post-judgment interest, as applicable.

37. I dismiss the remaining claims and counterclaims.
38. 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.
39. 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.

Julie K. Gibson, Tribunal Member