



Civil Resolution Tribunal

Date Issued: July 31, 2020

File: SC-2020-001709

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Green Clover Inc. v. Highway King Transport Ltd.*, 2020 BCCRT 862

B E T W E E N :

GREEN CLOVER INC. and TYLER MADISON

APPLICANTS

A N D :

HIGHWAY KING TRANSPORT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a contract for cleaning services. The applicants, Green Clover Inc. (Green Clover) and Tyler Madison, say they provided cleaning services but the

respondent, Highway King Transport Ltd. (Highway), did not pay. They also say that Highway did not provide proper notice to terminate the agreement and that it owes them for materials. The applicants ask for \$3,417.23 for cleaning services, \$1,008.00 in lieu of notice, and \$67.09 for garbage bags, for a total of \$4,492.32. Tyler Madison represents the applicants.

2. Highway says it should not have to pay the full amount for the cleaning services because Green Clover did not provide the services agreed to under the contract. Highway says that it provided correct notice and Green Clover did not provide cleaning services during some of this period. It says it should not have to pay the full amount claimed in lieu of notice. Highway agrees it owes \$67.09 for the garbage bags. Highway is represented by an organizational contact.

JURISDICTION AND PROCEDURE

3. 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.
4. The CRT 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 "they 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 CRT'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 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.
6. 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.

ISSUE

7. The issue in this dispute is whether the applicants properly provided the cleaning services under the agreement and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicants must prove their 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.
9. It is undisputed that Green Clover and Highway entered into an agreement on July 3, 2019 for cleaning services to start the weekend of August 3, 2019. I note that Tyler Madison was not named in his personal capacity as party to this agreement. Tyler Madison has not presented any evidence showing that Highway is obligated to him personally. Therefore, because Tyler Madison did not establish a contract between him and Highway, I find that he personally is not entitled to any remedy if Highway breached its agreement with Green Clover.

10. The July 3, 2019 agreement set out the cleaning services, the frequency and the cost, which was \$960 per month. The agreement stated that the contract could be terminated with 60 days written notice by either party. The contract indicated that payments were due on the 5th day of the following month after the cleaning services, and that service charges of 25.36% per year would apply to overdue invoices. The agreement did not mention that Green Clover could suspend services if there are outstanding invoices. This is relevant because, as discussed below, the evidence shows that Green Clover did suspend services.
11. Green Clover submits that they provided three different sets of cleaners, but Highway found them all unsatisfactory. Green Clover submits that if their work was unsatisfactory it is partly because Highway was not paying their invoices. It is undisputed that Highway expressed concern over the quality of cleaning and that it did not pay the invoices for services from August to November 2019. However, the evidence is not clear that Highway deliberately withheld payment and that this was not just Highway's accounting department's oversight. Green Clover provided invoices by separate emails, but Highway was emailing with Green Clover constantly and the issue of outstanding invoices did not come up until mid-November 2019. I find that Green Clover has not established that Highway was deliberately withholding payment.
12. Green Clover provided Highway's database customer log which says that Green Clover sent an email on October 3, 2019 indicating that the cleaners would not continue because they had not been paid. The October 3, 2019 email in evidence does not say this. In the email Green Clover's general manager, S, says that the cleaner was not able to do the full scope of cleaning services that night and that Green Clover was taking steps to move the cleaner off Highway's account. S also stated in an email on October 7, 2019 that she had already apologized for the cleaner's poor performance and that deficiencies would be rectified and the cleaner would be removed from the account. S did not mention anything about Highway's outstanding invoices.

