



Civil Resolution Tribunal

Date Issued: July 10, 2020

File: SC-2019-010795

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garry Krausher dba Krausher Contracting v. Jones*, 2020 BCCRT 773

B E T W E E N :

GARRY KRAUSHER (Doing Business As KRAUSHER
CONTRACTING)

APPLICANT

A N D :

CHRISTOPHER GORDON JONES, KASH EQUIPMENT &
LANDSCAPING, and 1113915 B.C. LTD. dba KASH EQUIPMENT &
LANDSCAPING

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This claim is about a debt for heavy duty vehicle inspection and maintenance services. The applicant, Garry Krausher (Doing Business As Krausher Contracting)

claims the respondents owe \$2,098.28 for unpaid invoices, plus interest of \$1,666.09, for a total of \$3,756.37.

2. Respondents, Christopher Gordon Jones and Kash Equipment & Landscaping (Kash) are in default. Respondent, 1113915 B.C. LTD. dba Kash Equipment & Landscaping (111), says it does not have a contract with Mr. Krausher so it is not responsible for the invoices.
3. 111 says the respondents, Mr. Jones and Kash, have filed for bankruptcy.
4. Mr. Krausher is self-represented. Christopher Jones represents 111. Mr. Jones and Kash both failed to file a Dispute Responses as required and have not participated in this dispute, other than as 111's representative.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT 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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. 111 says that respondents Mr. Jones and Kash have filed for bankruptcy. I note that a bankruptcy stay of proceeding under section 69(1) of the *Bankruptcy and Insolvency Act* (BIA) prohibits the commencement or continuation of a claim against bankrupt persons. Accordingly, I

have considered whether the BIA prevents Mr. Krausher's claims against Mr. Jones and Kash in this matter.

8. Neither Mr. Jones or Kash have provided Dispute Responses notifying Mr. Krausher and the CRT of a bankruptcy filing. 111 says that Mr. Jones and Kash were bankrupt more than a year earlier but 111 did not provide any details of the alleged bankruptcy. 111 did not say when the bankruptcy was allegedly filed, what the bankruptcy file number was, who the trustee in bankruptcy was, whether a stay of proceeding was in effect or whether the alleged bankruptcy discharged the debts in this dispute.
9. I gave all parties an opportunity to provide further submissions about Mr. Jones' and Kash's bankruptcy status. Mr. Krausher says that he is not aware of a bankruptcy filing. Mr. Krausher says he has not received notice of a bankruptcy filing. Further, he says that no trustees in bankruptcy contacted him. 111 did not provide any further submissions or evidence of a bankruptcy filing.
10. Based on the lack of evidence, I am not satisfied that either Mr. Jones or Kash have filed bankruptcy or that a bankruptcy stay of proceeding under the BIA is in effect. Accordingly, I find that I have jurisdiction to adjudicate Mr. Krausher's claims against Mr. Jones and Kash.
11. 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.
12. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

13. The issue in this dispute is whether Mr. Jones, Kash and 111 owe Mr. Krausher a debt for unpaid invoices. If so, how much?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Mr. Krausher must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
15. It is undisputed that Mr. Krausher issued a July 19, 2017 invoice for \$2,463.71 and a July 25, 2017 invoice for \$449.97 to “Kash Excavating” for mechanic services. Both invoices say interest of 2% per month is payable for unpaid invoices after 21 days.
16. Mr. Krausher acknowledges payments of \$123.40, \$500 and \$200 towards these invoices. These payments are supported by Mr. Krausher’s financial statements. Since the respondents did not dispute the amount of these payments, I find that they have made partial payments of \$823.40 towards the July 19, 2017 and July 25, 2017 invoices.

Does 111 owe a debt to Mr. Krausher?

17. To hold 111 responsible for the unpaid invoices, Mr. Krausher must prove that he has a contract with 111. 111 says it does not have a contract with Mr. Krausher.
18. For a valid contract to exist, the parties must have a meeting of the minds. This means that the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms. There must also be an offer by one party that is accepted by the other and payment of money or something else of value. (See discussion on contract formation in *Redfern Resources Ltd. (Re)*, 2012 BCCA 189 and *Fairchild Developments Ltd. v. 575476 B.C. Ltd.*, 2020 BCCA 123.)

