



# Civil Resolution Tribunal

Date Issued: June 17, 2021

File: SC-2021-001100

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Prorise Painting & Renovations Ltd. v. Koru Construction Ltd.*,  
2021 BCCRT 666

B E T W E E N :

PRORISE PAINTING & RENOVATIONS LTD.

**APPLICANT**

A N D :

KORU CONSTRUCTION LTD.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about payment for an amended invoice.
2. The applicant, Prorise Painting & Renovations Ltd. (Prorise) was hired by the respondent contractor, Koru Construction (Koru), to paint a condominium unit. Prorise

says it completed the work and invoiced Koru, but it mistakenly failed to charge Goods and Services Tax (GST) on its services and materials due to a computer error. Prorise says it issued Koru an amended invoice for the unpaid GST, which Koru has refused to pay. Prorise claims \$439.80 for the unpaid GST.

3. Koru says that GST was clearly marked on Prorise's original invoice, which it paid in full, so nothing further should be owing. Koru also argues that Prorise's amended invoice was submitted well after the 60-day time limit provided in their contract, so it does not have to pay it. Finally, Koru submits that Prorise may have charged twice for painting the ceiling, so Koru likely overpaid Prorise. Koru did not file a counterclaim.
4. Prorise is represented by its owner, Joseph Halfar, and Koru is represented by its owner, Chris O'Leary.

## **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. 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.

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. Did Koru already pay the GST, such that nothing is owing to Prorise?
  - b. Did Prorise breach the contract by submitting its invoice late, and if so, is it barred from claiming GST on the work done?
  - c. Is Koru entitled to any set-off for duplicate charges on Prorise's invoice?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Prorise must prove its claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. It is undisputed that Koru hired Prorise as a subcontractor to paint the interior of a condominium unit. Prorise provided Koru with a detailed contract setting out Prorise's anticipated scope of work, schedule, and cost, which Koru signed on January 17, 2020. Koru also provided Prorise with a subcontractor disclosure agreement, which set out terms and conditions for Koru's subcontractors, which Prorise signed on February 18, 2020.

12. Prorise argues that only its contract should govern because it was signed first, and no fresh consideration was exchanged when it signed Koru's disclosure agreement. However, I find that Koru's disclosure agreement was not a new agreement between the parties, such that it was intended to replace Prorise's contract. Rather, I find Koru's disclosure statement was akin to a contractual amendment, which simply added terms and conditions that the parties' agreed would govern their relationship, in addition to Prorise's contractual terms. Amendments to existing contracts do not require fresh consideration: see *Rosas v. Toca*, 2018 BCCA 191. So, I find that Prorise's contract and Koru's disclosure agreement, together, formed the parties' contract.
13. It is undisputed that Prorise completed the painting job, including additional work at Koru's direction that was not set out in Prorise's original contract. Prorise provided Koru with an April 20, 2020 invoice for both the work Prorise quoted for in its contract and the extra work performed. The invoice set out a rate for each described activity, and each activity indicated the rate was subject to GST. At the bottom of the invoice, there was a line showing \$418.86 for GST, and the invoice total was \$8,796. It is undisputed that Koru paid Prorise's April 20, 2020 invoice in full.
14. Prorise says that during its year-end process, it discovered its accounting system had "glitched", so its April 20, 2020 invoice was produced showing rates inclusive of GST, when GST should have been calculated on top of the stated rates. When Prorise discovered this mistake, it issued Koru an amended invoice. Prorise's December 30, 2020 invoice (amended invoice) shows a subtotal of \$8,796, plus GST of \$439.80, for a total of \$9,235.80. The outstanding amount for GST on Prorise's amended invoice is the claimed \$439.80, which Koru undisputedly has refused to pay.

***Has Koru already paid all GST owing?***

15. Koru argues that GST was clearly itemized on Prorise's April 20, 2020 invoice, so it has already paid tax on Prorise's materials and services.

16. I find there is nothing obvious on the face of Prorise's original invoice to indicate the GST was improperly calculated. It simply appears that for each of its services, Prorise stated its rate with GST included, and the total GST paid is itemized at the bottom of the invoice.
17. Nevertheless, I accept that Prorise intended to calculate GST on top of the rates stated on its invoice. I say this because Prorise's contract quoted \$4,516 for the initially agreed scope of work, plus applicable taxes. However, on its April 20, 2020 invoice, the \$4,516 amount is set out inclusive of GST. Further, Prorise's contract states additional work will be charged at \$60 per hour, plus applicable taxes. However, the additional work was charged on the invoice at \$60 per hour, inclusive of GST. So, I find Koru has not already paid the applicable taxes on Prorise's rates, as agreed under their contract.

***Was the amended invoice submitted late?***

18. Koru also relies on its disclosure agreement, which says invoices must be received within 60 days of work being completed. Koru argues that it should not have to pay Prorise's amended invoice because it was submitted more than 200 days after work was completed.
19. Prorise argues that there are contradictory terms in the parties' agreements about submitting invoices, so Koru should not be able to rely on the 60-day time limit in its disclosure agreement. However, Prorise did not specify what terms it alleges are contradictory.
20. I find there is nothing in Prorise's contract about when it will submit its invoices for payment once work is completed. In contrast, Koru's disclosure agreement includes the underlined statement: "Invoices must be received within 60 days following the completion of work". I find there is nothing in Prorise's contract that contradicts this obligation. So, contrary to Prorise's submission, I find there is no ambiguity about which contract's terms should govern on this issue.

21. I find the 60-day time limit for submitting invoices was a binding term of the parties' agreement. Further, I find it was unnecessary for Koru to state the consequences for submitting a late invoice in the contract because the clear implication is that late invoices will not be paid.
22. Prorise argues that even if the 60-day time limit is valid, it complied with that term because its original invoice was submitted on time. I infer that Prorise's position is that amended invoices do not have to comply with the contractual time limit. I disagree. I find that Prorise's amended invoice was an invoice for work it completed under the contract, and Prorise was bound to submit its invoice to Koru, including any applicable taxes, within 60 days after completing the job. Given Prorise's amended invoice was provided to Koru more than 200 days after it completed work, I find it was out of time and Koru was not obligated to pay it. Therefore, I dismiss Prorise's claim.
23. As noted, Koru alleges that Prorise made a further invoicing error by double charging Koru for painting a ceiling. Koru did not file a counterclaim. Generally, in such circumstances, if a respondent can show they have a claim sufficiently connected to the applicant's claim, a set-off may be ordered against any damages found payable to the applicant. However, given my findings above, there is nothing to set-off against, so I do not have to consider Koru's allegations about overcharging.
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. As Prorise was unsuccessful, I find it is not entitled to reimbursement of any CRT fees or dispute-related expenses.
25. Koru, as the successful party, did not pay any fees or claim dispute-related expenses, so I make no order.

## **ORDER**

26. I dismiss Prorise's claims and this dispute.

---

Kristin Gardner, Tribunal Member