



Civil Resolution Tribunal

Date Issued: August 20, 2021

File: SC-2020-006362

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coho Communications Ltd. v. Lafayette*, 2021 BCCRT 923

B E T W E E N :

COHO COMMUNICATIONS LTD.

APPLICANT

A N D :

FAYE LAFAYETTE also known as FAYE PAMELA FAYLENE
LAFAYETTE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about the installation of a security camera system. The respondent, Faye Lafayette hired the applicant, Coho Communications Ltd. (Coho), to install a security camera system at her business. Coho says it installed the camera system and claims \$2,131.50 for unpaid work and equipment.

2. Ms. Lafayette says she does not owe payment under the contract because Coho did not complete the work. She also says that Coho allegedly destroyed the camera system and physically attacked her.
3. Coho is represented by its owner, Len McIlwrick. Ms. Lafayette is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
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.

8. Ms. Lafayette asked the CRT to pause this dispute for medical reasons. In a December 21, 2020 preliminary decision I granted her request to pause the dispute for 60 days on the basis that Ms. Lafayette was temporarily medically unable to participate in the dispute. Ms. Lafayette made a second request to pause the dispute but, in an April 6, 2021 preliminary decision, another tribunal member denied this request. Ms. Lafayette also requested permission to be represented by a lawyer in this dispute. This request was denied in a May 11, 2021 preliminary decision by another tribunal member.

ISSUES

9. The issues in this dispute are:
 - a. Does Ms. Lafayette owe Coho \$2,131.50 for unpaid work and equipment?
 - b. Is Ms. Lafayette entitled to a set-off from any amount owed?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Coho, as the applicant, must prove its claims 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.

Does Ms. Lafayette owe \$2,131.50 for unpaid work?

11. On January 22, 2020, Coho offered by email to install a security camera system at Ms. Lafayette's business for \$2,030 plus GST, which equals \$2,131.50. It is undisputed that Ms. Lafayette accepted this offer and hired Coho. In doing so, I find that the parties entered a binding contract on the terms stated in the January 22, 2020 email.
12. Coho says it finished installing the equipment on March 12, 2020 and it was working properly. Coho sent a March 17, 2020 invoice for \$2,131.50. In contrast, Ms. Lafayette says that although Coho started working on March 12, 2020, the work was

not completed. Ms. Lafayette does not describe the further work needed to complete the project. However, she provided emails she sent to Coho asking it to replace a camera or wiring and to secure a cable better.

13. Overall, I am satisfied that Coho performed its installation services. I reach that conclusion because I find that Coho installed the security cameras, monitor, wiring and DVR system even though Ms. Lafayette was not satisfied with Coho's work. However, Ms. Lafayette may be entitled to a set-off from the contract price if she can prove that Coho's work or equipment provided was defective. This issue is discussed below.
14. It is undisputed that Coho has not received any money from Ms. Lafayette. So, I find that Ms. Lafayette owes Coho \$2,131.50 for unpaid work, subject to any set-offs.

Is Ms. Lafayette entitled to a set-off?

15. I will now consider whether Ms. Lafayette is entitled to any set-offs against the \$2,131.50 invoice. Ms. Lafayette did not file a counterclaim. Because she is alleging the deficiencies and set-offs, the burden to prove the set-offs shift to Ms. Lafayette (see *Lund v. Appleford*, 2017 BCPC 91).
16. A set-off is a right existing between parties that owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue (see *Black's Law Dictionary*, revised 4th edition, at paragraph 1538). When the desired set-off is closely enough connected with an applicant's claimed rights that it would be unjust to proceed without permitting a set-off, equitable set-off may be applied (see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34).
17. As discussed above, Ms. Lafayette says that Coho's work was incomplete and defective. In support, she provided an email she sent to Coho on April 22, 2020 asking it to replace the wiring or camera at the front driveway. Ms. Lafayette also sent Coho a further email on April 23, 2020 saying that a coaxial cable needed to be secured better. However, Ms. Lafayette did not provide submissions explaining the nature of these alleged deficiencies. Further, Ms. Lafayette did not provide evidence supporting

the existence of the alleged defects identified in her emails or provide a description of whether these alleged deficiencies affected her use of the camera system. For these reasons, I find Ms. Lafayette's claim that Coho's work was incomplete or deficient to be unproven.

18. Ms. Lafayette also says that Coho is not entitled to payment because it damaged the equipment. It is undisputed that a physical altercation occurred at Ms. Lafayette's business on May 13, 2020. Coho says it attempted to remove the camera equipment because Ms. Lafayette had not paid for it. It is undisputed that Ms. Lafayette gave Coho a cheque for \$2,131.50 but she later asked her financial institution to stop payment of the cheque. This prevented Coho from receiving money from the cheque's deposit. The altercation occurred after Ms. Lafayette requested the cheque's stop payment.
19. Coho says the May 13, 2020 incident is unrelated to this dispute because it occurred approximately 2 months after Coho completed its work on March 12, 2021. Ms. Lafayette says the altercation is related to this dispute. I find that there is a sufficient relationship between the performance of the camera system installation contract and the May 13, 2020 altercation for an equitable set-off to apply here. I reach that conclusion because I find that Mr. McIlwrick's conduct, on behalf of Coho, on May 13, 2020 was an attempt to resolve a disagreement relating to the same contract at issue in this dispute. As such, I find that Ms. Lafayette's claim that Coho damaged the equipment while attempting to remove it is directly related to the security camera installation contract. However, I find that Ms. Lafayette's claim that she suffered personal injuries during the incident is not sufficiently related to Coho's claim for unpaid work and equipment to be considered as a set-off from Coho's invoice.
20. For the above reasons, Ms. Lafayette may be entitled to a set-off from the amount owed to Coho if she can prove that Coho is responsible for damaging the equipment during the altercation.
21. Coho says that its owner, Mr. McIlwrick, entered Ms. Lafayette's business to remove the unpaid camera system. Coho says Ms. Lafayette started the altercation and Mr.

