



Civil Resolution Tribunal

Date Issued: September 25, 2020

File: SC-2020-003353

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Metropolitan Credit Adjusters Ltd. v. Jack*, 2020 BCCRT 1084

BETWEEN:

METROPOLITAN CREDIT ADJUSTERS LTD.

APPLICANT

AND:

BEA JACK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about unpaid commission. The applicant, Metropolitan Credit Adjusters Ltd. (Metropolitan), is a debt collection agency. Metropolitan says it assisted the respondent, Bea Jack, with collecting money owed to her by a third party company, WS. Metropolitan says Ms. Jack owes it \$2,625 for its services.

2. Ms. Jack says Metropolitan is not entitled to collect the full commission because she collected the debt from WS without Metropolitan's assistance.
3. Metropolitan is represented by TB, its manager. Ms. Jack is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.
7. 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

8. The issue in this dispute is whether Ms. Jack must pay Metropolitan \$2,625 plus contractual interest.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Metropolitan, as the applicant, must prove its claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision. In this decision, witnesses and others are identified by their initials, which are known to the parties.
10. Metropolitan says Ms. Jack hired it to assist her with collecting \$23,100 from one of her clients, WS.
11. Metropolitan and Ms. Jack signed a contract dated September 18, 2019. The contract was a 1 page pre-printed form created by Metropolitan and filled in and signed by the parties. It included the following terms:
 - a. The client was identified as West Coast Snow Removal (West Coast).
 - b. Ms. Jack had signing authority for West Coast.
 - c. The contract applied to collections accounts listed now and at later dates.
 - d. The “creditor” agreed to pay Metropolitan 25% commission on any monies paid on balances assigned to Metropolitan for collections,
 - e. The collections account would be left in Metropolitan’s “hands” as long as it was in the process of collection,
 - f. The creditor would report to Metropolitan all payments received directly or indirectly from the debtor. Metropolitan would receive “full credit” for the collection and the commission rate in the agreement will apply,
 - g. The creditor agreed to pay Metropolitan for its services within 30 days of receiving an invoice.
 - h. Overdue accounts were subject to interest at 2.5% per month. The contract did not specify an annual interest rate.

Is Ms. Jack personally liable?

12. I find West Coast was the creditor under the contract terms. However, Metropolitan did not name West Coast as a respondent in this dispute. Metropolitan stated that West Coast was not registered as a corporation in British Columbia and so Ms. Jack was personally responsible. Metropolitan provided a copy of a screenshot from the BC Registry Services website for conducting a search by business name. However, I find this is inconclusive since the screenshot did not show the results of the search.
13. Aside from the Dispute Response, Ms. Jack did not provide any further submissions. Parties are under no obligation to provide evidence and submissions during the CRT decision process but failing to do so can lead the CRT to make an adverse inference. I find that it is appropriate to make an adverse inference against Ms. Jack. Since Ms. Jack did not deny she was a sole proprietor or produce any evidence that West Coast was incorporated, I find Ms. Jack is a sole proprietor and was carrying on business as West Coast Snow Removal. As a sole proprietor, I find Ms. Jack is personally liable for West Coast's debts and liabilities.

Is Metropolitan entitled to a commission?

14. I find there was a binding contract between the parties. Although the contract did not mention WS or state that the account balance for WS was assigned to Metropolitan, I find that Ms. Jack intended for Metropolitan to pursue collection against WS since on September 25, 2019 she sent Metropolitan information about WS's debt and her attempts to collect payment.
15. Metropolitan provided its notes and correspondence to show that from October 2, 2019 to January 13, 2020 it contacted WS by phone, email, and regular mail to collect the debt. Metropolitan says on January 13, 2020, WS emailed that it had settled the debt with Ms. Jack directly for \$10,000. Metropolitan says WS paid Ms. Jack \$10,000 on January 22, 2020. Metropolitan invoiced Ms. Jack \$2,625 (\$2,500 plus \$125 GST) on January 31, 2020.

