



Civil Resolution Tribunal

Date Issued: August 20, 2020

File: SC-2020-000441

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McGuire v. A-Central Used Auto Parts Ltd.*, 2020 BCCRT 930

B E T W E E N :

LISA MCGUIRE (Doing Business As LEAVE IT TO LISA
BOOKKEEPING SERVICES)

APPLICANT

A N D :

A-Central Used Auto Parts Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for bookkeeping services.
2. The applicant, Lisa McGuire (Doing Business As Leave it to Lisa Bookkeeping Services), was contracted to perform bookkeeping services for the respondent, A-Central Used Auto Parts Ltd. (A-Central). Ms. McGuire says that in October 2019,

she provided two days of accounting software training for A-Central and that A-Central has failed to pay her. Ms. McGuire claims \$467.25 for unpaid invoice #1394.

3. A-Central says that Ms. McGuire did not provide the training as set out in her invoice. It says Ms. McGuire wasted time trying to find the answer to a question she should have known, so it should not have to pay for that time. A-Central also says that Ms. McGuire's previous bookkeeping work was deficient, so it should not have to pay her invoice.
4. Ms. McGuire is self-represented. A-Central is represented by an employee, DB.

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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, 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. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. 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.

8. 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

9. The issues in this dispute are:
 - a. Whether A-Central must pay Ms. McGuire \$467.25 for invoice #1394, and
 - b. Whether Ms. McGuire's services were deficient.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Ms. McGuire bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. A-Central hired Ms. McGuire in January 2019 to perform independent bookkeeping services. The Bookkeeping Services Contract (contract) in evidence shows that Ms. McGuire agreed to provide services including monthly financials, general ledger audits, journal entries, bank reconciliation and credit card reconciliations, among others, for payment of \$45 per hour.
12. Ms. McGuire says that on October 9 and 15, 2019, she trained A-Central's staff bookkeeper, DB, on certain aspects of the accounting software, Quickbooks (QB). The evidence shows that Ms. McGuire's original October 29, 2019 invoice #1394 included 3 hours for QB PST filing training on October 9 and 2 hours for QB year-end training on October 15. Ms. McGuire charged \$89 per hour, for a total of \$467.25, including GST. As discussed below, the contract does not specify that Ms.

McGuire will charge a different rate for training than other bookkeeping services for A-Central.

13. A-Central's main dispute with Ms. McGuire's invoice is about the time charged on October 9. A-Central submits that Ms. McGuire was supposed to train DB on the year end procedures that day. It says that DB had an initial question about how to key PST into QB, which Ms. McGuire did not know and spent the entire 3 hours trying to figure out the answer, including about 2 hours on the phone with QB. A-Central says that Ms. McGuire left that day without answering DB's question or providing any training.
14. In a November 16, 2019 email, DB advised Ms. McGuire that she did not agree with the charge for 3 hours of PST training at \$89 per hour and asked Ms. McGuire to consider adjusting the invoice. Ms. McGuire responded by email, saying that she did spend time training on the PST procedures, but agreed to adjust the bill anyway. A-Central's evidence includes an amended version of invoice #1394, which charged \$45 per hour for the 3 hours on October 9. The total of the amended invoice #1394 is \$328.65.
15. A-Central says it should not have to pay Ms. McGuire anything for October 9 because all 3 hours was a waste of time. There is also some dispute about how much time Ms. McGuire spent with DB on October 9. A-Central says it was about 3 hours. Ms. McGuire says it was about 5 hours, but she only charged for 3 hours. In this dispute, Ms. McGuire submitted a third version of invoice #1394, which charged 3 hours for training on October 9 at \$89 per hour, but which also reflected an additional 2.16 hours of uncharged time that Ms. McGuire spent on the phone with QB and on 2 smoke breaks. Ms. McGuire says that when A-Central failed to pay her amended reduced invoice, she decided to claim the \$89 rate she had charged in the original invoice.
16. Based on text messages A-Central submitted between Ms. McGuire and DB on October 9, I find that Ms. McGuire spent only 3 hours with DB on October 9. While Ms. McGuire submits that she spent about 1 hour on the phone with QB, I find A-

Central's estimate of 2 hours more persuasive as it is consistent with Ms. McGuire's invoice reflecting about 2 hours of uncharged time for her time on the phone. Given that, in the third version of her invoice, Ms. McGuire specified that she was not charging A-Central for her time on the phone with QB, I find Ms. McGuire spent only 1 hour of chargeable time with DB on October 9. When Ms. McGuire amended invoice #1394 after DB's November 16 email, she charged the \$45 per hour rate reflected in the contract for her time on October 9. Therefore, I find A-Central must pay Ms. McGuire for 1 hour at \$45 per hour, plus GST for October 9.

