Civil Resolution Tribunal

Date Issued: June 8, 2021

File: SC-2020-007765

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Houle Electric Limited v. Miro Chembiotech Ltd.*, 2021 BCCRT 631

B E T W E E N :

HOULE ELECTRIC LIMITED

APPLICANT

A N D :

MIRO CHEMBIOTECH LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This dispute is about electrical services. The applicant, Houle Electric Limited (Houle) provided electric connection services for the respondent, Miro Chembiotech Ltd. (Miro). Houle claims $3,435.60 for unpaid work.

2. Miro says it does not owe Houle payment because Houle did not complete the work. Miro also says that a previous Civil Resolution Tribunal (CRT) decision has already determined the scope of the parties' contract.

3. Houle is represented by an employee. Miro is represented by its owner, Oleksandr Miroshnychenko.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Supreme Court of British Columbia (BCSC) action

8. Mr. Miroshnychenko filed a Notice of Claim at the BCSC on December 8, 2020 relating to the parties' electrical contract. Both parties were asked to provide submissions about whether I should refuse to resolve this dispute under section 11(1) of the CRTA because another legally binding process is more appropriate. Both parties provided submissions and a copy of the Notice of Claim which I have reviewed and considered in making this decision.

9. In the BCSC Notice of Claim, Mr. Miroshnychenko claims that several of Houle's employees breached the electrical services contract, committed fraudulent misrepresentations and breached the BC *Business Practices and Consumer Protection Act* (BPCPA). Houle and Miro are not named as parties in the Notice of Claim.

10. CRT rule 1.18 says that when the CRT is determining whether to resolve a dispute that is within the CRT's jurisdiction, the CRT may consider the CRT's mandate, whether there are related legally binding processes underway, the relative impacts on each party of the CRT refusing to resolve the claim or dispute, and any other factors the CRT considers appropriate.

11. 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. Houle argues that it is more economical to resolve this dispute in the CRT. Miro says that this dispute can be resolved at the CRT, separate from the BCSC action.

12. Although both disputes relate to the same electrical services contract, this dispute and the BCSC action involve different parties. While the contracting corporations are the parties in this dispute, Mr. Miroshnychenko and Houle's employees are the parties individually in the BCSC action.

13. I also find it appropriate to consider the parties' preferences as a factor in determining whether another legally binding process is more appropriate. Here, both parties want to resolve this dispute before the CRT.

14. On balance, I find it appropriate to resolve this dispute based on the parties' agreement to do so.

BPCPA

15. In its submissions, Miro requests a declaration that Houle violated the BPCPA and requests an order fining Houle under the BPCPA. Since Miro has not made a counterclaim, I find that this request is not properly before me and I do not consider it in this decision. Further, I note that even if Miro had made a counterclaim, I would find the CRT does not have the jurisdiction to order such relief.

Late Submissions

16. During the submissions relating to the BCSC action, Miro also provided new evidence which I find relevant. I find that Houle was not prejudiced by this new evidence because it had an opportunity to respond. I have considered Miro's new evidence and Houle's responsive evidence in my decision.

17. I note that Miro also provided late submissions, which Houle was given an opportunity to respond to. I find these submissions are not relevant so I have not admitted them.

ISSUE

18. The issue in this dispute is whether Miro owes Houle $3,435.60 for unpaid electrical services.

EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, the applicant Houle must prove its claim on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

20. Houle says its employee DM performed a walkthrough of Miro's premise in July 2019 to provide a quote to connect Miro's electrical equipment. It is undisputed that Houle gave Miro a July 10, 2019 written quote for $2,726 plus tax for electrical services. The quote said that Houle would install breakers, connect feeder cables to equipment and install a toggle type disconnect to all the equipment identified during the walkthrough. The quote also said that Houle would supply and install receptacles for a fume hood and pressure washer and Houle would obtain electrical permits. It is undisputed that Miro accepted the July 10, 2019 quote. I find that the quote became the parties' written contract.

21. Houle says it worked on the project during the weeks ending on October 5, 2019 and October 12, 2019. Houle sent Miro an invoice for $3,435.60 on December 23, 2019. It is undisputed that the invoice is unpaid.

Additional work

22. In addition to the $2,726 quote, Houle's invoice charged an additional $546 for extra time to hook up controls not part of the quote. The invoice charged 6 hours at the rate of $91 per hour for the extra services. Miro does not dispute these 6 hours of additional service was performed.

23. Houle's employee, AH provided a statement saying that they spent most of the second week troubleshooting issues with Miro and its overseas representative which was not included in the quote price. AH says that Miro "seemed to understand" that this work required additional payment. Based on AH's undisputed statement, I find that Miro agreed to an additional 6 hours of troubleshooting services that were not included in the contact price and I find that Miro must pay for this work. I find that

Houle's $546 fee for 6 hours of additional electrical work is reasonable. So, If find that Miro must pay the $546 additional fees.

Spray dryer and fluidized bed dryer

24. Miro says that Houle did not perform all of the contract work. Specifically, Miro says that Houle did not connect the spray dryer and fluidized bed dryer. Houle admits that it did not connect this equipment. However, Houle says that this was not included in the contract.