19. It is undisputed that Mr. Krausher did not have a signed contract with 111. Mr. Krausher says a contract was formed by performing services and issuing invoices. A contract does not need to be signed to be enforceable, but it can be harder to prove.
20. Mr. Krausher says that his business performed heavy duty inspection and maintenance services for the respondents on an ongoing basis from August 31, 2016 to July 25, 2017. Mr. Krausher provided 14 invoices for services performed over that time period. It is not disputed that Mr. Krausher provided these services.
21. All of Mr. Krausher's invoices from August 31, 2016 to July 25, 2017 were issued to "Kash Excavating." 111 says "Kash Equipment" is a different entity than "Kash Excavating." However, 111 does not explain its relationship to "Kash Equipment" or "Kash Excavating."
22. Mr. Krausher says that Mr. Jones represented that he was authorized to act as 111's agent and that he formed a contract with Mr. Krausher on 111's behalf. 111 did not dispute this. Based on Mr. Krausher's undisputed submission, I find that Mr. Jones entered a contract with Mr. Krausher on behalf of 111 as 111's agent.
23. Also, electronic payment records show that 111 made the following payments to Mr. Krausher:
 - a. On August 31, 2017, 111 paid Mr. Krausher \$500.
 - b. On November 21, 2017, 111 paid Mr. Krausher \$250.
 - c. On December 13, 2017, 111 paid Mr. Krausher \$500.
 - d. On February 16, 2018, 111 paid Mr. Krausher \$200.
24. Mr. Krausher's financial records indicate that 111's August 31, 2017 payment of \$500 and \$126.60 of 111's November 21, 2017 payment of \$250 were attributed to prior invoices that are fully paid. Mr. Krausher's financial records attribute the

remaining \$823.40 of 111's payments to the unpaid invoices in dispute in this matter. 111 did not dispute Mr. Krausher's financial records.

25. 111 does not explain why it made payments for Mr. Krausher's invoices if it does not have a contract with Mr. Krausher. I find that, more likely than not, 111 made payments to Mr. Krausher because it did have a contract with Mr. Krausher for heavy duty vehicle inspection and maintenance services.
26. For the above reasons, I find that 111 is responsible for Mr. Krausher's unpaid invoices.
27. I note that 111 suggests a payment plan to resolve this matter. I find 111's proposal is inappropriate, as I agree with the Mr. Krausher that he is entitled to judgment and Mr. Krausher can pursue enforcement, through a payment plan or a court proceeding, afterwards.

Do Mr. Jones and Kash owe a debt to Mr. Krausher?

28. As noted above, both Mr. Jones and Kash are in default. In particular, on January 14, 2020 the CRT served both Mr. Jones and Kash with the Dispute Notice by mail in accordance with the CRT's rules. Under the CRT's rules, the service was deemed received within 10 days, and the Dispute Response due 14 days after that. Neither Mr. Jones nor Kash filed Dispute Responses as required.
29. Liability is assumed when respondents are in default. This means that because the respondents Mr. Jones and Kash refused to participate, it is generally reasonable to assume that Mr. Krausher's position is correct on the issue at hand. So, I find Mr. Jones and Kash both owe Mr. Krausher a debt for the unpaid invoices.
30. I find Mr. Jones, Kash and 111 equally responsible for the unpaid invoices so I find them all jointly and severally liable for this debt.
31. I turn then to the amount of damages that is appropriate.

How much do the respondents owe?

32. The Dispute Notice claims unpaid invoices of debt of \$2,098.28. However, Mr. Krausher's evidence suggests a slightly different amount owing. Mr. Krausher's July 19, 2017 invoice says they owe \$2,463.71. After deducting the acknowledged payments totaling \$823.40, I find that the respondents owe \$1,640.31 for the July 19, 2017 invoice. I find that the respondents owe the entire unpaid amount of \$449.97 for the July 25, 2017 invoice. So, I find that the respondents owe \$2,090.28 in unpaid invoices.
33. Mr. Jones, Kash and 111 also owe Mr. Krausher interest on the outstanding principle.
34. Section 4 of the federal *Interest Act* says that when an interest rate in a contract is expressed as a rate or percentage for any period less than 1 year, and if the contract does not contain an express statement of the equivalent yearly interest rate or percentage, the maximum allowable interest rate is 5% per year. However, I find the *Interest Act* is not relevant here, because there was no contract between the parties about payment of interest. As stated in *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775, a right to charge interest cannot be based simply on a unilateral assertion in an invoice. Therefore, I find Mr. Krausher is entitled to pre-judgment interest under the *Court Order Interest Act*.
35. Under the *Court Order Interest Act*, I find Mr. Krausher is entitled to prejudgment interest on the \$1,640.31 owed from the July 19, 2017 invoice, accruing from 21 days after the invoice date, August 9, 2017, to the date the date of this decision, being \$75.43. Mr. Krausher is also entitled to prejudgment interest on the \$449.97 owed from the July 25, 2017 invoice, accruing from 21 days after the invoice date, August 15, 2017, to the date the date of this decision, being \$20.37. So, Mr. Jones, Kash and 111 must pay Mr. Krausher a total of \$95.80 in pre-judgment interest.
36. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. I see no reason in this case not to follow that general rule. I find that Mr. Jones, Kash and 111 must reimburse Mr. Krausher \$125 for CRT filing fees. I find that the respondents are not responsible for Mr. Krausher's \$50 CRT fee for submitting a claim over \$3,000 since the total award in this dispute is less than \$3,000.

ORDERS

37. Within 30 days of the date of this order, I order Mr. Jones, Kash and 111, jointly and severally, to pay Mr. Krausher a total of \$2,311.08, broken down as follows:

- a. \$2,090.28 as debt for unpaid invoices,
- b. \$95.80 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

38. Mr. Krausher is entitled to post-judgment interest, as applicable.

39. Under section 48 of the CRTA, the CRT 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 CRT'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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

40. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member