



Civil Resolution Tribunal

Date Issued: May 21, 2020

File: SC-2019-009246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Adam Wilkinson (dba Adam Paul Lewis Wilkinson) v. DCC Construction,*
2020 BCCRT 557

B E T W E E N :

ADAM WILKINSON (Doing Business As ADAM PAUL LEWIS
WILKINSON)

APPLICANT

A N D :

DCC CONSTRUCTION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about whether the respondent, DCC Construction Ltd., owes the applicant, Adam Wilkinson (Doing Business as Adam Paul Lewis Wilkinson), for cleaning services. The applicant says that the respondent has not paid two invoices totaling \$2,0558, one for \$1323 and the other for \$735. The applicant also says he had to continue paying for his accounting software subscription until the amounts were paid, which totaled \$221.76. The applicant represents himself.
2. The respondent says that it issued a cheque for the \$1,323 invoice but the applicant never cashed it. It says it paid the \$735 invoice in full. The respondent says it is not responsible for paying for the applicant's bookkeeping software. The respondent is represented by an organizational contact.

JURISDICTION AND PROCEDURE

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

5. 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.
6. 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

7. The issues in this dispute are:
 - a. Whether the respondent owes the applicant for the cleaning services invoices, and
 - b. Whether the respondent should have to pay for the applicant's accounting software subscription.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove his claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

The \$735.00 invoice

9. It is undisputed that the parties entered into an agreement for cleaning services. The applicant says the respondent has not paid its invoice #1176, dated February

25, 2018, for \$735.00, for services provided in February 2018. The respondent says it paid invoice #1176 at the same time as it paid invoice #1201 (for \$918.75) with a cheque that was cashed for \$1,653.75. Invoice #1201 was for services in April 2018. The applicant says that the \$1,653.75 cheque was not for invoice #1176 but rather was for work done in April and May 2018. He provided a copy of the \$1,653.75 cheque showing it was dated May 29, 2018 and the respondent wrote in the memo line that it was for April and May. The respondent does not dispute that he wrote this in the memo line.

10. The applicant claims that this shows that the respondent is being dishonest and has never paid invoice #1176. For the reasons that follow, I do not accept this submission.
11. The respondent says that the applicant's bookkeeping was previously inaccurate and that the respondent pays its bills. The applicant did not make a submission on whether his bookkeeping was previously inaccurate. The applicant provided invoices that his accounting software issued but, as indicated below, the applicant's evidence about the information he entered into the software is unclear.
12. The applicant provided a breakdown of the respondent's payments. This was prepared by the applicant and does not appear to be generated by the accounting software. It says that the respondent made a payment in January 2018, but the applicant was unsure of the cheque number because he deposited it directly to his credit card. Therefore, if the respondent gave the applicant a cheque and he did not deposit it into his account but paid it to his credit card it is unclear whether the accounting software would show this invoice as paid or even register the payment. There is then a note that invoice #1176 for \$735.00 was unpaid. Right after this there is a note that invoice #1182 was also for \$735.00 and this was paid on April 5, 2018.
13. I note that when the applicant contacted the respondent by email on August 13, 2019, he did not say that invoice #1176 was outstanding. Rather, he said that invoice #1182 was not paid. The respondent has provided information showing that

#1182 has been paid. The respondent provided a cheque stub which specifically states that it paid invoice #1182 on April 4, 2018. The applicant also provided a copy of the cheque which has #1182 written in the memo line. Therefore, the evidence shows that #1182 was paid and the applicant has provided no explanation as to why he originally claimed it was not.

