



Civil Resolution Tribunal

Date Issued: September 18, 2020

File: SC-2020-002339

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Orlowski v. Black Knight Security Ltd.*, 2020 BCCRT 1055

B E T W E E N :

CINDY ORLOWSKI

APPLICANT

A N D :

BLACK KNIGHT SECURITY LTD.

DRESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute about payment for bookkeeping services.
2. The applicant, Cindy Orlowski, provided bookkeeping services for the respondent, Black Knight Security Ltd. (BKS). Ms. Orlowski says BKS failed to pay her March 10, 2019 invoice in full and seeks \$4,300, the remaining invoice balance.

3. BKS disputes that it owes Ms. Orlowski the invoice balance. It says Ms. Orlowski overcharged it and failed to perform the work to a satisfactory standard.
4. Ms. Orlowski is self-represented. BKS is represented by an officer or employee, "MO".

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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly 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.

ISSUE

9. The issue in this dispute is to what extent, if any, BKS must pay Ms. Orlowski the claimed \$4,300 for bookkeeping services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one Ms. Orlowski, as the applicant, must prove her claims on a balance of probabilities. I have read all the parties submissions, but refer only to the evidence and arguments I find relevant to provide context for my decision.
11. In January 2019, BKS hired Ms. Orlowski to perform bookkeeping services. The parties did not have a written contract setting out the terms of their agreement. I find they verbally agreed that Ms. Orlowski would prepare BKS's books and financial statements for its business's 2017-2018 tax year, plus some other bookkeeping tasks. I find that Ms. Orlowski agreed to prepare the tax related documents by the Canada Revenue Agency (CRA) corporate tax deadline.
12. I find it is not clear on the evidence what rate the parties initially agreed on for Ms. Orlowski's bookkeeping services. However, I find the parties ultimately agreed to \$24 per hour, which is the rate Ms. Orlowski invoiced BKS for her work.
13. Based on the parties' statements, emails and texts in evidence, I find that Ms. Orlowski prepared BKS's tax documents before the CRA deadline. I find that Ms. Orlowski had also agreed to transition BKS's books to a cloud-based program, but she abandoned this work to meet the tax deadline. BKS did not raise this as an issue in its emails to Ms. Orlowski. So, I find the cloud-based transition must not have been critical. Ms. Orlowski was instead able to prepare BKS's books using

desktop software. I find Ms. Orlowski's work allowed BKS to file its 2017-2018 corporate taxes on time.

14. On April 23, 2019, Ms. Orlowski sent BKS a \$6,000 invoice for 250 hours at \$24 per hour. The invoice is dated March 10, 2019. MO asked Ms. Orlowski to show her hours and work done to support the invoice. Ms. Orlowski informed MO that she already sent her work product to BKS's accountant, JG, who filed the taxes in March 2019. I find this is supported by the evidence. I find that Ms. Orlowski also sent MO copies of her work product after he requested it. It is not clear that Ms. Orlowski provided MO with a summary of her time log, (which is summarized in argument). However, MO stated in the parties' April 23, 2019 email exchange that he thought "\$5,000 was more than fair" for her work. Since MO was working directly with Ms. Orlowski, I find he likely made this statement because he knew the volume of work required of her was at least over 200 hours.
15. Prior to paying the invoice, MO asked Ms. Orlowski to return its records for an upcoming audit. It is undisputed that Ms. Orlowski still had BKS's box of records in her possession because she continued to work through April. MO agreed to pay Ms. Orlowski "by cheques" once she returned its records. On April 24, 2019, Ms. Orlowski returned BKS's records and BKS paid Ms. Orlowski \$1,700 by e-transfer. It is unclear on the evidence why BKS paid only \$1,700 or how it came up with this amount. For some unexplained reason, Ms. Orlowski also did not charge BKS the work she performed after March 10, 2019. This dispute is over the \$4,300 balance remaining on the March 10, 2019 invoice.
16. Ms. Orlowski says that BKS owes the remaining balance because she worked the billed hours, performed the work as required, and BKS agreed to pay.
17. BKS says that Ms. Orlowski overcharged it and held its documents "hostage" in order to get paid. To support its position, BKS provided a July 8, 2020 statement from JG who prepared its books and financial statements for the 2016 and 2017 fiscal years. JG stated that the work would have taken him about 68 hours. However, JG's past invoices in evidence show that he charged BKS a monthly and

