



Civil Resolution Tribunal

Date Issued: November 13, 2020

File: SC-2020-005683

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *C.G.I. Credit Guard Inc. v. Westcor Thermal Inc.*, 2020 BCCRT 1279

B E T W E E N :

C.G.I. CREDIT GUARD INC.

APPLICANT

A N D :

WESTCOR THERMAL INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, C.G.I. Credit Guard Inc. (CGI), is a collection agency. CGI says that the respondent, Westcor Thermal Inc. (Westcor), hired CGI to collect a \$6,615 debt. CGI claims \$1,736.44, which it says is the commission Westcor owes under the terms and conditions on CGI's website.

2. Westcor says that it did not agree to the terms on CGI's website and is not bound by them. Westcor also says that it does not owe a commission because its lawyer, not CGI, negotiated a settlement with the debtor. Westcor says that it should only be required to pay a reasonable sum based on the amount of work CGI did, which Westcor says is \$500.
3. The parties are each represented by an employee.

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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says 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 in the interests of justice.
6. Section 42 of the CRTA says 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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Is Westcor bound by the terms on CGI's website?
 - b. How much does Westcor owe CGI?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, CGI as the applicant must prove its case on a balance of probabilities. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision.
10. As mentioned above, CGI is a collection agency. CGI solicits new business, at least in part, through a form on its website. The form asks for detailed information about the prospective client, the debt to be collected, the debtor, and the steps the client has taken to collect the debt. The form also asks the client to upload copies of invoices, contracts, and other useful documents.
11. At the bottom of the form, above a "Submit" button, the website states: "By clicking on Submit, you agree to our terms and conditions. To view these terms and conditions, simply click [HERE](#) to view a PDF file that will open in a new window."
12. This links to a single page document that sets out the terms that apply to each CGI contract. Among other things, the client agrees to "cease all negotiation with the debtors". The terms set out when a commission is payable, including when the client requests that CGI close or withdraw an active collection file.
13. For debts against an operating business, the terms set the commission on a sliding scale of 25% of the first \$1,000 collected, 20% of the next \$2,000 collected, and 15% of the next \$7,000 collected. For debts where "a writ or other legal action has previously taken place", the terms set the commission at 50%.

14. On April 13, 2020, a Westcor employee, DO, filled out CGI's online form twice, both in relation to debts from the same debtor. The first time DO filled out the form was for a single \$4,725 invoice, dated February 10, 2020. The second time was for the same \$4,725 invoice, plus a second invoice of \$1,890, dated March 23, 2020, for a total debt of \$6,615. While the parties do not explain why DO filled the form out twice, I infer that the second form replaced the first form so that DO could add the second invoice. Westcor's debtor was an operating business.
15. In a statement, DO says that a CGI employee, BC, told them to create an account using the online form but did not say that by doing so DO was agreeing to any terms or making a contract. DO also says that BC rushed them. Finally, DO says that English is their second language and did not understand the importance of the online form.
16. Westcor does not dispute that the screenshots of CGI's website in evidence, which are dated September 28, 2020, are different than the website was when DO filled out the forms. I note that the fields in Westcor's completed form match those in the screenshot. I therefore find that the website did not substantively change between April 13 and September 28, 2020.
17. Westcor does not say that DO did not have authority to make a contract on Westcor's behalf. I therefore infer that DO had such authority.
18. Prior to contacting CGI, Westcor's lawyer had placed builders' liens on title to the debtor's real property for the same debts.
19. According to CGI's records, which Westcor does not dispute, BC spoke to the debtor on April 13, 2020. On April 15, after a series of emails between BC and the debtor, the debtor said that it would settle for \$4,114.69. On April 21, Westcor's general manager, MH, told BC that Westcor would not accept the offer. However, MH told BC that he would waive the second invoice if the debtor paid the first.

20. Between April 21 and May 6, 2020, BC tried several times to contact the debtor, without success. On May 6, the debtor told BC that it had settled the debt through Westcor's lawyer.
21. Later on May 6, 2020, BC emailed MH about the settlement. MH confirmed that Westcor had settled the matter. MH said that he appreciated BC's efforts and that BC could close his file.
22. Westcor settled with the debtor for \$4,500.
23. On May 7, 2020, CGI sent Westcor an invoice for \$1,736.44, which represented a 25% flat commission on the debt of \$6,615, plus GST. Westcor refused to pay.
24. CGI says that it came up with the 25% commission because it considered the builders' liens filed by Westcor's lawyer to be a "legal action" that entitled it to a 50% commission. CGI says it voluntarily reduced the commission to 25% but does not explain why.

