



Civil Resolution Tribunal

Date Issued: July 27, 2020

Files: SC-2019-010096 and
SC-2019-010097

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Control Solutions Ltd. v. Simpson & Chang Plumbing & General Contracting Ltd.*, 2020 BCCRT 832

BETWEEN:

CONTROL SOLUTIONS LTD.

APPLICANT

AND:

SIMPSON & CHANG PLUMBING & GENERAL CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The parties in these two contractual disputes are the same. The applicant is Control Solutions Ltd. (Control). The respondent is Simpson & Chang Plumbing & General Contracting Ltd. (Simpson).
2. In SC-2019-010096, Control claims \$2,468.60 as the balance owing for its May 2019 supply and installation of temperature controls at a business in Park Royal in West Vancouver, in accordance with mechanical drawings and specifications.
3. In SC-2019-010097, Control claims \$4,938.00 for its March 2019 supply and installation of temperature controls at a business in Surrey, BC.
4. In both disputes, Simpson says one of its partners, DM, signed the Control agreement without authorization to do so. Simpson says Control's claims should be against DM and that Simpson is not responsible.
5. Control is represented by CN, an organizational contact. Simpson is represented by a principal, Andrew Simpson. To distinguish from the named respondent Simpson, I will refer to Andrew Simpson as Mr. Simpson.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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 tribunal considers appropriate.

Preliminary matters

10. In a February 19, 2020 preliminary decision, a CRT member issued a preliminary decision that the 2 disputes could proceed. The first issue was that there was at that time an ongoing proceeding in the BC Supreme Court (BCSC) with Simpson as plaintiff and DM as one of the named defendants. The BCSC notice of civil claim stated that DM breached the partnership terms and a shareholder agreement. I agree with the preliminary decision that Simpson's allegations against DM are unrelated to Control's entitlement to payment of its invoices as claimed in these CRT proceedings.
11. The second issue in the preliminary decision was that Simpson said it was insolvent, and section 69 of the *Bankruptcy and Insolvency Act* (BIA) says that on filing a notice of intention, no remedy or action may be taken (or continued) against a bankrupt without leave of the court in bankruptcy. However, Control provided a bankruptcy search that showed no results and Simpson's representative then responded that a lawyer had advised that bankruptcy was a "foregone conclusion". While I acknowledge that Simpson later chose not to provide evidence or submissions in these disputes, I find there is no evidence before me that Simpson is bankrupt so as to engage section 69 of the BIA. I find I am able to resolve these 2 disputes.

12. Next, I acknowledge Control filed two separate disputes, which if combined the claims' total exceeds the CRT's \$5,000 small claims monetary limit. However, as set out in the non-binding CRT noteworthy decision *De Bayer v. Yang*, 2019 BCCRT 298 that I find persuasive, I find the BC Provincial Court decisions on the application of monetary limits show that where claims are sufficiently distinct, each can attract its own monetary limit. In *Wah Loong Ltd. v. Fortune Garden Restaurant (Richmond) Ltd.*, 2000 BCPC 163, the claimant filed 8 separate court actions against the same defendant, each under the court's monetary limit of \$10,000 but totaling over \$70,000. Each court action was for payment of multiple invoices.
13. In *Wah Loong*, the court analyzed the parties' relationship and determined that each invoice was for payment under a distinct contract. Each time the respondent failed to pay an invoice, it was a separate claim. Therefore, the court found that the claimant had not inappropriately split its case. The court permitted the claimant to pursue the 8 court actions.
14. I find the circumstances are the same here as in *Wah Loong*. Control's claims relate to 2 separate contracts, at 2 separate locations at different times. So, I find they are truly separate claims that entitle Control to a \$5,000 monetary limit per claim.

ISSUE

15. The issue in these disputes is whether Simpson owes Control for invoiced work requested by DM, who Simpson says was not authorized to order the work.

EVIDENCE AND ANALYSIS

16. In a civil claim such as this, the applicant Control bears the burden of proof, on a balance of probabilities. As referenced above, Simpson chose not to file any evidence or make any submissions in either dispute, despite having the opportunity to do so with multiple reminders from CRT staff. I have only referenced the evidence and submissions as necessary to give context to my decision.

