



Civil Resolution Tribunal

Date Issued: August 24, 2020

File: SC-2020-001459

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Get Proclean Corp. v. Torres*, 2020 BCCRT 941

BETWEEN:

GET PROCLEAN CORP.

APPLICANT

AND:

ENRIQUE TORRES and ANDREA DUARTE

RESPONDENTS

AND:

GET PROCLEAN CORP.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant and respondent by counterclaim, Get Proclean Corp. (Proclean), runs a cleaning business. Proclean says that the respondents and applicants by counterclaim, Enrique Torres and Andrea Duarte, owe Proclean \$1,745 for cleaning services and \$650 to replace a vacuum. Mr. Torres and Ms. Duarte dispute Proclean's claims.
2. Mr. Torres and Ms. Duarte say they owe nothing because Proclean allegedly invoiced for cleaning that was either not done or was of poor quality.
3. Mr. Torres and Ms. Duarte also say that a friend of Proclean's sole director, Luis Gomez, assaulted and stole Mr. Torres's prescription eye glasses. In their counterclaim, Mr. Torres and Ms. Duarte seek \$1,210 for replacement glasses, \$1,500 for emotional distress, and \$25 for gas to drive to file police reports.
4. Proclean is represented by Mr. Gomez who denies both the assault and the theft. Neither Mr. Gomez personally, nor his unnamed friend, are parties to this dispute.
5. Mr. Torres and Ms. Duarte are represented by Ms. Duarte.

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. Some of the evidence in this dispute amounts to a "he said, they say" scenario. Credibility of

interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

8. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is in issue.
9. 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.
10. 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

11. The issues in this dispute are:
 - a. To what extent if any, is Proclean entitled to \$1,745 for cleaning services?
 - b. Must Mr. Torres and Ms. Duarte reimburse Proclean \$650 for a vacuum?
 - c. To what extent if any, are Mr. Torres and Ms. Duarte entitled to \$1,210 for replacement glasses, \$1,500 for emotional distress, and \$25 for gas expenses?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Proclean bears the burden of proving its claims on a balance of probabilities. Mr. Torres and Ms. Duarte carry the same burden on the counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. There is no written contract between Proclean and Mr. Torres or Ms. Duarte. Based on the parties' submissions and text messages, I find they agreed that Proclean would clean their Airbnb suites for an hourly rate of \$27 plus GST. I find it was an implied term of the parties' contract that Proclean would perform its work to a standard of a professional cleaner.

To what extent if any, is Proclean entitled to \$1,745 for cleaning services?

14. I find on the text messages and invoices in evidence that Proclean cleaned several of Mr. Torres and Ms. Duarte's AirBnB suites from late November 2019 to mid-January 2020 and charged them \$27 per hour plus GST for the cleaning services.
15. I find that Mr. Torres and Ms. Duarte paid Proclean's initial invoices of \$1,817.74 for cleaning in November and December. On January 20, 2020, Mr. Gomez texted Mr. Torres for payment of \$3,487.05 for Proclean's remaining services. I find that Mr. Torres and Ms. Duarte agreed to pay and on January 22, 2020 sent 2 e-transfers of \$1,741 each to Mr. Gomez. I am unclear on the evidence why they sent \$3.05 less than allegedly owed. In any event, there was a problem with the e-transfers. The bank account statement in evidence shows that just one \$1,741 e-transfer was deposited on January 23, 2020. Only \$1 of the other \$1,741 e-transfer went through and was deposited.
16. The texts show that Mr. Gomez followed up with Mr. Torres and Ms. Duarte about the incomplete e-transfer. However, they did not resolve the payment issue. I find that Mr. Gomez received a total of \$1,742 by the 2 e-transfers on January 23, 2020 as is shown on the bank statement in evidence. I find a balance of \$1,745.05

remained, which is \$.05 more than the claimed amount. I infer Proclean rounded down to arrive at its claimed \$1,745.

17. Ms. Duarte argues in this proceeding that Proclean is not entitled to the remaining balance despite having agreed and attempted to pay in January 2020. Ms. Duarte now asserts that Proclean abandoned the contract after January 6, 2020 and is claiming for work never done. However, I find on the texts between Mr. Gomez and Ms. Duarte that Proclean actively worked after January 6, 2020. The texts also make no mention of Proclean abandoning its cleaning jobs. I find it more likely than not that Proclean continued to clean in January 2020 and Ms. Duarte attempted to pay because she agreed the work was complete.
18. I acknowledge that Ms. Duarte says she hired another cleaner for the month of January 2020. However, I find the fact that Ms. Duarte hired another cleaner does not mean that Proclean stopped cleaning. Ms. Duarte and Mr. Torres had more than 1 Airbnb suite. The other cleaner's invoice in evidence is not itemized and does not state which suites were cleaned or the exact cleaning dates. There is insufficient evidence the other cleaner performed work that Proclean either charged for or failed to perform.
19. I turn now to discuss Ms. Duarte and Mr. Torres's argument that Proclean breached the contract by substandard services.
20. Ms. Duarte argues that there were issues with Proclean's cleaning services. She says its staff were late and its cleaning was poor. It is undisputed that Proclean was late on the first cleaning day. However, the evidence does not show that its lateness interfered with the Airbnb rental or that it was late on other cleaning days. I find Proclean did not breach the contract because it was once late.
21. To support her position of poor cleaning, Ms. Duarte provided an extract from a text conversation and a "payout" receipt showing that she refunded an Airbnb guest \$270.82. I accept on the texts that the refund was for a suite that Proclean cleaned. The guest's text in evidence says he moved out early because his "girlfriend is a