Mcllwrick defended himself by pushing her away. Coho says that Mr. Mcllwrick was unable to remove the camera equipment and he did not “destroy” the equipment. However, Coho does not say whether it damaged the equipment to an extent less than destruction.

22. In contrast, Ms. Lafayette says that Mr. Mcllwrick forced his way into the store after the business was closed and attacked her. Since Coho does not dispute that Mr. Mcllwrick entered the store after it was closed, I accept this submission as accurate. Ms. Lafayette says that Coho damaged the camera equipment beyond repair and she provided multiple photographs that appear to show damaged wires and connections. Based on the photographs, I am satisfied that the camera system was damaged.
23. On balance, I find that Coho is responsible for damaging the equipment. I reach that conclusion because I find that Mr. Mcllwrick entered the business when it was not open to the public. Although it is undisputed that Coho was unpaid for its work and equipment, I find that Coho was not permitted to enter Ms. Lafayette’s business after hours without Ms. Lafayette’s permission to remove the equipment. I find that this constitutes a trespass and, more likely than not, led to the physical altercation. Further, I find Ms. Lafayette’s version of events more likely to be accurate because I find the photographs provided showing wire connection damage are consistent with her submission that Mr. Mcllwrick forcibly pulled the wires from the camera system. For the above reasons, I find that Coho is responsible for damaging the camera equipment.
24. Ms. Lafayette provided an April 16, 2021 estimate of \$4,673 from P.R. Bridge Systems Ltd.’s (Bridge) operations manager, CW, to install a new camera system. I am satisfied that, as an operations manager at a security camera supply business, CW has sufficient expertise as required by CRT rule 8.3 to provide an expert opinion about Ms. Lafayette’s camera system. Bridge’s quote says that Ms. Lafayette’s existing DVR equipment and monitor was damaged and unrepairable. The quote also says that the proposed new camera system is not compatible with Ms. Lafayette’s older analog system so all of the existing cameras needed to be replaced. The quote

also says that the cameras installed by Coho could have been damaged and there is no way to test them.

25. Based on the photographs and Bridge's quote, I find that Ms. Lafayette has proved that Coho has damaged the DVR machine, monitor and cables. So, I find that Ms. Lafayette is not responsible for these charges from Coho's invoice. I also find that Ms. Lafayette is not responsible for Coho's labour charges because I find that further labour will be required to reinstall the system.
26. However, I find that Ms. Lafayette has not proved that the 4 cameras provided by Coho were damaged. CW only says that these cameras may be damaged and CW admits that the cameras were not tested. I do not find this evidence sufficient to prove that the cameras were damaged. Further, although CW says that Ms. Lafayette's analog cameras are not compatible with new systems, Ms. Lafayette has not provided a sufficient explanation of why a new system is needed. I find that Ms. Lafayette has failed to prove that the cameras provided by Coho were damaged. So, I find that Ms. Lafayette is responsible for the cameras' costs.
27. Based on Coho's January 22, 2020 email quote, the damaged DVR machine, monitor, cables and Coho's labour were worth \$1,543.50. So, I find that Ms. Lafayette is entitled to a set-off of \$1,543.50 from Coho's invoice.
28. For the above reasons, I find that Ms. Lafayette owes Coho \$588 under the contract for the cameras' costs.

Interest, CRT fees and dispute-related expenses

29. The *Court Order Interest Act* (COIA) applies to the CRT. So, I find that Coho is entitled to prejudgment interest on the \$588 debt for the unpaid equipment from March 17, 2020, the date of the invoice, to the date of this decision. This equals \$6.33.
30. 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 Coho is partially successful, I find it is entitled to one-half of its CRT fees, being \$67.50. Coho did not request reimbursement of dispute-related expenses. Ms. Lafayette requested reimbursement of \$45 of dispute-related expenses for photocopying and printing costs. However, Ms. Lafayette does not explain why she needed to print documents for this dispute instead of submitting her evidence electronically to the CRT. I find that Ms. Lafayette has not proved that her printing costs were reasonably necessary for this dispute and I dismiss her request for reimbursement of dispute-related expenses.

ORDERS

31. Within 30 days of the date of this order, I order Ms. Lafayette to pay Coho a total of \$661.83, broken down as follows:
 - a. \$588 as debt for unpaid equipment,
 - b. \$6.33 in pre-judgment COIA interest, and
 - c. \$67.50 in CRT fees.
32. Coho is entitled post-judgment interest, as applicable.
33. 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.

34. 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