



Civil Resolution Tribunal

Date Issued: July 27, 2021

File: SC-2021-000620

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Walltek Storage Ltd. v. 0955824 B.C. Ltd.*, 2021 BCCRT 818

B E T W E E N :

WALLTEK STORAGE LTD.

APPLICANT

A N D :

0955824 B.C. LTD.

RESPONDENT

A N D :

WALLTEK STORAGE LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. The applicant (and respondent by counterclaim), Walltek Storage Ltd. (Walltek), and the respondent (and applicant by counterclaim), 0955824 B.C. Ltd., which does business as Van Pro Disposal (Van Pro), were parties in a previous Civil Resolution Tribunal (CRT) dispute (SC-2020-000069). In that previous dispute, Van Pro sought damages for Walltek's alleged breach of a waste disposal contract. That dispute was dismissed.
2. Van Pro then filed a new CRT dispute against Walltek (SC-2020-004141), alleging the same breach of contract and damages as it had sought in the previous dispute that was dismissed. Walltek did not file a Dispute Response in SC-2020-004141 because it had already received a decision in its favour and did not realize Van Pro had brought a new claim. Because Walltek did not respond, the CRT found Walltek in default and ordered Walltek to pay Van Pro \$3,060.96.
3. A bailiff collected \$4,113.38 from Walltek for the amount owing on the default order, plus fees and disbursements. Walltek later successfully applied to the CRT to cancel the default order. The CRT then later refused to resolve dispute SC-2020-004141 on the basis that the issues had already been decided in dispute SC-2020-000069.
4. Walltek now claims from Van Pro the \$4,113.38 it paid the bailiff to satisfy the default order in SC-2020-004141 that was later cancelled.
5. Van Pro says it should not have to pay the money back because it can prove Walltek owed that amount for breaching the waste disposal contract. Van Pro says Walltek should at least be responsible for the bailiff and filing fees because they were incurred due to Walltek's error in failing to file a Dispute Response.
6. Van Pro counterclaims for \$4,188.38, alleging the same breach of the waste disposal contract and bailiff and filing fees. Van Pro did not explain the \$75 difference between its counterclaim and what Walltek paid the bailiff, as discussed further below.
7. Each party is represented by an employee or principal.

JURISDICTION AND PROCEDURE

8. 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.
9. Under section 11(1)(a)(ii) of the CRTA, the CRT may refuse to resolve a claim or dispute within its jurisdiction if it considers that the claim or dispute has been resolved by a legally binding process or other dispute resolution process. More on this below.
10. 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.
11. 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.
12. 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.

ISSUE

13. The issue in this dispute is whether Van Pro must reimburse Walltek anything for the amount collected on the default order that was later cancelled.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant Walltek must prove its claims on a balance of probabilities. Van Pro must prove its counterclaims on the same standard. I have read all the parties' evidence and submissions, but I refer only to what I find is relevant and necessary to provide context for my decision.
15. The following background facts are undisputed:
- a. Van Pro's dispute against Walltek (SC-2020-000069) for breach of their waste disposal contract was dismissed on its merits in an April 21, 2020 CRT decision indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Walltek Storage Ltd.*, 2020 BCCRT 433.
 - b. Van Pro did not pay the required fee to file a notice of objection to the April 21, 2020 decision. Instead, Van Pro submitted a new application to the CRT on May 26, 2020 (SC-2020-004141), making the same claims against Walltek as it did in its previous dispute. The duplicate nature of the claim was not apparent in the Dispute Notice, and there was no reference to the previous decision.
 - c. Walltek did not file a Dispute Response in SC-2020-004141, so Van Pro applied for a default decision. Again, there was no reference in the default application to the previous decision made in SC-2020-000069. Van Pro received a default order on July 22, 2020, ordering Walltek to pay \$3,060.69.
 - d. On August 31, 2020, Van Pro obtained an order for seizure and sale from the Provincial Court, ordering a bailiff to collect the amount of the default order from Walltek, plus fees and disbursements incurred to enforce the order. Walltek paid the bailiff \$4,113.38 on October 28, 2020.
 - e. On November 24, 2020, the CRT cancelled the default order. Walltek then filed its Dispute Response in SC-2020-004141 and alleged that the issues in that dispute had already been decided in dispute SC-2020-000069.

