



Civil Resolution Tribunal

Date Issued: November 6, 2020

File: SC-2020-004288

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pacific Rim Sundecks 2003 Ltd. v. C.Y. Home Services Inc.*,
2020 BCCRT 1253

BETWEEN:

PACIFIC RIM SUNDECKS 2003 LTD.

APPLICANT

AND:

C.Y. HOME SERVICES INC. and KEVIN JOHNSTON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for custom aluminum railings.

2. The applicant, Pacific Rim Sundecks 2003 Ltd. (Pacific Rim), says it installed custom aluminum railings at the respondent Kevin Johnston's home, at the request of the respondent, C.Y. Home Services Ltd. (CY). Pacific Rim says \$4,000 of its invoice remains unpaid. CY says payment is the homeowner Mr. Johnston's responsibility, and denies owing Pacific Rim any money.
3. Pacific Rim is represented by its owner, Garth Forrest. CY is represented an employee or principal, Colin Yarrow. Mr. Johnston did not file a Dispute Response as required. I discuss his default status below.

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). Section 2 of the CRTA states that 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. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary 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 that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
6. Section 42 of the CRTA says that 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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is who is responsible for paying the balance of Pacific Rim's invoice.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Pacific Rim 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.
10. At the outset, I note that Mr. Johnston is in default for failing to file a Dispute Response as required. I am satisfied on a balance of probabilities that Mr. Johnston was served according to the CRT's rules. However, given my conclusions below, I find nothing turns on Mr. Johnston's technical default status.
11. It is undisputed that on August 7, 2019, Pacific Rim provided a proposal for custom railings at Mr. Johnston's home in North Vancouver. The proposal totaled \$16,744.35 including tax, and although it contained Mr. Johnston's home address as the service location, the proposal was submitted to CY who was listed as the customer.

12. CY says it was hired by Mr. Johnston to act as general contractor to manage Mr. Johnston's home renovation project. CY says Mr. Johnston paid CY a management fee based on a percentage of its invoices.
13. Pacific Rim says after the initial proposal was sent, it subsequently forwarded drawings to CY, which CY approved on September 23, 2019. Pacific Rim then installed the railings at some point thereafter. There is no allegation that Pacific Rim's work was substandard or had any deficiencies. In fact, the evidence is that Mr. Johnston told CY he was very happy with the railings' installation and look.
14. CY says it had no signed contract with Pacific Rim, nor did CY make any financial commitment to it. However, it is not disputed that CY obtained and approved Pacific Rim's railing quote on Mr. Johnston's behalf. I find Pacific Rim's August 7, 2019 proposal to CY formed the basis of a contract between Pacific Rim and CY. Emails in evidence also indicate that Mr. Johnston paid CY a \$4,000 deposit for the railings, which was held by CY in anticipation of paying Pacific Rim. For unrelated reasons, CY says it applied those held funds to another sub-contractor's invoice at Mr. Johnston's request.
15. Pacific Rim invoiced CY \$16,744.35 for its work on November 14, 2019, the amount reflected in its initial proposal.
16. Pacific Rim says it had no dealings at all with Mr. Johnston until November 18, 2019, after the railings were installed and invoiced, when CY asked Pacific Rim to forward its invoice to Mr. Johnston. I accept Pacific Rim's undisputed evidence on this point. It is also undisputed that on January 9, 2020, Mr. Johnston paid Pacific Rim \$12,744.35 towards its invoice, leaving an outstanding balance of \$4,000, the amount sought in this claim.
17. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on its behalf. The evidence before me in this dispute shows that Mr. Johnston authorized CY to act on his behalf as general contractor to obtain a quote and facilitate installation of custom railings at

his home. I find CY made no attempt to notify Pacific Rim that it was contracting as an agent, either on behalf of the undisclosed homeowner Mr. Johnston or at all. Rather, at the time, CY chose to request, approve and receive services from Pacific Rim, and be responsible for payment of those services (as evidenced by the fact Mr. Johnston paid CY a deposit for the railings, not Pacific Rim) (see: *Punjab Foods Centre Ltd. v. Bailie*, 1999 CanLII 3197 (BCSC)).

18. When an agent (CY) acts with actual (or presumed) authority on behalf of an undisclosed principal (Mr. Johnston) without disclosing they (CY) are acting as an agent, the contractor (Pacific Rim) can sue the agent personally on the contract. When the contractor learns of the principal, it can choose whether to proceed against the agent or the principal (see: *Barnett v. Rademaker, et al*, 2004 BCSC 1060 at paragraph 28).
19. Here, Pacific Rim named both Mr. Johnston and CY as respondents. It is undisputed that CY did not advise Pacific Rim at the time Pacific Rim's proposal was made and accepted, that it was acting as agent. Therefore, Pacific Rim is entitled to collect from either the agent (CY) or the principal (Mr. Johnston), but not both. The doctrine of alternative liability applies where a party must choose whether to pursue an action against a principal or an agent (see: *Dan Gamache Trucking Inc. v. Encore Metals Inc.*, 2008 BCSC 243 at paragraphs 21-22). The doctrine of alternative liability does not prevent an applicant from commencing an action against both the agent and principal, but it does prohibit the applicant from obtaining a judgment against both (see: *Dan Gamache Trucking*).
20. I find CY is liable for the remainder of Pacific Rim's invoice, as agent for Mr. Johnston. I find CY held itself out as the contracting party to Pacific Rim. I also find the intention was that CY would pay Pacific Rim for its services, for reasons discussed above. Although Mr. Johnston is technically in default, I find that does not negate CY's liability to Pacific Rim, and Pacific Rim is entitled to collect its outstanding invoice from CY as requested in the Dispute Notice. I find CY must pay Pacific Rim the balance of the

outstanding invoice, \$4,000. Given this finding, and the law about alternative liability discussed above, Pacific Rim's claims against Mr. Johnston must be dismissed.

21. I note CY did not file a third party notice against Mr. Johnston. Therefore, I make no findings about whether Mr. Johnston is liable to CY for reimbursement of the \$4,000.
22. Pacific Rim is also entitled to contractual interest under the contract. The August 7, 2019 proposal, which was accepted by CY, stated that payment was due on invoicing and interest was payable on any outstanding amounts at the rate of 24% per year. Therefore, Pacific Rim is entitled to 24% annual interest on the \$4,000 outstanding balance from November 14, 2019 (the date of its final invoice) to the date of this decision. This equals \$941.59.
23. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Pacific Rim was successful, I find that it is entitled to reimbursement of the \$175 it paid in tribunal fees. No dispute-related expenses were claimed.

ORDERS

24. Within 30 days of the date of this decision, I order the respondent, C.Y. Home Services Ltd., to pay the applicant, Pacific Rim Sundecks 2003 Ltd. (Pacific Rim) a total of \$5,116.59, broken down as follows:
 - a. \$4,000 in debt,
 - b. \$941.59 in pre-judgment contractual interest at 24% per year, and
 - c. \$175 in tribunal fees.
25. Pacific Rim is also entitled to post-judgment interest, as applicable.
26. Pacific Rim's claims against the respondent, Kevin Johnston, are dismissed.

27. 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.
28. 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.

Andrea Ritchie, Vice Chair