14. In his Dispute Notice, the applicant did not specify the number of the invoice he was claiming was unpaid. He just said it was for \$735, despite the fact that invoice #1176 and #1182 were both for the same amount. It is only in his submissions that the applicant identifies the outstanding invoice as #1176. Again, this is a different invoice than the invoice #1182 the applicant issued a final warning about in his email.
15. I find that the applicant's communications are confusing about which invoice was outstanding and this partly explains why the respondent's evidence about what it paid and did not pay does not only involve invoice #1176. The applicant originally stated he was going to file a claim about outstanding invoice #1182. It makes sense that the respondent provided evidence that this invoice was paid. I find the applicant's allegation that the respondent was dishonest in his submissions without merit.
16. The question remains whether the respondent paid invoice #1176 for \$735. The applicant says it did not, based on his records. I have already found that the applicant's records are incomplete and unclear. According to his August 13, 2019 email even the applicant thought he was claiming for invoice #1182. Most importantly however is that the applicant provided a copy of invoice #1176 and it is stamped paid. As noted, invoice #1182 is for the same amount and it is not stamped paid, even though it was.
17. The onus is on the applicant to prove his case. I find that he has not done so. The applicant's records indicate that he sometimes deposited a cheque directly to his credit card and did not keep track of the cheque number. It is unclear whether this could have happened with the payment of invoice #1176. What is clear is that

invoice #1176 shows as being paid. I decline to speculate that perhaps the applicant was mixing it up with invoice #1182, especially since the respondent has shown that it paid invoice #1182. I find that based on a balance of probabilities the applicant has not proved that the respondent did not pay invoice #1176.

18. Therefore, I dismiss the applicant's claim for payment of invoice #1176 for \$735.

The \$1,323.00 invoice

19. The respondent admits that it owes the applicant for the \$1323.00 #1247 invoice which was issued in late August 2018. However, it states that it sent the applicant a cheque for this amount. The respondent provided the cheque stub for \$1,323.00 showing it was for invoice #1247 and was dated October 1, 2018.

20. The respondent says that it mailed the cheque to the applicant's new address as he had recently moved. However, the applicant says he never received the cheque. The respondent says that the applicant had poor bookkeeping practices. The respondent says the applicant likely lost the cheque. The respondent also says that the applicant did not follow up for a long time before he said on March 27, 2019 and then on August 2019 that he did not receive the cheque. The respondent says that once the applicant indicated he did not receive the cheque it followed up and realized that the cheque was not cashed. It cancelled the cheque and is willing to pay this amount but says it should not have to pay interest because the applicant did not inform it in a timely manner that he had not received it.

21. The applicant says that he emailed the respondent many times saying that this invoice had not been paid. However, the applicant only provided the August 13, 2019 email. I do not accept the applicant's submission that he sent many emails about the \$1,323.00 owing because he has not provided them. However, since the respondent admits he received a March 27, 2019 email, I accept that the respondent knew as of that date that the applicant did not cash the \$1,323.00 cheque. Therefore, I find it appropriate to award the applicant interest under the

Court Order Interest Act (COIA) for the \$1,323.00 outstanding as of that date until the date of this decision. This amounts to \$29.83.

Should the respondent have to pay for the applicant's accounting software subscription?

22. The applicant says that he went out of business so he would have cancelled the accounting subscription, but he had to maintain it solely for the purpose of following up on the respondent's outstanding invoices. He has provided a record from November 2018 which he says is the last transaction involving a client other than the respondent. I first note that this does not prove that there are no later records showing the applicant used the software for other clients or that the software was necessary to follow up on the two invoices the applicant says were outstanding. However, even if the applicant could prove this, I would still find it inappropriate to order the respondent to pay for the subscription.
23. The applicant has provided no proof that the respondent ever agreed to contribute to the cost of the applicant's accounting software subscription. The applicant has not provided evidence that it informed the respondent that it must make timely payments and that an additional cost would be added to its account to keep track of outstanding invoices. The purchase of this accounting service and his decision to keep subscribing to it was solely the applicant's decision and therefore the respondent is not obligated to pay anything toward this subscription. I dismiss the applicant's claim for his \$221.76 accounting software subscription.

TRIBUNAL FEES AND EXPENSES

24. 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. Here the applicant was partly successful, so I find he is entitled to reimbursement of half of his \$125 tribunal fees or \$62.50. There was no request for dispute-related expenses.

ORDER

25. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$1,415.33, broken down as follows:
- a. \$1,323.00 in debt for the outstanding invoice #1247
 - b. \$29.83 in pre-judgment interest under the COIA, and
 - c. \$62.50 in tribunal fees.
26. The applicant is entitled to post-judgment interest, as applicable.
27. I dismiss the applicant's other claims.
28. 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. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

29. 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.

Kathleen Mell, Tribunal Member