



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Adorable Enterprises Ltd. v. Twin Phoenix Building Maintenance Inc.*,
2021 BCCRT 517

B E T W E E N :

ADORABLE ENTERPRISES LTD.

APPLICANT

A N D :

TWIN PHOENIX BUILDING MAINTENANCE INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about unpaid janitorial work. The applicant, Adorable Enterprises Ltd. (Adorable), says it worked as a subcontractor for the respondent, Twin Phoenix Building Maintenance Inc. (Twin), to provide janitorial services. Adorable says Twin owes \$4,074 for unpaid janitorial work and GST. Adorable also claims \$42 for a

corporate search and \$150 for registered mail and courier fees. I discuss these below as claims for dispute-related expenses.

2. Twin says Adorable claims for an incorrect amount. It also says it already paid the majority of the claimed amount. Finally, Twin says that Adorable breached the parties' contract by submitting one of its invoices late and is therefore barred from claiming for it.
3. The parties are represented by their respective owners.
4. For the reasons that follow, I find Adorable has proven the majority of its claims and I order Twin to pay the amounts set out below.

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. 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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

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 as follows:
 - a. Did Twin already pay any of the amounts claimed?
 - b. Did Adorable breach the contract by submitting one of its invoices late, and if so, is it barred from claiming for any work done?
 - c. Must Twin pay Adorable any of the amounts claimed?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Adorable as the applicant must prove its claims on a balance of probabilities. I have reviewed all the parties' submissions and evidence, but only comment on them as necessary to explain my decision.
11. Twin acts as a contractor for various clients to provide cleaning services. On July 5, 2018, Twin and Adorable signed a written contract. Under its terms, Twin hired Adorable as a subcontractor for cleaning services. Twin agreed to pay Adorable a

fee, but the contract does not say how much. Adorable says the parties agreed on a rate of \$15 per hour at 6 hours per day and Twin did not dispute this.

12. Adorable performed its cleaning services at 3 different restaurants and Twin paid for the work. Their relationship soured when Adorable began providing its services directly for one of these restaurants. I find this occurred in late October or early November 2018. I find this shown by text messages sent on November 16, 2018, between Twin's owner and Adorable's owner. Twin's owner wrote that Twin "[won't] pay you anything anymore" because "we have confirmation that [Adorable] took the contract" at one of the restaurants.
13. Twin does not allege that Adorable breached the contract when it "took the contract", or that it otherwise need not pay Adorable because of this. A BC Provincial Court settlement conference record indicates Twin sued Adorable and its claims were dismissed because it was "without reasonable grounds". The parties' submissions suggest it was about this issue. Given these circumstances, I make no findings on whether Adorable breached the contract by working directly for one of the restaurants.
14. Adorable claims \$3,304.50 for a November 1, 2018 invoice that includes \$2,790 for work done in October 2018, \$100 for being on call during that month, and \$144.50 in GST. A November 12, 2018 invoice includes these amounts and adds \$990 for work done in November 2018 plus \$49.50 in GST. The November 12, 2018 invoice equals the claim amount of \$4,074.

Issue #1. Did Twin already pay any of the amounts claimed?

15. Twin says it already paid a portion of the amount claimed. While Adorable has the burden of proving its claims, I find that Twin has the burden to prove what payments it made. See *Miller v. Hall*, 2020 BCSC 461 at paragraph 50.
16. Twin provided no evidence to support its assertion that it paid any amounts owing. Further, in a March 12, 2019 text message, Twin's owner wrote to Adorable's owner, "You just took a contract from me that's why I did not pay you remember". I find this

is consistent with Adorable's submission that it has not been paid for any of the claimed amounts.

Issue #2. Did Adorable breach the contract by submitting one of its invoices late, and if so, is it barred from claiming for any work done?

17. Section 2 of the contract says that Adorable agreed to invoice Twin at the end of each month, and "in no circumstances later than 90 days from the month in which the [services] were performed". If Adorable submitted an invoice after the 90-day window, it "[would] not be paid" and Adorable agreed not to make any claims for those services.
18. Twin says Adorable provided its invoice for the October 2018 work on June 23, 2019. Twin submits that Adorable therefore provided its invoice outside the 90-day window required for payment. As proof, Twin provided a June 23, 2019 invoice that, aside from the date and invoice number, matches the November 1, 2018 invoice. There are therefore 2 invoices with differing dates that describe only the October 2018 work.
19. Adorable says it provided the November 1, 2018 invoice in time. It says the June 23, 2019 invoice was merely a duplicate, electronically generated at the time and sent by email. Adorable also provided a signed witness statement dated January 18, 2021 from LS. LS wrote that they had been working for Adorable since November 2018. LS says they saw Adorable's owner meet Twin's owner at Twin's office and provide him the November 1, 2018 invoice. However, LS did not say when this happened, so I do not find LS's evidence helpful.
20. Ultimately, I find nothing turns on this. As noted earlier, there is a third November 12, 2018 invoice for \$4,074 that includes all work done in both October and November 2018. Twin did not directly comment on the November 2018 invoice. LS says they dropped off an invoice at Twin's office on November 13, 2018. I infer this was the November 12, 2018 invoice as LS says at the time that they confirmed the number of hours worked in November 2018 in order to produce it.

21. On balance, I find that LS delivered the November 12, 2018 invoice as described in their witness statement. I find this satisfies Adorable's obligation to "submit the invoice" to Twin within the 90-day window, discussed above. While it was not delivered at the end of the month, the contract does not say this prevents payment of the invoice and there is no indication that doing so led to any loss or damage. Consistent with my finding, the text messages from Twin's owner, discussed above, indicate Twin withheld payment because of their business dispute rather than a failure by Adorable to provide an invoice. I find that Adorable's claims are still in time under the contract.

Issue #3. Must Twin pay Adorable any of the amounts claimed?

22. There is no allegation that Adorable's work was deficient or that its invoices were unreasonable. I have found that Adorable remains unpaid and its claims are still in time under the contract. Given this, I order Twin to pay Adorable \$4,074 as documented in the November 12, 2018 invoice.

23. The *Court Order Interest Act* applies to the CRT. Adorable is entitled to pre-judgment interest on the damages award of \$4,074 from November 12, 2018, the date of the invoice, to the date of this decision. This equals \$143.08.

24. 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.

25. Adorable is the successful party, so I find it is entitled to reimbursement of \$175 in CRT fees. Adorable also claims \$150 for registered mail and courier fees and \$42 for a corporate registry search. These amounts are unsupported by any evidence, such as receipts. I also find them to be, on their face, unreasonably high. I therefore dismiss Adorable's claims for reimbursement of these dispute-related expenses.

ORDERS

26. Within 14 days of the date of this order, I order Twin to pay Adorable a total of \$4,392.08, broken down as follows:
 - a. \$4,074 as damages for breach of contract,
 - b. \$143.08 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
27. Adorable is entitled to post-judgment interest, as applicable.
28. I dismiss Adorable's remaining claims.
29. 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.

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.

David Jiang, Tribunal Member