not an hourly fee for bookkeeping services. It is also not clear that JG performed the same number of tasks as Ms. Orłowski in the prior years. The underlying documents are not in evidence and there is nothing to show the comparative work volume over the years. Also, as mentioned, MO had knowledge of Ms. Orłowski's work and had agreed that she worked over 200 hours. So, I put no weight on JG's 68 hour quote.

18. I find that Ms. Orłowski did not keep BKS's records hostage. I find that she had kept the records to perform its work. I find she returned them the day after she was sked and on time for its audit. Also, after Ms. Orłowski returned the records, MO repeatedly agreed by text until August 2019 that BKS would send further payment. MO texted that BKS needed more time to pay her because of another debt. However, BKS did not then send further payment.
19. I find that BKS's reasons for not paying the March 10, 2019 invoice balance are inconsistent. I put heavy weight on MO's 2019 emails and texts where he agreed to pay. I find MO likely agreed to pay because Ms. Orłowski performed the invoiced work as required. BKS provides no explanation otherwise.
20. I turn now to BKS's argument that Ms. Orłowski breached the contract by substandard work. Where a party alleges breach of contract for substandard work, the burden of proof is on the party making the allegation (*Lund v. Appleford Building Company Ltd. Et al*, 2017 BCPC 91 at paragraph 124). Here the burden of proof that Ms. Orłowski's work was substandard is on BKS.
21. BKS asserts that it had to pay extra for JG to file its taxes because Ms. Orłowski decided she would not file them herself. Ms. Orłowski says she never agreed to file BKS's taxes because she is a bookkeeper and not an accountant. There is no documentary evidence that Ms. Orłowski agreed to file BKS's taxes. I find that Ms. Orłowski was not required to file BKS's taxes.
22. BKS also asserts that it had to pay JG to "rectify" Ms. Orłowski's work. However, JG did not mention that he corrected problems with Ms. Orłowski's work in his

statement in evidence. JG's invoices in evidence also do not state a charge to rectify Ms. Orlowski's work. BKS provided no evidence apart from MO's assertions that there were problems with Ms. Orlowski's work. Based on the parties' correspondence in evidence, I find that BKS only raised a concern about Ms. Orlowski's work months after it agreed to pay. This was only after she threatened legal action for non-payment in February 2020. I find that BKS has not proven on a balance of probabilities that Ms. Orlowski breached the parties' contract with substandard work.

23. I find that BKS owes Ms. Orlowski the claimed invoice balance of \$4,300 for her bookkeeping services.
24. The *Court Order Interest Act* applies to the CRT. Ms. Orlowski is entitled to pre-judgement interest on the \$4,300 debt from April 23, 2019, the date of she sent the invoice, to the date of this decision. This equals \$104.17.
25. Ms. Orlowski asks that the CRT admonish the BKS for what she describes as insulting and slanderous comments in argument. The CRT does not have jurisdiction to make a declaratory order admonishing a party's conduct. I also found nothing extraordinary about BKS's submissions. Although I did find they contained personal criticism of Ms. Orlowski, they were made in the context of responding to a disputed claim. I decline to grant this requested remedy.
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 see no reason in this case not to follow that general rule. I find Ms. Orlowski is entitled to reimbursement of \$175 in CRT fees. Ms. Orlowski claimed no dispute-related expenses. Since BKS was unsuccessful in this dispute, I dismiss its claim for \$525 in dispute-related expenses for a report.

ORDERS

27. Within 30 days of the date of this order, I order BKS to pay Ms. Orlowski a total of \$4,579.17, broken down as follows:
 - a. \$4,300 in debt for bookkeeping services,
 - b. \$104.17 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
28. Ms. Orlowski is entitled to post-judgment interest, as applicable.
29. I dismiss BKS's claim for dispute-related expenses.
30. 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.
31. 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