16. In her Dispute Response, Ms. Jack stated Metropolitan did not collect money from WS on her behalf. She says she negotiated with WS without Metropolitan's assistance and in January 2020, WS agreed to pay her \$10,000 in satisfaction of its debt. Ms. Jack says Metropolitan was not involved in negotiating this settlement. She says Metropolitan's representative, CP, verbally told her and her partner, B, several times that "no collection, no charge". Ms. Jack did not provide the dates these alleged conversations took place or a statement from B and so I find Ms. Jack's statement of what was said is not reliable and I give it no weight.
17. Metropolitan denies CP told Ms. Jack or B "no collection, no charge". It submitted a transcript of CP's initial phone conversation with Ms. Jack and B on September 18, 2019. According to the transcript, CP stated "The way that we work is we don't charge you anything until money is received into your hands or mine". I find CP's statement did not mean that Metropolitan would not charge a commission if Ms. Jack collected the debt herself.
18. The phrase "no collection, no charge" also appeared in the written contract. As mentioned above, the contract was a 1 page form. It contained the heading "Terms and Conditions No Collection – No Charge". The contract did not state that headings were for reference only. Headings as well as the text of a contract must be considered when interpreting contracts (see *Yin v. Abexco Inc.*, 2018 BCSC 1821 at paragraph 28). Under this heading, paragraph 3 stated that the creditor would report all payments received from a debtor and that "full credit" for the collection would be given to Metropolitan. It also stated that the 25% commission would apply. When the heading is read with paragraph 3, I find the contract stated that the creditor must pay a 25% commission to Metropolitan once payment was received, regardless of who collected the payment.

Quality of service

19. Ms. Jack says it is not reasonable for Metropolitan to charge 25% of the settlement amount since she did not collect interest from WS on the debt and collected less than half of the original debt amount. Metropolitan says the contract stipulated that

the commission was due regardless of whether Ms. Jack collected the funds directly.

20. I do not accept Ms. Jack's argument. The contract did not state that the commission rate was affected by whether the creditor collected the debt or if the amount collected was less than the original debt. The contract also did not state that the commission was based on the amount of time or effort Metropolitan spent on trying to collect the debt. I find Ms. Jack chose to settle with WS for less than the original debt. There is also no evidence that Metropolitan agreed to decrease the commission rate if Ms. Jack settled for less than the original debt.
21. Ms. Jack also stated Metropolitan's services were "poorly provided". However, she says she is prepared to pay some amount for the minimal work Metropolitan did, although she did not state how much. Metropolitan says that it put time and effort towards pursuing WS's debt and so is entitled to charge Ms. Jack the commission under the contract terms. As mentioned above, it provided copies of its business records that showed the attempts it made to contact WS.
22. I find it is an implied term of the contract that Metropolitan's services must be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). Since Ms. Jack alleged Metropolitan's work was of poor quality, I find she bears the burden of proving so. Ms. Jack did not state how the services were poor or provide any examples. For this reason, I find she did not meet her burden and so I give her allegation no weight.
23. I find Ms. Jack must pay Metropolitan \$2,500 for the commission plus \$125 for GST for a total of \$2,625.

INTEREST AND CRT FEES

24. Although the contract contained an interest rate for undue accounts, Metropolitan claimed non-contractual interest in the Dispute Notice. The *Court Order Interest Act* applies to the CRT. Metropolitan is entitled to pre-judgement interest on the \$2,625.

According to the contract, payment was due 30 days after the invoice date. Since Ms. Jack was invoiced on January 31, 2020, then pre-judgement interest is payable from March 1, 2020 to the date of this decision. This equals \$19.84.

25. 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 Metropolitan is entitled to reimbursement of \$125 in CRT fees. Metropolitan did not seek dispute-related expenses.

ORDERS

26. Within 14 days of the date of this order, I order Bea Jack to pay Metropolitan Credit Adjusters Ltd. a total of \$2,769.84 broken down as follows:

- a. \$2,625 in debt,
- b. \$19.84 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

27. Metropolitan Credit Adjusters Ltd. is entitled to post-judgment interest, as applicable.

28. 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.

29. 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.

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.

Rama Sood, Tribunal Member