- f. On January 12, 2021, I issued a summary decision in SC-2020-004141, refusing to resolve Van Pro's claims on the basis that they were *res judicata*, meaning the issues and causes of action had already been decided.
16. In this dispute, Walltek claims reimbursement of the \$4,113.38 it paid to the bailiff in satisfaction of the order for seizure and sale relating to the default order in SC-2020-004141 that was later cancelled. As noted, the claims in that SC-2020-004141 dispute were later found to have already been decided, in that they were previously dismissed.
17. The bailiff's invoice in evidence shows that of the \$4,113.38 it collected from Walltek, \$1,031.42 was for the bailiff's fees and disbursements. So, Van Pro received the \$3,060.69 amount of the default order, plus the \$21 fee it paid for the order for seizure and sale.
18. Given that the default order, which formed the basis of the order for seizure and sale, was cancelled and the dispute was found to be *res judicata*, I find there is no legal basis on which Van Pro would be entitled to keep the \$3,060.69 it collected on the default order. As I found in my January 12, 2021 summary decision in SC-2020-004141, Van Pro knew or should have known that its claims against Walltek had already been finally decided and dismissed in SC-2020-000069, and it was improper to try to re-litigate them.
19. While Van Pro argues it was Walltek's failure to file a Dispute Response in SC-2020-004141 that resulted in the default order, for the following reasons I find that is insufficient to make Walltek responsible for the amounts it paid under the order for seizure and sale. As noted, there was nothing in the SC-2020-004141 Dispute Notice to alert the CRT that Van Pro was making claims against Walltek that had already been dismissed. Further, while it is undisputed that the CRT mailed the Dispute Notice to Walltek, I find Walltek reasonably failed to appreciate that it was a new dispute that it had to respond to, given Van Pro made the very same claims as in the previous dispute. So, the default order was issued without Walltek's participation, and Van Pro again did not flag for the CRT in its default application that its claims had

already been decided and dismissed. On that basis, I find the full amount Walltek paid the bailiff, including the \$21 fee for the order for seizure and sale, and the \$1,031.42 in bailiff's fees should be borne by Van Pro, not Walltek.

20. Therefore, I order Van Pro to reimburse Walltek the full \$4,113.38 that Walltek paid to the bailiff to satisfy the default order and the order for seizure and sale.
21. As for Van Pro's counterclaim, I find it is simply another attempt to re-litigate the same issues that were finally decided on April 21, 2020 in SC-2020-000069. As noted, Van Pro did not explain why its counterclaim is \$75 more than what Walltek paid to the bailiff, and I infer that it represents either an administrative error or additional interest that has allegedly accrued. Either way, I find Van Pro has raised no new issues or causes of action, and so I refuse to resolve Van Pro's counterclaim on the basis that it is *res judicata*.
22. The *Court Order Interest Act* applies to the CRT. Walltek is entitled to pre-judgement interest on the \$4,113.38 from November 24, 2020, the date the Default Order was cancelled, to the date of this decision. This equals \$12.44.
23. 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. I find Walltek is entitled to reimbursement of \$175 in CRT fees. I dismiss Van Pro's claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

24. Within 14 days of the date of this decision, I order the respondent, 0955824 B.C. Ltd., to pay the applicant, Walltek Storage Ltd., a total of \$4,300.82, broken down as follows:
 - a. \$4,113.38 as reimbursement for the amount Walltek paid under the order for seizure and sale,

- b. \$12.44 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

25. Walltek is entitled to post-judgment interest, as applicable.

26. I refuse to resolve Van Pro's counterclaim under section 11(1)(a)(ii) of the CRTA.

27. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

28. 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.

Kristin Gardner, Tribunal Member