



# Civil Resolution Tribunal

Date Issued: May 13, 2021

File: SC-2020-008348

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tabriz Construction Ltd. v. Stofer*, 2021 BCCRT 509

BETWEEN:

TABRIZ CONSTRUCTION LTD.

**APPLICANT**

AND:

SEAN STOFER and TREVOR INGLIS

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about responsibility for a contractor's invoice. The applicant, Tabriz Construction Ltd. (Tabriz), says the respondent, Sean Stofer, hired Tabriz to build a

fence and do other work on a new home construction. That home is owned by the other respondent, Trevor Inglis. Tabriz seeks \$5,000 for its unpaid invoice.

2. Mr. Stofer says Tabriz provided services to Westpeak Projects Inc. (Westpeak), which is not a party to this dispute. Mr. Stofer is the sole owner and director of Westpeak. Mr. Stofer asks that the claim against him personally be dismissed.
3. Mr. Inglis says he did not hire Tabriz, and he paid Westpeak in full according to their fixed-price home construction contract. Mr. Inglis says Mr. Stofer or Westpeak are responsible for paying Tabriz.
4. Tabriz is represented by an employee or principal. The respondents are each self-represented. For the reasons that follow, I dismiss Tabriz's claims.

## **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). 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes

proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

7. 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.
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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Who hired Tabriz?
  - b. If neither respondent hired Tabriz, must either respondent pay for Tabriz's work under the common law concept of unjust enrichment?

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil dispute, Tabriz must prove its claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

### ***Background***

11. The evidence includes a February 18, 2017 fixed price new home construction agreement between Westpeak and Mr. Inglis and another homeowner, a person I infer is Mr. Inglis's spouse (general contract). Under the general contract, Westpeak was responsible for coordinating, directing and supervising the various parts of the home's construction.

12. There were a number of design changes and associated cost overruns, the details of which are not relevant to this dispute. Mr. Stofer says Mr. Inglis ended the general contract and owed Westpeak \$1,000,000 in unpaid invoices. He says Westpeak informed Tabriz of the contract termination and said that it would be placing a builder's lien on the property, which Tabriz could also do. He says Westpeak intends to pay Tabriz once its claim against Mr. Inglis in BC Supreme Court (BCSC) is resolved. Copies of court registry documents in evidence confirm the existence of the BCSC claim and counterclaim.
13. Tabriz says it completed all work as instructed by Mr. Stofer in a high-quality manner. After completing the work, on October 10, 2019 Tabriz sent "West Peak Developments" an invoice. The work included soffits, J trim, and a custom fence and gate. The total cost was \$5,235. I find Tabriz abandons any claim to amounts over \$5,000, the CRT's small claims monetary limit.

### ***Who hired Tabriz?***

14. Tabriz does not allege a contractual relationship with Mr. Inglis. It alleges a contractual relationship with Mr. Stofer.
15. Tabriz says it did the work requested by Mr. Stofer in accordance with "the agreement." It is not clear to what agreement Tabriz refers, because there is no written contract in evidence showing Tabriz as a party. Tabriz also did not provide details of an oral agreement.
16. Mr. Stofer says Westpeak hired Tabriz. He says he has never done business as a person, and has always carried out his construction business through his company, Westpeak.
17. Tabriz denies that Westpeak has any connection or relationship to its claim. It says it has never dealt with that company, and all of its communications were with Mr. Stofer. It further says Mr. Stofer carries on business as West Peak Developments, which it says is a sole proprietorship. It says Mr. Stofer is therefore personally liable.

18. Tabriz's October 10, 2019 invoice is addressed to West Peak Developments, with Mr. Stofer's name underneath. However, I find this is not determinative of who the contracting parties were, given Tabriz decided what name to put on the invoice. There is no evidence that Mr. Stofer directed Tabriz to invoice this way. There is no independent evidence that Mr. Stofer carried on business as West Peak Developments, or under any other name, as a sole proprietor.
19. Tabriz submitted text messages to and from Mr. Stofer, but I find they only confirm that Mr. Stofer was the point of contact for Tabriz. This is not disputed. The text messages do not say anything about which legal entity Tabriz contracted with.
20. As noted, the general contract was between Westpeak and the homeowners. Westpeak was responsible for overseeing the construction. I find it unlikely that Mr. Stofer would personally contract with Tabriz, rather than doing so through the general contractor, Westpeak. I find Tabriz has not met its burden of proving a contract with Mr. Stofer in his personal capacity.
21. Although Mr. Stofer is Westpeak's sole owner and director, Westpeak is a separate legal entity. Owners and directors are not generally liable for a corporation's actions in the absence of fraud or improper conduct, which are not present here.
22. I conclude that Mr. Stofer did not personally hire Tabriz and is not responsible for the unpaid invoice. As Westpeak is not a party to this dispute, I make no findings about its liability. I next consider Tabriz's unjust enrichment argument.

### ***Unjust enrichment***

23. Unjust enrichment is a common law doctrine. The legal test for unjust enrichment is that Tabriz must show: a) that a respondent was enriched, b) that it suffered a corresponding deprivation or loss, and c) that there is no "juristic reason" or valid basis for the enrichment: *Kerr v. Baranow*, 2011 SCC 10.
24. Tabriz argues in submissions that Mr. Stofer was unjustly enriched by receiving the benefit of Tabriz's work and materials without paying Tabriz.

25. To establish claim in unjust enrichment against a company's principal or shareholder, it is necessary to "pierce the corporate veil", meaning to remove the individual protection normally granted by the corporate structure: *Tracy (Representative ad litem of) v. Instalcons Financial Solution Centres (B.C.) Ltd.*, 2009 BCCA 110, at para. 18. Successful claims typically involve principals that form the company for the purpose of doing a wrongful act, or direct it to do so. There is no evidence that Mr. Stofer did either of those things.
26. I find that any enrichment from Tabriz's work benefited Westpeak, which was entitled to the proceeds from the general contract. It is completely speculative what benefit Mr. Stofer, as opposed to Westpeak, may or may not have received from Tabriz's work. Courts have held that for unjust enrichment claims to be successful, the enrichment must be unquestionable: *Peel (Regional Municipality) v. Canada*, 1992 CanLII 21 (SCC). Therefore, I find Tabriz has not established that Mr. Stofer was unjustly enriched.
27. Tabriz also alleged in the Dispute Notice that Mr. Inglis was unjustly enriched by receiving the benefit of its work but not paying for it. Tabriz did not elaborate in submissions, but I address the argument here for completeness.
28. There is insufficient evidence before me to conclude that Mr. Inglis was enriched, given he undisputedly paid Westpeak at least \$1.8 million, and has filed a counterclaim in the BCSC for damages in negligence and breach of contract, among other things. Those issues are for the BCSC to determine. In any event, the law is well established that if there is a contractual chain from an owner to a general contractor to a subcontractor, that contractual chain is generally a "juristic reason" to deny recovery: *Abstract Construction Inc. v Margolis*, 2020 BCSC 59, para. 58. This is in part because the subcontractor has remedies against the general contractor, and lien remedies against the owner's property.
29. In conclusion, I find that Tabriz has not established that either Mr. Stofer or Mr. Inglis is responsible for its invoice or otherwise liable to Tabriz.

30. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. The respondents were successful but did not pay fees or claim expenses. I dismiss the Tabriz's claim for reimbursement of CRT fees.

## **ORDER**

31. I dismiss Tabriz's claims and this dispute.

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Micah Carmody, Tribunal Member