25. The July 10, 2019 quote said that Houle would connect all the equipment identified during the walkthrough. However, the parties disagree about whether the spray dryer and fluidized bed dryer were present during the walkthrough.

26. As detailed further below, in a previous CRT dispute, SC-2020-001682 Miro claimed against Houle for damages related to a spray dryer and fluidized bed dryer . Since that dispute was heard by the CRT and the decision was published on the CRT's website, I rely on the published decision. In that previous dispute, a tribunal member made a default decision against Houle. Miro argues that the CRT has already determined that Houle has beached the contract based on the default decision.

27. The legal principle of issue estoppel prevents someone from raising an issue that has already been decided in another process (*Erschbamer v. Wallster*, 2013 BCCA 76). The test for issue estoppel has 3 parts. Each part must be met.

    a. The same question has been decided.

    b. The decision deciding the question is final.

    c. The parties were the same in the decision and the subsequent proceeding.

28. There are good policy reasons for requiring parties to raise all their arguments during the same proceeding. Among them are the need for finality, public confidence in the administration of justice, and conservation of the parties' and the court's or tribunal's resources. However, courts have observed that reliance on default judgments in the

application of res judicata is a special circumstance. The policy considerations do not apply to the same extent in uncontested proceedings, and therefore a conservative approach is appropriate. In *Harland v. Williams*, 1993 CanLII 384 (BCSC), the court said that a "restrictive operation must be given to an estoppel arising from a default judgment." It also said that a judgment in default can only be used to stop what must "necessarily and with complete precision" have been determined in that proceeding.

29. Applying the test for issue estoppel, I find that the final 2 parts of the test are met. Section 53 of the CRTA makes it clear that the CRT's default decisions are final decisions. There is no dispute that the parties in this dispute are the same 2 parties identified in the default decision.

30. As for the first part of the test, following the guidance set out in *Harland*, I must identify as clearly as possible what issues or questions the default decision decided.

31. The CRT's default decisions are sparsely reasoned, in keeping with the CRT's mandate of providing dispute resolution that is accessible, speedy, economical, informal and flexible. The default decision shows that Miro described its $2,998.97 claim as damages for Houle's failure to connect a spray dryer and fluidized bed dryer to a power source. The decision does not weigh any evidence and simply concludes that the monetary amounts claimed are owed. This is in accordance with the CRT's rules, which state that the CRT will assume a respondent is liable in a default decision. I find that the default decision establishes that Miro and Houle had a contract for the connection of Miro's spray dryer and fluidized bed dryer. As discussed above, Houle now claims that the connection of the spray dryer and fluidized bed dryer are not included in the contract.

32. In *Lutz v. Pyke*, 1977 CanLII 1703 (NSSC), the defendant secured a default judgment against the plaintiff for the balance due under an agreement to buy shares. The plaintiff asked the court to undo the contract, and asked for damages for breach of warranty and misrepresentation. The court concluded that estoppel prevented the plaintiff from relying on any "purely defensive matter" that was open to them in the

former action. On that basis, the court held that the plaintiff could not later deny the contract which must be taken to be admitted by the default judgment.

33. Although *Lutz* is not binding on the CRT, I find the reasoning persuasive. Applying the reasoning in *Lutz*, I find that Houle is prevented from denying that it was contractually required to connect Miro's spray dryer and fluidized bed dryer. So, based on the default decision in the previous dispute, I find that the parties' contract included the connection of this equipment.

34. Houle argues that it could not connect the spray dryer and fluid bed dryer to Miro's existing 200 amp power supply. Miro disagrees. However, I find it unnecessary to determine whether this equipment could be connected since I have found above that the contract includes this work and it is undisputed that this work was not performed. I find that Houle is not entitled to payment for non-performed work.

35. Neither party provided an estimate of the connection costs for the spray dryer and fluidized bed dryer. Miro says that, in addition to the spray dryer and fluidized bed dryer, Houle was required to connect 3 other devices. Since Houle does not dispute this, I accept this as accurate. So, I find that Houle did not perform 40% of the contractually required work. Houle provided invoices and receipts showing that its parts and supplies cost a total $757.62 and an electrical permit cost $161 invoice. Based on these costs, which I accept as accurate because they are supported by receipts, I find that the balance of the $2,726 contract price was for labour, being $1,807.38. Since the 40% of the work was non-performed, I deduct 40% of Houle's labour charges. This totals $722.95.

36. Based on the above, I find that Miro owes Houle a debt of $2,712.65.

37. The *Court Order Interest Act* (COIA) applies to the CRT. Houle is entitled to pre-judgment interest on the $2,712.65 debt from December 23, 2019, the date of the invoice, to the date of this decision. This equals $39.12.

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. I see no reason in this case not to follow that general rule. Since Houle was generally successful, I find Houle is entitled to reimbursement of $175 in CRT fees. Houle did not claim reimbursement of dispute-related expenses.

ORDERS

39. Within 30 days of the date of this order, I order Miro to pay Houle a total of $2,926.77, broken down as follows:

    a. $2,712.65 in debt for unpaid work,

    b. $39.12 in pre-judgment COIA interest, and

    c. $175 in CRT fees.

40. Houle is entitled to post-judgment interest, as applicable.

41. 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.

42. 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.

Richard McAndrew, Tribunal Member