



Civil Resolution Tribunal

Date Issued: December 1, 2020

File: SC-2020-004113

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zaeri v. Daniels*, 2020 BCCRT 1362

BETWEEN:

IMAN ZAERI

APPLICANT

AND:

RICHARD DANIELS and XANTHOUS SERVICES CORP.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Iman Zaeri, seeks a \$1,000 refund for a fee he gave to the respondent, Richard Daniels, towards a cleaning subcontract with the respondent, Xanthous Services Corp. (Xanthous). Mr. Zaeri says the \$1,000 fee is refundable.

2. The respondents say the \$1,000 was for a non-refundable fee to be put on a subcontract waitlist. They deny that either Xanthous, or Mr. Daniels who is Xanthous's operations manager, must refund the fee.
3. Mr. Zaeri is self-represented. The respondents are represented by an Xanthous employee, PG.

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. Xanthous's representative PG stated in response submissions that, if possible, they would like to speak with the CRT member by phone about the dispute. I directed the CRT staff to clarify PG's request. PG clarified that they wanted to go over "the case" by phone because they are uncomfortable with the online format.
6. I note that the CRT is an online tribunal and no party had requested an oral hearing earlier in this process despite being provided with information about the CRT's processes.
7. After having carefully reviewed the parties' submissions, I find the parties had a fair opportunity to provide evidence and argument in writing. I find an oral hearing, such as by telephone, is not warranted this late in the CRT process. I also find that I am properly able to assess and weigh the documentary evidence and written arguments before me without an oral hearing. 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.

8. To the extent that PG is seeking legal advice, my role as a CRT member is as a neutral decision maker and I cannot provide legal advice. Accordingly, I have not discussed this dispute or provided advice to either party. I have made my decision based entirely on the parties' documentary evidence and written submissions.
9. 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.
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.

Claims against Mr. Daniels

11. I find Mr. Daniels was acting as Xanthous's employee and agent with respect to the claimed \$1,000 fee. Xanthous is a legal corporate entity that is separate and distinct from its employees. There is no suggestion that Mr. Daniels was a party in his personal capacity to a contract between Mr. Zaeri and Xanthous. I find that Mr. Zaeri has not alleged any basis for his claim against Mr. Daniels personally. I dismiss Mr. Zaeri's claims against Mr. Daniels in his personal capacity.

ISSUE

12. The remaining issue in this dispute is whether Xanthous must reimburse Mr. Zaeri's \$1,000 waitlist fee.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, as the applicant, Mr. Zaeri must prove his claims on a balance of probabilities. I have reviewed the evidence and arguments but refer to them only as I find necessary to explain my decision.
14. On January 17, 2020, Mr. Zaeri and his wife, SD, paid \$1,000 to Xanthous to be placed on a waitlist for a subcontract for cleaning services. Xanthous does business as Pinnacle Building Services, which is a commercial cleaning company. Mr. Zaeri and his wife are subcontracted cleaners.
15. The “Sub Contract Waiting List” agreement in evidence was signed by SD and Mr. Daniels, Operations Manager on January 17, 2020. As noted, I find Mr. Daniels was acting as agent for Xanthous. The agreement states that SD has:

given Pinnacle Building Services \$1000.00 to be put on the Sub Contractor waiting list. I understand that the \$1000.00 fee is non refundable and will be put towards my Contract fee when I receive an account

(Quote reproduced as written)

16. SD then signed a separate cleaning subcontract with Xanthous on February 24, 2020. I find the \$1,000 fee was likely applied to the subcontract account as this is not in dispute.
17. On February 24, 2020, Mr. Zaeri gave Mr. Daniels a cheque for \$1,000 payable to “Pinnacle Building Services” to be put on a waitlist for a second cleaning subcontract. However, Mr. Zaeri says that soon after giving Mr. Daniels the \$1,000 cheque he called and asked him not to cash it. Mr. Zaeri says he told Mr. Daniels he decided that 1 subcontract was enough, and he did not want to be put on the waitlist for an additional subcontract. As there is no statement from Mr. Daniels or evidence to the contrary, I accept Mr. Zaeri’s assertion that he promptly asked Mr. Daniels not to cash the cheque for these reasons.

18. Xanthous did not refrain from cashing the cheque. A processed copy of the \$1,000 February 24, 2020 cheque in evidence shows that Xanthous cashed the cheque on March 3, 2020.
19. Xanthous argues that it is entitled to keep the \$1,000 because Mr. Zaeri knew the money was not refundable. Mr. Zaeri disagrees. He says Xanthous should never have cashed the \$1,000 cheque because he promptly asked Xanthous not to cash it and never signed a second agreement.
20. There is no dispute that neither Mr. Zaeri nor SD signed a Sub Contract Waiting List agreement specific to the February 24, 2020 cheque for \$1,000. I find the fact that SD signed the January agreement does not mean that the parties had agreed that any future waitlist fees would be non-refundable. This is because the signed January 17, 2020 agreement only refers to the one \$1,000 fee, which was put towards the awarded subcontract.
21. Further, I find the purpose of the \$1,000 fee was for Xanthous to put Mr. Zaeri or SD on a subcontract waiting list. As there is no evidence that Xanthous put Mr. Zaeri or SD on an additional subcontract waitlist, I find that it did not. In the circumstances, I find Mr. Zaeri is entitled to reimbursement of the \$1,000 waitlist fee.
22. Mr. Zaeri also argues that the terms of the signed February 24, 2020 subcontract would have allowed Xanthous to assign new subcontracts without an additional waitlist fee. Since the subcontract terms are not before me and I have found in favour of Mr. Zaeri, I find no need to further discuss this contractual interpretation issue.
23. For the above reasons, I find Xanthous must reimburse the \$1,000 waitlist fee to Mr. Zaeri.
24. The *Court Order Interest Act* applies to the CRT. Mr. Zaeri is entitled to pre-judgment interest on the \$1,000 fee debt from March 3, 2020 to the date of this decision. This equals \$8.31.

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. The CRT required Mr. Zaeri to serve the respondent, Xanthous. Mr. Zaeri provided a receipt for the \$23.21 fee to serve Xanthous by registered mail. As I find this expense was reasonably incurred, I will allow it. I find that Xanthous must reimburse Mr. Zaeri the \$23.21 expense. Mr. Zaeri paid no CRT fees.
26. Xanthous and Mr. Daniels paid no CRT fees and claimed no dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order the respondent, Xanthous, to pay Mr. Zaeri a total of \$1,031.52, broken down as follows:
 - a. \$1,000 in debt for the waitlist fee,
 - b. \$8.31 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$23.21 for dispute-related expenses.
28. Mr. Zaeri is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
29. I dismiss Mr. Zaeri's claims against Mr. Daniels.
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