13. Further, Green Clover did not provide evidence of their arrangement for paying their employees and whether they did not pay their employees because of Highway's failure to pay its invoices. I have reviewed the emails between the parties which show that S said she only became aware of outstanding invoices in November 2019 and this was after months of Highway complaining that the cleaning crews were not properly providing the cleaning services. I also note that this is after Highway gave notice by email on October 15, 2019 that it wanted to terminate Green Clover's services.
14. On the evidence, I do not accept Green Clover's explanation that it was Highway's failure to pay the invoices that resulted in substandard cleaning. I also note that even if Green Clover's employees were paid late this would not justify substandard cleaning under the agreement.
15. Green Clover also argues that their work was not substandard and that Highway's standards were too high. Again, Green Clover has submitted a database customer log. I have already indicated above that I do not accept this log as being an accurate representation of what was occurring between the parties. The log has several entries stating that the reason why Green Clover could not perform the work Highway expected was because of the high number of people coming in and out of Highway's premises and that some areas needed more than spot cleaning and more thorough repair. There is no supporting evidence that Green Clover ever told Highway this.
16. Further, the evidence shows that Highway's complaints were not about walls and floors that might need upgrading. Rather, Highway sent numerous emails from October through November 2019 about mirrors and countertops not being cleaned, as well as garbage not being removed, and offices not being cleaned at all. Additionally, Green Clover admitted that there were deficiencies and also offered a partial discount because of these deficiencies. Overall, I find that the evidence shows that Green Clover did not provide the services it promised under the contract.

Remedy

17. I note that in October and November 2019 Highway did not tell Green Clover that it refused to pay for the entirety of their services, instead it asked for a discount. I find it is fair that Highway should only have to pay for work reasonably performed. Therefore, Highway should not have to pay for cleaning services it did not receive, and Green Clover is entitled to reasonable payment for the cleaning work that was done. This is known in law as '*quantum meruit*', or value for work done.
18. Green Clover asks for \$3,417.23 for cleaning services. Looking at the items listed on the schedule of cleaning specifications, I note that Highway complained of numerous issues including wastebaskets not being emptied, trash not being removed, some offices not being cleaned, mirrors and faucets not being cleaned, and countertops, especially in the kitchen, not being wiped down. Highway provided photos showing some of these issues. Green Clover argues that these pictures are not date stamped and do not prove that these pictures represent how the office looked after they finished cleaning. Because the pictures correspond with the emails between the parties, on balance I find they accurately reflect issues Highway brought up with Green Clover.
19. Having said that I note that there were many other cleaning services which Green Clover did perform such as vacuuming, sweeping, mopping, and cleaning the toilets, which did not appear to be the source of Highway's complaints. I also note that Highway did not say that every time Green Clover cleaned that it was dissatisfied with the cleaning services.
20. On a judgement basis, I find that 50% of the work set out in the cleaning specification schedule were not completed or were completed in a significantly substandard manner. Therefore, I find Highway is obligated to pay Green Clover 50% of the amount claimed or \$1,708.62.

21. Green Clover also requests \$1,008.00 in lieu of notice. The evidence shows that Highway gave notice on October 15, 2019. Green Clover continued to work after this and was in contact with Highway about improving their performance. In mid-November the emails show that Highway indicated that the cleaning services were not improving. It was at that point that Green Clover suspended Highway's services based on lack of payment. As noted, it is unclear whether this was an accounting oversight. S did not bring up the lack of payment until this time. Further, as mentioned, the contract does not say that Green Clover can suspend service during the notice period and then charge for cleaning services in lieu of notice.
22. I find it was not Highway that stopped Green Clover from continuing to work and it was Green Clover that suspended service. Therefore, I find that Green Clover is not entitled to payment in lieu of notice.
23. Green Clover requested \$67.09 for garbage bags. Highway agrees it owes this amount. I find Highway must pay \$67.09 for the garbage bags. Therefore, Green Clover is entitled to \$1,775.71 (\$1,708.62 for cleaning plus \$67.09 for garbage bags). It is also entitled to pre-judgment interest from the November 15, 2019 date it stopped service until the date of this decision on the basis of 25.36% rate set out in the contract. This amounts to \$320.78.
24. 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. Because Green Clover was partly successful in their claims, I find they are entitled to reimbursement of half of the \$175 paid for CRT fees, which equals \$87.50. Green Clover also requests \$38.04 in expenses for a corporate search. I find that this is a reasonable dispute-related expense and because Green Clover was partly successful, I find they are entitled to half of this amount or \$19.02.

ORDERS

25. Within 30 days Highway must pay Green Clover a total of \$2,203.01 broken down as follows:
- a. \$1,708.62 in debt for cleaning services,
 - b. \$67.09 in debt for garbage bags,
 - c. \$320.78 in contractual interest at 25.36% annually,
 - d. \$87.50 in CRT fees, and
 - e. \$19.02 in dispute-related expenses.
26. Green Clover is also entitled to contractual post-judgement interest as applicable.
27. I dismiss Tyler Madison's 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