



Civil Resolution Tribunal

Date Issued: June 10, 2020

File: SC-2019-008001

Type: Small Claims

Civil Resolution CRT

Indexed as: *Philip v. Ekos Redevelopents Inc.*, 2020 BCCRT 643

B E T W E E N :

O D E L P H I L I P

APPLICANT

A N D :

E K O S R E D E V E L O P E N T S I N C .

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for contract services the applicant Odel Philip provided for the respondent, named as Ekos Redevelopents Inc. (Ekos). Mr. Philip says Ekos agreed to pay Mr. Philip an hourly rate for work Mr. Philip did on various

job sites. Mr. Philip claims \$3,092.51 as payment for contract work completed in October 2018.

2. Ekos says Mr. Philip invoiced a total of \$28,714.46 and was actually paid \$29,463.47, more than the amount invoiced. In addition, Ekos says there are appropriate back-charges owing by Mr. Philip for deficiencies, but that even ignoring those back-charges Ekos says it owes Mr. Philip nothing.
3. Mr. Philip is self-represented. Ekos is represented by its principal or employee, JS.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. The CRT 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 CRT 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 CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. In his submissions, Mr. Philip refers to sections 21, 23 and 24 of the *Employment Standards Act* (ESA), and appears to argue that Ekos made improper deductions in that he says Ekos refuses to pay all his invoices. First, Mr. Philip elsewhere argues that he worked as a sub-contractor rather than an employee, and generally speaking the ESA only governs employee relationships. Second, the Employment Standards Branch has exclusive jurisdiction to apply the ESA. I find the parties' obligations in this CRT dispute turn on the parties' contractual relationship, not the ESA. Therefore, I find the CRT has jurisdiction to decide this dispute.

ISSUE

9. The issue in this dispute is to what extent, if any, Ekos owes Mr. Philip \$3,092.51 for alleged outstanding invoice balances.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, an applicant bears the burden of proof, on a balance of probabilities. I have only discussed the parties' evidence and submissions to the extent necessary to give context to my decision.
11. It is undisputed that Mr. Philip worked on several different jobs for Ekos, operating through his business "Karsan & Philip Wall and Ceiling". While not entirely clear from the evidence and submissions, it appears Mr. Philip was doing drywall-related work, including taping and boarding.
12. At issue in this dispute are 9 handwritten invoices Mr. Philip issued to Ekos between September 13, 2018 and December 10, 2018. Mr. Philip says he sent multiple invoices and revised one in January 2019. He says that Ekos was routinely late in paying, which left outstanding balances to be rolled over into the next invoice.
13. Given the alleged discrepancies about Mr. Philip's invoices and what has been paid, I summarize below the 9 invoices Mr. Philip submitted in evidence, which apart from the invoice date do not set out the days actually worked:

- a. *Invoice #532554 dated September 13, 2018 for \$3,021.69.* This was for drywall materials and labour at a business, FHV. Mr. Philip submits this invoice remains unpaid, although he completed further jobs for Ekos with the promise of payment.
- b. *Invoice #532557 dated October 11, 2018 for \$2,468.32.* Further drywall work at FHV. This invoice in part appears to charge \$735 for “hours out from last bill”. Mr. Philip submits this invoice remains unpaid.
- c. *Invoice #532561 dated November 21, 2018 for \$5,015.99.* Framing and boarding work at an Alexander Street address in Vancouver. There is an added handwritten note across its face, “Not paid carried over” (quote reproduced as written). Mr. Philip submits this invoice was not paid and “was carried over ... from the previous invoices” with the promise of imminent payment. However, there is nothing on the face of this invoice that appears to be a carried over charge from prior invoices, apart from the handwritten notation mentioned above.
- d. *Invoice #532562 dated November 26, 2018 for \$6,108.97.* This invoice is partly for work on the Alexander Street project, and includes a carry-forward of amounts owing from invoice #532561 for \$5,015.99 and invoice #532560 for \$3,657.50. On the face of invoice #532562 Mr. Philip notes \$5,000 was paid and charges an additional \$2,435.48, leaving a \$6,108.97 balance owing. I do not have invoice #532560 in evidence before me.
- e. *Invoice #532563 dated November 26, 2018 for \$919.46.* This invoice is for 21 hours of work at a Douglas Road address.
- f. *Invoice #532565 dated December 7, 2018 for \$1,576.22.* This invoice is for labour at the FHV site.
- g. *Invoice #532566 dated December 10, 2018 for \$4,487.86.* This is for drywall labour done by 3 workers at the Alexander Street address.

