



Civil Resolution Tribunal

Date Issued: March 25, 2020

File: SC-2019-007435

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Claim Your Benefits v. D.B.*, 2020 BCCRT 333

B E T W E E N :

CLAIM YOUR BENEFITS

APPLICANT

A N D :

D.B.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. The applicant, Claim Your Benefits, claims that the respondent, D.B., owes \$4,656.54, plus interest, for nonpayment of services related to an application for disability credits. The respondent denies having an agreement with the applicant. The respondent says that her signature on the contract was forged.

2. The applicant is represented by a business representative. The respondent is self-represented.
3. In the published version of this decision, I have anonymized the respondent's name to protect the identity of the respondent's minor child.

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 *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.
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, 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. Did the respondent agree to the applicant's services?
 - b. Does the respondent owe the applicant payment for services, and if so, what is the amount owed by the respondent?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove their case on the balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The applicant operates a business that files applications for federal disability benefits. The applicant charges their customers a fee based on a percentage of the lump sum benefits awarded.
11. The applicant claims that the respondent hired them to get government benefits relating to the respondent's minor child. The applicant provided a copy of agreement which they claim the respondent signed.
12. The respondent claims that she did not hire the applicant or sign the agreement. The respondent says that only her spouse communicated with and hired the applicant. The respondent claims that her apparent signature on the agreement was forged.
13. So, did the respondent sign the agreement?
14. The applicant provided a copy of the agreement which appeared to have a signature under the respondent's name. This signature was dated March 15, 2019. The respondent's spouse's signature also appears on the agreement.

15. The applicant provided the following emails exchanged with the respondent's spouse. There is no evidence showing the respondent received these emails.
 - a. The respondent's spouse sent an email on March 15, 2019 stating that the respondent signed the agreement.
 - b. The respondent's spouse sent an email dated March 18, 2019 stating that the respondent had contacted their child's doctor and told them that the applicant would be contacting them.
 - c. The respondent's spouse sent an email on March 25, 2019 stating that the respondent discussed the applicant's services with The respondent's spouse and said to go ahead.
16. The applicant also provided a signed Canada Revenue Agency (CRA) form dated March 26, 2019. The respondent's name is on the form and the signature looks very similar to the signature on the agreement.
17. On balance, I find that the applicant has proved that the respondent signed the agreement. The signatures on the agreement and the CRA form look very similar. In addition, the respondent's spouse's emails say that the respondent signed the agreement and she participated in the services by contacting their child's doctor on behalf of the applicant.
18. While the respondent has argued that all communications in this matter were between the applicant and her spouse, the respondent has not provided any evidence showing that her spouse's emails were false or that someone forged her signature. In addition, the respondent did not explain why someone would forge her signature or why her spouse would tell the applicant that she had signed the agreement if she had not. I also note that the respondent has not provided any signature samples to dispute the genuineness of the signature on the agreement.
19. If a party fails to produce evidence in favour of their position, and has no reasonable explanation for failing to call the evidence, an adverse inference may be drawn (see

Zawadzki v. Calimoso, 2011 BCSC 45. In this matter, the respondent has not provided any evidence in response to the claim. The respondent did not provide any explanation why she did not provide a statement from her spouse explaining the circumstances or why she did not provide her own signature samples. By failing to provide this evidence, or an explanation for its absence, I draw an adverse inference against the respondent's claim that she did not sign the agreement. Based upon this adverse inference and the similarity of the signatures, I find that it is more likely than not that the respondent did sign the agreement.

20. So, did the respondent breach the agreement?
21. The agreement requires the respondent to co-operate with the applicant's services. However, it is undisputed that the respondent cancelled the applicant's CRA authorization which prevented the applicant from completing their services. Accordingly, I find that the respondent breached the contract.
22. The respondent argued that she is not responsible for damages because the applicant did not perform their contractual services. Specifically, the respondent argues that application forms submitted by the applicant were rejected by CRA and the respondent filed the forms again herself.
23. The respondent has the burden to prove a setoff from the applicant's claim. However, the respondent has not provided any evidence to prove her allegation that the applicant did not perform their contractual services. The respondent says that she has CRA documents which prove her claims. However, the respondent did not provide these documents. In the absence of evidence, I find that the respondent has not proved that the applicant failed to perform the contract and so I find that the respondent is not entitled to a setoff.
24. As I have found that the respondent breached the agreement, I turn to the amount of damages the applicant is entitled to. The general rule for assessing damages for a breach of contract is that the innocent person is entitled to the amount of money

that would put them in the same position as if the contract had been performed (see *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319 at para. 39).