Is Westcor bound by the terms and conditions on CGI's website?

25. CGI says that by clicking the "Submit" button at the bottom of its online intake form, Westcor agreed to the terms on its website. Westcor disagrees.
26. The general legal principle is that parties will not be bound by contractual terms that they did not explicitly agree to. In other words, just because a party has terms and conditions on their website does not necessarily mean that they are part of the parties' contract. However, this is not an absolute rule.
27. Terms and conditions on a website can form a contract if the website's owner takes reasonable steps to bring them to a visitor's attention before the parties enter into a contract. This is true even if the visitor chooses not to review the terms and conditions. See *Century 21 Canada Limited Partnership v. Rogers Communications Inc.*, 2011 BCSC 1196, and *Kobelt Manufacturing Co. Ltd. v. Pacific Rim Engineered Products (1987) Ltd.*, 2011 BCSC 224.

28. I find that CGI took reasonable steps to alert Westcor about the terms and conditions before the parties entered into a contract. CGI's website clearly says that a user accepts the terms and conditions by clicking the "Submit" button. I find that the notification is prominently displayed. I find that by completing the form, Westcor accepted the terms even though DO did not read them.
29. As mentioned above, DO says that BC rushed them to complete the forms, although they do not say how. There is no evidence that there was any urgency for Westcor to start collections proceedings. In fact, in one of his emails, MH says that Westcor is not in a hurry to collect. The terms fit on a single page document that would take little time to review. I conclude that DO had a reasonable opportunity to review the terms on the website before submitting the form.
30. Finally, I do not accept that DO lacked the English skills to understand that the online form included terms and conditions. The website is in plain language and DO successfully filled out the form twice.
31. I therefore find that the terms on CGI's website are part of the parties' contract.

How much does Westcor owe CGI?

32. Westcor argues that it should not have to pay a commission because even though the debtor agreed to settle, it has not paid the settlement. I find that CGI's entitlement to be paid arises from Westcor's decision to tell CGI to stop working and close its file. I find that whether the debtor has paid the settlement is irrelevant.
33. I find that the terms are clear that if Westcor requests that CGI close an active collections file, CGI may charge a commission based on the face value of the debt, in this case \$6,615.
34. I find that this interpretation is supported by the term that requires Westcor to stop all other collections efforts. Despite this term, Westcor chose to have its lawyer negotiate with the debtor at the same time as CGI. I find that Westcor cannot avoid the commission just because the settlement went through its lawyer instead of CGI.

35. In its reply submissions, CGI included a calculation of the commission based on the sliding scale for business debts, but it is unclear whether this is an admission that it is not entitled to the 50% commission for debts where there is a “writ or other legal action”. In any event, I find that the appropriate commission is the sliding scale for business debts. I find that the 50% commission covers situations where CGI has started a legal proceeding or taken other legal action on behalf of the client. Here, Westcor’s lawyer put a builder’s lien on the debtor’s property before Westcor hired CGI. I find that this is not a “legal action” within the meaning of the contract’s terms.
36. I find that Westcor owes a commission of \$1,251.86, based on the sliding scale for business debts applied to \$6,615, plus GST. I order Westcor to pay this amount.
37. The *Court Order Interest Act* applies to the CRT. CGI is entitled to pre-judgement interest on the commission from May 7, 2020, the date of the invoice, to the date of this decision. This equals \$6.16.
38. 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. Even though CGI received less than it initially claimed, I find that it was the substantially successful party. I find CGI is entitled to reimbursement of \$125 in CRT fees. CGI also claimed \$117.27 in dispute-related expenses, which represents the cost to retrieve the builders’ liens from the Land Title Office. I find that it was reasonable for CGI to obtain a copy of the debtor’s title, since it shows when the builders’ liens were registered and when they were cancelled. I find that it was unnecessary to obtain copies of the builders’ liens and cancellations themselves, as the details contained in these documents was not relevant. I find that CGI is entitled to reimbursement of the search fee of \$11.61 and dismiss the remaining claims for dispute-related expenses.

ORDERS

39. Within 28 days of the date of this order, I order Westcor to pay CGI a total of \$1,394.63, broken down as follows:

- a. \$1,251.86 in commissions,
- b. \$6.16 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$136.61 for \$125 in CRT fees and \$11.61 for dispute-related expenses.

40. I dismiss CGI's remaining claims.

41. CGI is entitled to post-judgment interest, as applicable.

42. 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.

43. 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.

Eric Regehr, Tribunal Member