- h. *Invoice #532567 dated December 10, 2018 for \$13,092.51.* This invoice is essentially a statement of account, claiming \$4,487.86 for the Alexander Street work, \$1,576.22 for the FHV work, and \$919.46 for the Douglas Road work. The invoice also claims \$6,108.97 as a revised bill for invoice #532562, although the amount is the same as the total owing on the original invoice #532562, which in turn carried forward earlier invoice balances. On invoice #532567, there are handwritten notations across it, “paid 10,000” and “now owe \$3,092.51”, the amount claimed in this dispute.
 - i. *Invoice #000004 dated January 8, 2019, for \$13,092.51.* This is the same total on the December 10, 2018 invoice #532567, but does not acknowledge the \$10,000 payment noted on the face of #532567. This is not an invoice for new work but rather is essentially a statement of account.
- 14. Mr. Philip did not provide a total invoiced amount in his submissions.
- 15. Ekos submitted invoices from Mr. Philip it says totaled \$28,714.46, which includes 2 invoices (June 22 and September 2, 2018) not submitted by Mr. Philip that together totaled \$5,131.94. Taking off those 2 invoices, that leaves an invoiced total of \$23,582.52. Based on Ekos’ statement, Ekos treated invoice #532562 as \$2,435.48 owing under that particular invoice (compared to the \$6,108.97 total balance on Mr. Philip’s invoice). Otherwise, Ekos’ invoice totals match Mr. Philip’s, including invoice #532560, and excluding invoice #00004 that is essentially a statement of account.
- 16. Ekos’ submitted accounting records show that it paid by cheque a total of \$29,463.47, with 5 cheque payments after September 2018 (I have not included the cheque numbers below):
 - a. \$874.68 paid on June 22, 2018
 - b. \$7,945.14 paid on September 10, 2018
 - c. \$3,174.33 paid on September 14, 2018
 - d. \$2,468.32 paid on October 19, 2018

e. \$5,000 paid on November 22, 2018

f. \$10,000 paid on December 20, 2018

17. I note that Ekos did not provide actual proof of payment (being copies of the above-noted cheques), saying that its accountant still has all of its files but that Ekos could obtain the records if necessary. Ordinarily, I would find the burden rests on the respondent to prove it made the payments it says it did. Parties are told during the CRT's facilitation process that they are required to submit all relevant evidence.
18. However, I find Mr. Philip's own records and stated recollections are unreliable. He submits that because Ekos did not pay on time, "billed amounts constantly had to be carried over and re-invoiced in order to receive payments". I am unable to reconcile Mr. Philip's submitted invoices as to what is a new charge and what is a "re-invoice". Most significantly, I find Mr. Philip has likely not properly accounted for all of Ekos' payments, given the informal manner in which he documented payments.
19. I find it significant that Mr. Philip does not address Ekos' evidence about its specific cheque payments. Bearing in mind the CRT's mandate that includes proportionality, I find it would not be appropriate to ask Ekos to obtain the cancelled cheques and produce them. In the absence of comment by Mr. Philip in response to those specific cheques having been issued, I prefer Ekos' accounting record setting out the specific invoices and its payments over Mr. Philip's confusing invoices.
20. Further, Mr. Philip says the \$3,092.51 claim is for work completed in October 2018. I cannot reconcile that timeframe with the claimed outstanding invoices provided. In Mr. Philip's submitted May 5, 2019 email to his then counsel, he also said the contract started in October 2018. Yet, Mr. Philip appears to claim the September 2018 invoice remains unpaid and Ekos' evidence shows Mr. Philip began working for it in June 2018. I find Mr. Philip's discrepancy between the "work completed" timeframe and the invoice dates does not support a conclusion that Mr. Philip's invoices are accurate.

21. On balance, I find Mr. Philip's invoicing is unreliable and so I cannot conclude it is more likely than not that Ekos owes Mr. Philip anything further for the invoices at issue in Mr. Philip's claim. Given this conclusion, I do not need to address and I make no findings about whether Ekos is entitled to any back-charges for alleged deficiencies in Mr. Philip's work. I find Mr. Philip's claim must be dismissed.
22. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. As Mr. Philip was unsuccessful, I dismiss his claim for reimbursement of tribunal fees. Ekos did not pay any tribunal fees and no dispute-related expenses were claimed.

ORDER

23. I dismiss Mr. Philip's claims and this dispute.

Shelley Lopez, Vice Chair