



Civil Resolution Tribunal

Date Issued: January 20, 2020

File: SC-2019-003590

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stratacomm Landscape & Property Services Ltd. v. The Owners, Strata Plan EPS1944*, 2020 BCCRT 69

B E T W E E N :

STRATACOMM LANDSCAPE & PROPERTY SERVICES LTD.

APPLICANT

A N D :

The Owners, Strata Plan EPS1944

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about 2 invoices for snow and ice control services.

2. The applicant, Stratacomm Landscape & Property Services Ltd., performed snow removal and salting services under a contract with the respondent strata corporation, The Owners, Strata Plan EPS1944 (strata). The applicant issued the respondent 13 invoices between December 2016 and March 2017. It seeks payment of 2 outstanding invoices, totaling \$3,383.65, for services provided on 7 days in December 2016.
3. The strata says the applicant did not perform the work identified in the 2 invoices. It also says the applicant is out of time to bring this dispute.
4. The applicant is represented by Eronne Foster, whom I infer is an owner or principal. The strata is represented by its strata council president.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Is the applicant out of time to bring this dispute?
 - b. If not, is the applicant entitled to \$3,383.65 for payment of its 2 invoices?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. The *Limitation Act* applies to tribunal claims and establishes a basic limitation period of 2 years. A limitation period is a specific time within which a person may pursue a claim. If that time period expires, the claim may not be brought even if it may have been successful. I find that this 2-year limitation period applies to the applicant's claims.
12. The applicant submitted his tribunal dispute application on May 7, 2019. A limitation period begins to run the day after a claim is discovered. Accordingly, the applicant must have discovered his claim on or after May 7, 2017, or else it is barred by the *Limitation Act*. The unpaid invoices are dated December 15, 2016 and January 2, 2017. It is undisputed that the rest of the invoices were paid on or before April 28, 2017. These facts indicate that the applicant's claim is out of time. However, the applicant says the respondent's agent acknowledged the debt in February 2019, restarting the limitation period.

13. Section 24 of the *Limitation Act* says that if a person acknowledges liability in respect of a claim before the limitation period expires, the limitation period is restarted when the person acknowledges liability.
14. An acknowledgement of a debt occurs when a person or their agent recognizes a debt in writing, signed by hand or electronic signature within the meaning of the *Electronic Transactions Act*. On February 22, 2019, the strata's property manager, RM, emailed the applicant to convey that the strata was prepared to offer "50% on the outstanding amount owing." I am satisfied that RM had authority to bind the strata as the strata's agent, and that the email was "in writing" and signed with RM's electronic signature (see *Johal v. Nordio*, 2017 BCSC 1129).
15. However, I disagree with the applicant that the email was an acknowledgement of a debt. The test is whether, viewed objectively in the surrounding circumstances, the party who made the communication intended to admit liability (*Trombley v. Pannu*, 2016 BCCA 324). Despite RM's use of the words "outstanding amount owing," it is clear from the context of the email that RM was conveying an offer to settle a disputed amount, not acknowledging the strata's liability for the amount. The strata's denial of liability for the disputed invoices never wavered.
16. I find that the latest possible date the applicant discovered its claim is April 28, 2017, when the strata paid all but the disputed invoices, and therefore I find that the applicant's claim is barred by the *Limitation Act*.
17. Even if the applicant's claim was not statute-barred, I would dismiss the applicant's claim on the merits. The applicant admits that it subcontracted the snow removal and salting services to a third party, but provided no statement from that third party confirming the dates that it performed the work. It also provided no other objective evidence that it performed the work outlined in the disputed invoices.
18. 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. The applicant was unsuccessful, so I dismiss its claim for tribunal fees. Neither party claimed dispute-related expenses.

ORDER

19. I dismiss the applicant's claims and this dispute.

Micah Carmody, Tribunal Member