25. The agreement states that the applicant will be paid fees in the amount of 25 percent of the benefits awarded to the respondent, plus tax. The agreement also states that, if the applicant is unable to confirm the amount of the respondent's benefits, the applicant will receive 25 percent of the applicant's estimated value of the claim. In addition, the agreement states that the respondent may provide evidence showing that she did not receive benefits.
26. The applicant argues that they are unable to confirm the amount of the respondent's award because the respondent cancelled their CRA authorization.
27. The applicant sent an invoice on July 23, 2019 stating that the estimated value of respondent's claim was \$16,483.32. The applicant argues that the respondent owes 25 percent of this estimated claim value, plus tax, being \$4,656.54.
28. In general, the applicant has the burden of proving their damages. The applicant has not provided any evidence or explanation supporting the basis for their estimate of the value of respondent's claim. The applicant's July 23, 2019 invoice merely concludes that the value of the respondent's benefits claim is \$16,483.32.
29. When interpreting a contract, the tribunal should try to objectively discover the parties' intention at the time the contract was made. The tribunal should consider the terms of the agreement and the circumstances surrounding the parties when the contract was formed (see *Gilchrist v. Western Star Trucks Inc.*, 2000 BCCA 70.)
30. In this matter, I find that the contract's language places the burden on the respondent to disprove the applicant's estimate. In addition, I find that this interpretation of the agreement is consistent with the circumstances surrounding the parties. Since the applicant may not be able to determine the amount of the respondent's benefits award if the respondent stopped co-operating with the applicant, and since the applicant would likely have access to this information, it objectively makes sense that the parties would agree to place the burden of

disproving the applicant's estimate on the respondent. Accordingly, I find that the respondent has the burden of proving that the applicant's estimate of \$16,483.32 was not correct.

31. Since the respondent has not provided any evidence to refute the applicant's estimate of \$16,483.32, I find that the applicant is entitled to an award of damages for breach of contract in the amount of 25 percent of \$16,483.32, plus tax of \$535.71. This equals \$4,656.54.
32. I find the respondent must pay the applicant a total of \$4,656.54, plus interest.
33. I note that the applicant has previously filed a dispute against the respondent's spouse under file number SC-2019-007762 for nonpayment of the same services. The tribunal's record indicates that the respondent's spouse was ordered to pay the applicant damages of \$5,000 and tribunal fees of \$150.00 on November 7, 2019.
34. The law allows applicants to file the same claim against separate parties. But, an applicant cannot recover more than was caused by the respondent's wrong. To allow more would be double recovery. However, any amount collected in a prior claim is credited towards satisfaction of the subsequent claim (see *Dhillon v. Jaffer*, 2014 BCCA 215).
35. I requested that the parties provide further submissions about amounts collected by the applicant in the previous dispute under file number SC-2019-007762. The applicant stated that nothing has been collected from the respondent's spouse in the previous dispute. The respondent did not make a further submission. Based on the applicant's undisputed submission, I find that there are no collections from the previous dispute to be credited towards the satisfaction of this claim. Accordingly, the respondent must pay the amount of \$4,656.54.
36. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$4,656.54 debt from July 23, 2019, when the applicant sent their invoice, to the date of this decision. This equals \$61.45.

37. 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 successful in this dispute and I will allow their claim for \$175 in tribunal fees. Neither party claimed dispute-related expenses, so I award none.

ORDERS

38. Within 15 days of the date of this order, I order the respondent to pay the applicant a total of \$4,892.99, broken down as follows:

- a. \$4,656.54 in debt as payment for services,
- b. \$61.45 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in tribunal fees.

39. The applicant is entitled to post-judgment interest, as applicable.

40. 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.

41. 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.

Richard McAndrew, Tribunal Member