17. As for the 2 hours of time Ms. McGuire charged for October 15, it is undisputed that she returned to complete the year-end training that day with DB. While A-Central says it will pay for Ms. McGuire's time, it does not agree to pay her higher training rate.
18. As noted, the contract reflects that Ms. McGuire would be paid \$45 per hour for her work. While the contract does not specify training as one of the services that Ms. McGuire would provide to A-Central, I find Ms. McGuire is limited to \$45 per hour, absent a separate agreement that A-Central would pay Ms. McGuire a different rate for training services. There is no evidence before me of any such agreement. There is also no evidence before me about why Ms. McGuire charged more for training than her other services. Therefore, I find that Ms. McGuire is entitled to charge only her agreed rate of \$45 per hour for her undisputed 2 hours of time on August 15.
19. Given my findings above, I find that A-Central must pay Ms. McGuire for 3 hours at \$45 per hour, plus GST, for her October 29, 2019 invoice #1394, which totals \$141.75.
20. Can A-Central deduct anything for Ms. McGuire's previous work it says was deficient? First, I note that A-Central did not file a counterclaim against Ms. McGuire for her allegedly deficient work. In the absence of a counterclaim, only if the claimed set-off arose from the same course of dealings between the parties and engaged the same issues requiring resolution in the dispute, would it be reasonable to consider a set-off: see *Dhothar v. Atwal*, 2009 BCSC 1203.

21. A-Central says that over the time Ms. McGuire worked for them, she made numerous errors. Specifically, A-Central submits that Ms. McGuire made errors reconciling bank statements and entering year end journal entries, which DB had to fix, or which A-Central paid Ms. McGuire to re-do. I find these alleged deficiencies are not sufficiently connected to the services Ms. McGuire claims in invoice #1394 to warrant considering a set-off in the absence of a counterclaim.
22. However, even if A-Central had brought a counterclaim, for the following reasons I find A-Central has not proven it would be entitled to a set-off. Generally, the party alleging deficient work has the burden of proof to establish the deficiencies: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91. While Ms. McGuire did not specifically dispute making the alleged errors, I find that whether the bookkeeping work was done properly is a subject outside ordinary knowledge that requires expert opinion: see *Burbank v. R.T.B.*, 2007 BCCA 215. I find expert evidence would be needed in this dispute as it is not readily apparent if Ms. McGuire's work contained the alleged errors.
23. Further, the invoices relating to this alleged deficient work and any time spent to fix the alleged errors are not in evidence. There is also no evidence before me about when these alleged errors happened or that A-Central complained about Ms. McGuire's work before the issue with her October 29, 2019 invoice for training arose. Overall, I find there is insufficient evidence to prove Ms. McGuire's work was deficient or the time spent on these alleged errors. So, I find A-Central is not entitled to any set-off against invoice #1394 and must pay Ms. McGuire the \$141.75 I found is owing.
24. Ms. McGuire claims contractual interest on invoice #1394, which states that overdue amounts are subject to 29.9% interest. Contractual interest must be agreed to by both parties, and not unilaterally applied in an invoice. The contract is silent about interest being charged on overdue accounts and there is no other evidence that the parties had an agreement on a contractual interest rate for outstanding amounts. Therefore, I dismiss Ms. McGuire's claim for contractual interest.

25. However, the *Court Order Interest Act* applies to the CRT. Ms. McGuire is entitled to pre-judgement interest on \$141.75 from October 29, 2019, the date of the invoice, to the date of this decision. This equals \$1.95.
26. 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 find that Ms. McGuire was only partially successful in this dispute and is entitled to reimbursement of half of her paid CRT fees, totaling \$62.50. Neither party claimed any dispute-related expenses.

ORDERS

27. Within 21 days of the date of this decision, I order A-Central to pay Ms. McGuire a total of \$206.20, broken down as follows:
 - a. \$141.75 as payment for invoice #1394,
 - b. \$1.95 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
28. Ms. McGuire is entitled to post-judgment interest, as applicable.
29. 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.

30. 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.

Kristin Gardner, Tribunal Member