



Civil Resolution Tribunal

Date Issued: January 27, 2020

File: SC-2019-007476

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *AIC Global Communications Inc. v. K Trans Worldwide Logistics Ltd.*,
2020 BCCRT 97

B E T W E E N :

AIC GLOBAL COMMUNICATIONS INC.

APPLICANT

A N D :

K TRANS WORLDWIDE LOGISTICS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for telephone connectivity (telephone service). The applicant, AIC Global Communications Inc., provided telephone service to the respondent, K Trans Worldwide Logistics Ltd. The respondent accessed the telephone service through telephone handsets provided by the applicant. The

applicant says that the respondent stopped paying for the telephone service as of an April 1, 2019 invoice. The respondent says that it received poor service from the applicant and decided to switch to another telephone service.

2. The applicant seeks \$609.52 for unpaid telephone service, which it says includes contractual penalties and fees for a dishonoured cheque. The applicant also claims an unspecified amount for contractual interest on those unpaid services and penalties.
3. Each party appears to be represented by an authorized employee.

JURISDICTION AND PROCEDURE

4. 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 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.
5. 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 only, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Does the respondent owe the applicant \$609.52 for telephone service and contractual fees and penalties?
 - b. Does the respondent owe the applicant contractual interest, and if so, how much?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proving its claim, on a balance of probabilities. I have read all the parties' evidence and submissions, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. This is a debt claim. The parties do not dispute that the applicant provided telephone service to the respondent for a number of years. The evidence shows that the applicant also provided handsets to the respondent, for use with its telephone service. According to the respondent, the provided handsets were locked to the applicant's telephone service and could not be used with a different service.
11. The applicant says it sent an April 1, 2019 invoice to the respondent for telephone services it provided. This invoice is not in evidence. The applicant submitted a Returned Item Notice from its bank, showing an image of an April 10, 2019 cheque from the respondent for \$422.53. The notice said that the cheque payment had been stopped.
12. According to the applicant, the respondent promised to replace the returned cheque, but later refused to pay invoices dated April 1, 2019, May 1, 2019, and June 1, 2019. The respondent indicates that its dissatisfaction with the quality of the telephone service and the locked handsets led it to not make the payment, which I infer refers to the \$422.53 stopped payment.

13. Based on the evidence, I find the respondent acknowledged it was invoiced \$422.53 for telephone service, and that it refused to make that payment. The respondent does not disagree that the telephone service was provided. It also does not disagree with the invoice's calculations. However, the respondent argues that the poor quality of the telephone service and the locking of its handsets mean that the service was essentially of no value during the period covered by the April 1, 2019 invoice.
14. The respondent says it had been experiencing significant dropped calls and "very poor service for years" before it switched to a new telephone company. It also says that the service disconnected "from time to time," which greatly affected its business. I note that where defective work is alleged, the burden of proof is on the party asserting the defects. So, the respondent must prove on a balance of probabilities that the applicant breached their agreement by failing to provide telephone service that was of reasonable quality, as stated in *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.
15. In this case, there is no other evidence showing that the respondent or its customers were impacted by poor call quality. Before the respondent refused to make the April 2019 payment, there is no evidence that it complained of poor telephone service. I find the respondent has not proven the telephone service was of less than reasonable quality.
16. Turning to the handsets, the respondent states that because its handsets were locked to the applicant's telephone service, it had to purchase new handsets in order to switch to a new telephone service. It estimated the new handsets cost approximately \$1000.00 but provided no receipts or other proof of their purchase. The respondent has not filed a counterclaim about the locked handsets, so a claim for the value of the handsets is not before me. However, it seems the respondent might be seeking to set off this reported new handset purchase against its telephone service debt.

17. *Wilson v. Fotsch*, 2010 BCCA 226 (CanLII) at paragraphs 71 to 73, says that amounts claimed by a defendant may be set off (subtracted) from a plaintiff's claim only if both amounts are so clearly connected that it would be unjust to allow the plaintiff to enforce payment without taking into consideration the defendant's claim. It does not appear that the applicant locked the handsets in response to the respondent's failure to pay for telephone service, or that the locking was otherwise related to that debt. There is no evidence showing that the applicant agreed to provide unlocked handsets, or to unlock the handsets provided to the respondent. I find that the locked handsets are not sufficiently connected to the claimed telephone service debt that damages for the handsets, if proven, would be a reasonable or "equitable" set off to the telephone service debt. Therefore, I am satisfied no set off is applicable here.
18. As a result, I find the respondent owes the \$422.53 reportedly invoiced on April 1, 2019.
19. That said, I find the respondent did not specifically acknowledge any additional amounts later charged by the applicant. Moreover, the applicant did not submit documentation that demonstrated what services were provided, or how much they cost, after the amounts reportedly invoiced on April 1, 2019. The most relevant evidence is a June 1, 2019 Account Summary document, which showed a previous account balance of \$604.73, without further detail. It also showed new long distance charges of \$10.87 plus taxes, but did not clarify whether those charges applied to a period before or after the respondent cancelled its service in early May 2019. The document contained a partially redacted list of calls, all of which were labelled "free". It appears that the document was likely several pages long, but only the first page was submitted.
20. There is scant evidence of the extent of the services provided by the applicant after April 1, 2019, the market value of such services, or the typical monthly telephone fees previously paid by the respondent. As such, I am unable to determine what services were provided by the applicant, or their value, after April 1, 2019. As noted,

the submitted account summaries do not show that information, and the invoices in question are not in evidence. On balance, I find that the applicant has not met its burden of proving that the respondent owes it anything beyond the \$422.53.

21. The applicant says that the respondent owes contractual fees and penalties for the returned cheque, as well as contractual interest. The applicant says that these fees, penalties, and interest were printed on the reverse of its invoices. I am not satisfied that the respondent agreed to any of those terms simply by paying other invoices before April 1, 2019. In particular, contractual interest must be agreed to by both parties, and not unilaterally applied in a later invoice. Here, there is no evidence that a contractual interest rate was set out in the parties' agreement, only in a later invoice. As there is no other evidence before me showing that the respondent agreed to any contractual penalties, fees, or interest, I dismiss the applicant's claim for those items.
22. However, the *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$422.53 owed. The applicant's evidence indicates that invoices are due on receipt. Written correspondence between the parties appears to be electronic in nature, so I presume the April 1, 2019 invoice was received on that date. Therefore, pre-judgement interest is applied from April 1, 2019 to the date of this decision. This equals \$6.82.
23. 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 was partially successful and so I find it is entitled to half \$125.00 paid in tribunal fees, which is \$62.50. No dispute-related expenses were claimed.

ORDERS

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$491.85, broken down as follows:

- a. \$422.53 in debt as payment for telephone service provided,
 - b. \$6.82 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 for tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.
26. 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.
27. 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.

Chad McCarthy, Tribunal Member