germaphobe and doesn't feel comfortable staying here". Ms. Duarte says this was due to Proclean's "mistake". However, Proclean's "mistake" is not discussed in the texts or explained. There is no inspection record in evidence that the suite was unclean. I find on its own, the guest's comment does not prove the suite's cleanliness was below a professional standard.

22. Ms. Duarte also provided a copy of 1 Airbnb review for a "Classy & Unique Loft in Gastown" with a rating of 2/5 for "cleanliness". The excerpt does not state the suite's exact location or identify the "host" and so, it is not clear that it was a suite cleaned by Proclean. Even if Proclean cleaned this suite, I am not satisfied on 1 review that its cleaning was generally substandard or that it related to the cleaning invoices in question. Ms. Duarte did not provide any other reviews despite Proclean having cleaned several suites. I note there is also no evidence that Ms. Duarte and Mr. Torres suffered any loss by 1 low rating. I am not satisfied on the evidence before me that Proclean breached the cleaning contract by substandard service.
23. On my review of the invoices and text before me, I am satisfied that Ms. Duarte and Mr. Torres owe Proclean the claimed \$1,745 for cleaning services.

Must Mr. Torres and Ms. Duarte reimburse Proclean \$650 for a vacuum?

24. Someone from Proclean undisputedly left a vacuum in one of the Airbnb suites after finishing their work. It is undisputed that Mr. Gomez had kept a set of keys for the suite pending payment. Mr. Gomez says he entered the suite himself without permission in order to retrieve his vacuum but found it was missing. Proclean alleges Mr. Torres and Ms. Duarte "appropriated" the vacuum and seeks \$650 reimbursement. In contrast, Mr. Torres and Ms. Duarte say that Mr. Gomez took his vacuum from the suite when he accessed it and deny keeping the vacuum.
25. It is not clear on the evidence whether Mr. Gomez or Proclean, which is a separate legal entity, owned the vacuum. Mr. Gomez provided no purchase receipt or company asset record for the vacuum. There is also no other information before me about the vacuum such as its age, type, and condition and no quote for its

replacement cost. Even if I accept Proclean owned the vacuum, I find that Mr. Gomez has not proven the vacuum's value or that Mr. Torres or Ms. Duarte kept it. I dismiss Proclean's vacuum claim.

To what extent if any, are Mr. Torres and Ms. Duarte entitled to \$1,210 for replacement glasses, \$1,500 for emotional distress, and \$25 for gas expenses

26. I turn now to Mr. Torres and Ms. Duarte's counterclaim for replacement glasses, emotional distress and gas expenses. As mentioned above, they say Mr. Gomez's friend stole Mr. Torres's prescription glasses and assaulted Mr. Torres. However, I find they have not provided any factual or legal basis on which the corporate respondent by counterclaim, Proclean, would be liable for the actions of Mr. Gomez's unnamed friend. There is no information about this friend, he is not a party to this dispute, and the one witness statement in evidence does not corroborate the alleged theft.

27. While there is some circumstantial evidence the friend may have assaulted Mr. Torres, I also find Mr. Torres and Ms. Duarte have not proven they suffered any loss. Mr. Torres and Ms. Duarte provided no medical evidence of emotional distress and submitted no receipts for gas expenses. For these reasons, I dismiss their counterclaims.

Interest, Fees and Expenses

28. The *Court Order Interest Act* applies to the CRT. I find Proclean requested payment on January 20, 2020 as shown in the texts. I find that 3 days is a reasonable length of time in the circumstances to pay. I find that Proclean is entitled to pre-judgment interest on the \$1,745 from January 23, 2020 to the date of this decision. This equals \$16.10.

29. 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. Proclean was partially successful on its claim and so I find it is entitled to reimbursement of ½ its CRT fees, for a total of \$62.50. As Mr. Torres and Ms. Duarte were unsuccessful on the counterclaim, I dismiss their claims for CRT fees. None of the parties claimed dispute-related expenses.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Torres and Ms. Duarte to pay Proclean a total of \$1,823.60, broken down as follows:
 - a. \$1,745.00 as payment for cleaning services,
 - b. \$16.10 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
31. Proclean is entitled to post-judgment interest, as applicable.
32. I order that Mr. Torres and Ms. Duarte's counterclaim is dismissed.
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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

Trisha Apland, Tribunal Member