



Civil Resolution Tribunal

Date Issued: August 24, 2021

File: SC-2021-000390

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1240770 B.C.Ltd. v. Abnous Contracting Ltd.*, 2021 BCCRT 929

B E T W E E N :

1240770 B.C.LTD.

APPLICANT

A N D :

ABNOUS CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an unpaid invoice. The applicant, 1240770 B.C.LTD. (Jims), does business as Jims Park Royal. Jims says the respondent, Abnous Contracting Ltd. (Abnous), hired it for hardscaping-related work. Jims claims for the outstanding invoice balance of \$2,894.40 plus contractual interest of 2% per month.

2. Abnous does not dispute the invoice amount or contractual interest claim. It says it has not paid Jims because it is awaiting payment from its own client. Abnous says that for this reason, it should not have to reimburse Jims for CRT fees or be ordered to pay the invoice amount.
3. The parties are represented by their principals or employees.
4. For the reasons that follow, I find Jims is entitled to most of its claims. I order Abnous to pay Jims 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. 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.

ISSUE

9. Must Abnous pay Jims the claimed amounts?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Jims must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. The essential facts are undisputed. Abnous is a general contractor and hired Jims for hardscaping work. Jims completed the work shown in an unpaid August 27, 2020 invoice for \$2,894.40.
12. Abnous says it will pay the invoice as soon as Abnous' own client pays it. However, there is nothing before me, such as a written contract, to indicate Jims' payment is contingent on Abnous being paid. Jims' invoice says it is payable immediately. So, I find Jims is entitled to payment of \$2,894.40.
13. I note that Abnous said it would like to pay in "4 parts". Jims suggested a payment schedule but there is no indication Abnous agreed to all the terms. So, I decline to order it.
14. I next consider contractual interest. Jims' invoice says late interest is payable at a rate of 2% per month calculated from August 27, 2020. Abnous did not dispute the contractual interest claim. However, section 4 of the federal *Interest Act* says that when an interest rate is expressed as a rate for a period of less than a year, and the contract does not say the equivalent annual percentage rate, the maximum allowable interest is 5% per year. I find the parties cannot contract out of this mandatory legislation. There is no indication that Jims expressed the interest rate as an

equivalent annual percentage rate elsewhere. So, I find Jims is only entitled to contractual interest at the yearly rate of 5% per year, calculated from August 27, 2020. This equals \$143.53.

15. 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. Abnous says its client should pay this, rather than Abnous. However, I have already found that there is no indication that Jims' payment was contingent or otherwise conditional on Abnous being paid first. So, I find Jims is entitled to reimbursement from Abnous of \$125 in CRT fees. Jims did not claim for any dispute-related expenses, so I order none.

ORDERS

16. Within 14 days of the date of this order, I order Abnous to pay Jims a total of \$3,162.94, broken down as follows:
 - a. \$2,894.40 in debt,
 - b. \$143.54 in 5% annual contractual interest, and
 - c. \$125 in CRT fees.
17. Jims is entitled to post-judgment interest, as applicable.
18. 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.

19. 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