SC-2019-010096 - \$2,468.60 claim for Park Royal job

17. On January 29, 2019, Simpson sent Control an email from its “billing” email account, for Purchase Order #SCP018-082. The purchase price was noted as \$4,810. The email came from Simpson through a Quickbooks address, and was copied to an email address that I find was DM’s.
18. The Purchase Order itself has Simpson’s name and address at the top, with an adjacent logo of another name, S&C Mechanical Systems Ltd. (SCM), which I find is an affiliated company. The supplier is listed as Control and the “ship to” as Simpson. The Purchase Order refers back to Control’s December 17, 2018 quote sent to DM, whose email address was with SCM. The Purchase Order instructions said all invoices should be emailed to “billings” at SCM. I find this shows Simpson is a proper respondent and is obligated to pay Control’s invoice.
19. In June 2019, DM and Control exchanged emails that the project was going to be completed by someone else. DM asked Control for a credit for uncompleted work, and Control credited \$2,351.40. Taking the \$4,810 quoted price less \$2,351.40, this left \$2,468.60, the amount claimed in this dispute.
20. Control’s submitted 2 invoices dated May 16, 2019 and September 25, 2019 (the latter being for a \$252.53 holdback amount), which describe the Park Royal job location. As instructed under the Purchase Order, these were billed to SCM.
21. Simpson does not argue that Control did not provide the invoiced work or that the work was done deficiently. Simpson’s only argument raised in the Dispute Response filed at the outset of this proceeding is that DM was not authorized to order the work. As noted, Simpson chose not to file evidence or submissions, despite being invited to do so.
22. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on its behalf. So long as the agent discloses that they are acting as an agent for the principal, the agent will not generally be liable under a contract they make between the principal and third party.

The related issue here is whether DM had actual or apparent authority to enter into contracts on Simpson's behalf, such that Simpson should be held responsible. As noted, Simpson denies DM had such authority. However, the law of agency says that when an agent (DM) acts with actual or presumed authority on behalf of a disclosed principal (Simpson), the principal can sue or be sued on the contract.

23. I find that DM acted with either actual or presumed authority on Simpson's behalf. This is supported by the Purchase Order communications, and that DM signed off his emails with the title "Project Manager/Estimator". I find this means Simpson is liable for Control's invoices, for goods and services DM ordered on Simpson's behalf. I find Simpson owes Control \$2,468.60. As noted above, any dispute Simpson has with DM over his ordering is an issue between DM and Simpson. I find Simpson is obliged to pay for Control's work that DM ordered on Simpson's behalf.
24. The *Court Order Interest Act* (COIA) applies to the CRT. I find Control is entitled to pre-judgment interest under the COIA on the \$2,468.60, calculated from May 16, 2019 to the date of this decision. I have used May 16, 2019 as a reasonable date, bearing in mind the later June 2019 discount that was more than the later \$252.53 invoice. This COIA interest equals \$55.16.

SC-2019-010097 – \$4,938 claim for Surrey job

25. On September 24, 2018, DM emailed Control on Simpson's behalf and invited it to tender on the project. Control provided its \$4,782 plus GST quote on October 2, 2018.
26. Simpson's June 12, 2018 Purchase Order SCP018-067 has Control as the supplier and Simpson as the "ship to", for \$4,782.00 plus \$239.10 in tax, for a total of \$5,021.10. As in the Park Royal job, this Purchase Order had Simpson at the top of the document and on the side the same SCM logo. The Purchase Order instructions were the same as with the Park Royal job. Again, I find this shows Simpson is a proper respondent and is obligated to pay Control's invoice.

27. I have rejected above Simpson's sole argument that DM was not authorized to make the orders, which Simpson raised only in the Dispute Response and as noted provided no evidence or arguments.
28. Control's March 15, 2019 invoice for \$4,518.99 and its April 16, 2019 invoice for the \$502.11 holdback were billed to Simpson's affiliated company, SCM. These 2 invoices total \$5,021.10, and I note the CRT's maximum monetary limit in its small claims jurisdiction is \$5,000. There is no explanation for why Control only claims \$4,938 but since that is all it claims I only order Simpson to pay \$4,938.
29. Control is entitled to pre-judgment interest under the COIA on the \$4,938, calculated from April 16, 2019 to the date of this decision, a date I find reasonable in the circumstances. This equals \$118.24.
30. Under section 49 of the CRTA and CRT rule 9.5, a successful party is generally entitled to the recovery of their tribunal fees. I see no reason to deviate from that here. Control was successful and so it is entitled to reimbursement of its paid CRT fees. These equal \$125 in SC-2019-010096 and \$175 in SC-2019-010097, for a total of \$300.

ORDERS

31. Within 21 days of this decision, I order the respondent Simpson to pay the applicant Control a total of \$7,880.00, broken down as follows:
 - a. \$2,468.60 in debt for dispute SC-2019-010096,
 - b. \$55.16 in pre-judgment COIA interest on the \$2,468.60,
 - c. \$125 in CRT fees for SC-2019-010096,
 - d. \$4,938 in debt for dispute SC-2019-010097,
 - e. \$118.24 in pre-judgment COIA interest on the \$4,938, and
 - f. \$175 in CRT fees for dispute SC-2019-010097.

32. Control is entitled to post-judgment interest as applicable.
33. 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.
34. 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.

Shelley Lopez, Vice Chair