



Civil Resolution Tribunal

Date Issued: December 9, 2021

Files: SC-2020-008848, SC-2020-008847,
SC-2020-008845, SC-2020-008843,
SC-2020-008842, SC-2020-008841,
and SC-2020-008768

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Phoenix Restorations (2015) Ltd. v. Siegle Properties B.C. Ltd.*,
2021 BCCRT 1293

B E T W E E N :

PHOENIX RESTORATIONS (2015) LTD.

APPLICANT

A N D :

SIEGLE PROPERTIES B.C. LTD., NORMAN MA, and The Owners,
Strata Plan LMS 1101

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Phoenix Restorations (2015) Ltd. (Phoenix), filed 7 separate Civil Resolution Tribunal (CRT) disputes about delayed payment for emergency services it performed in strata lots of the respondent strata corporation, The Owners, Strata Plan LMS 1101 (strata). Phoenix's invoices were undisputedly paid several months after Phoenix issued them.
2. The respondent, Siegle Properties B.C. Ltd. (Siegle), is the strata's property management company and Norman Ma is Siegle's sole director. The parties are the same in all 7 disputes.
3. The CRT staff asked the parties for their preferred titles and pronouns but Ma did not provide them. So, without intending any disrespect in this decision, I have not guessed and instead have referred to that party by just their last name.
4. In each dispute, Phoenix says Ma and Siegle were in a conflict of interest because Ma allegedly owned a strata lot and was on the strata council. Phoenix alleges that Ma and Siegle deliberately delayed paying Phoenix for its invoiced work for their personal benefit. Phoenix seeks "bad faith" damages against all the respondents or alternatively, the same amounts in contractual interest for alleged late payment. As set out in the Dispute Notices, Phoenix claims the following amounts:
 - SC-2020-008768 - \$3,939.40
 - SC-2020-008841 - \$3,566.86
 - SC-2020-008842 - \$2,185.77
 - SC-2020-008843 - \$2,955.89
 - SC-2020-008845 - \$4,082.20
 - SC-2020-008847 - \$2,473.00
 - SC-2020-008848 - \$2,894.78

5. The respondents deny the allegations and claims in each dispute. They say Phoenix has no legal or evidentiary basis to claim bad faith or conflict of interest damages against any of the respondents. They also point out that Phoenix did not make any bad faith allegations against the strata. Each respondent also denies that they entered into a contract with Phoenix for the invoiced emergency services. Further, they say they are not liable to pay any interest on the 7 invoices because they had no interest agreement.
6. Ma is self-represented, Phoenix and Siegle are represented by company employees and the strata is represented by a strata council member.
7. For the reasons that follow, I dismiss Phoenix's claims in each dispute.

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. 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.
10. 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.

11. 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.

Linked Disputes and Monetary Limit

12. As noted, Phoenix brings 7 separate disputes against the respondents over allegedly late paid invoices, each claim under the CRT's \$5,000 small claims monetary limit. If the invoices were for the same emergency services contract, then these 7 disputes should have been filed as 1 dispute and together they would be over the \$5,000 limit. However, none of the parties argued that the invoices are for the same contract and there are separate work orders for the invoiced jobs. So, I find the invoices likely relate to distinct contracts and Phoenix did not improperly split its claims in the way discussed in *Wah Loong Ltd. v. Fortune Garden Restaurant (Richmond) Ltd.*, 2000 BCPC 163. Since the disputes involve the same parties and issues, I have, however, issued 1 decision for all 7 disputes.

ISSUES

13. The issues in these disputes are:
 - a. To what extent, if any, is Phoenix entitled to "bad faith" damages or contractual interest on the 7 invoices?
 - b. Is Phoenix otherwise entitled to unjust enrichment damages?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant Phoenix must prove its claims on a balance of probabilities (which means "more likely than not"). 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.

15. In 2018 and 2019, several strata lots in the strata complex suffered water damage and Phoenix attended to perform emergency services. Phoenix invoiced the strata for the emergency services it performed in each strata lot.
16. The parties agree the strata paid the 7 invoices on May 4, 2020, which is months after each of the invoices' stated "due" dates. The invoices state that contractual interest is charged at 2% per month or 26.82% per year. However, I find Phoenix cannot unilaterally impose interest in an invoice and it had no agreement with any of the respondents that contractual interest would apply. I discuss this conclusion in more detail below.
17. As mentioned, Siegle was the strata's property manager and Ma was Siegle's director. The respondents say Ma was not a strata council member, which I accept because there is no evidence that they were on council. I find no need to further discuss Phoenix's conflict of interest allegations because it provided no legal basis to find that Ma or any of the respondents would be liable for damages even if a conflict did exist.
18. Despite alleging that Siegle and Ma deliberately delayed paying the invoices to benefit themselves, Phoenix submitted no evidence to support this serious allegation and the respondents deny it. As there is no evidence of any personal gain, I find there was none here.
19. The respondents say the strata council would not authorize Siegle to release any payments until Phoenix provided documentation confirming the scope and completion of its invoiced work. The correspondence shows that Siegle informed Phoenix that this confirmation was required. Siegle sent several follow up emails to request Phoenix's documents to prove the work was indeed done. In May 2019 Phoenix replied that some of the work remained incomplete and Siegle asked it to clarify the charges for the incomplete work. The respondents say that Phoenix then

sent some of the requested documents but not all of them and it failed to clarify its invoicing for incomplete repairs. They say the strata still paid all 7 invoices at issue in these disputes even though it ultimately never received all the requested information.

20. Phoenix did not submit a reply argument or evidence to dispute the respondents' assertions above though it had a reasonable opportunity to do so. On balance, I accept the respondents' uncontradicted evidence that Phoenix failed to support its invoices in a timely way and this delayed payment.
21. Phoenix has not given any reason why it was entitled to payment by the invoices' stated "due" dates without proof that it satisfactorily completed the invoiced work. I find the strata and Siegle were justified in withholding payment pending Phoenix providing the supporting documents. As the evidence does not indicate any bad faith dealings and Phoenix caused the payment delay, I find Phoenix is not entitled to the claimed bad faith damages.
22. While my conclusion ends the matter, I have discussed Phoenix's alternative claims for contractual interest for completeness since the issue was raised.
23. Phoenix's right to charge contractual interest can only arise from the parties' mutual agreement that contractual interest would apply: *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775.
24. Because of the involvement of insurance companies, whose role has not been explained, I find it is not entirely clear on the evidence who contracted with Phoenix to address the water damage. As the strata's agents, neither Siegle, nor its director Ma, would normally be parties to such contracts even if they initially called Phoenix to attend to the damage and there is no evidence that they were parties. The strata says it had also not entered into any contract with Phoenix for the strata lots' emergency work and there is no written contract between the strata and Phoenix. The only written contracts in evidence are some work orders. Each work order states that the "undersigned", who is the individual strata lot owner, agreed to the terms in

the work order. While the work orders have interest terms, I find it was the individual strata lot owners and not the strata, Ma, or Siegle who agreed to those terms.

25. Based on the submitted evidence, I find the respondents had no interest agreement with Phoenix for the invoiced jobs and so, Phoenix is not entitled to any contractual interest payment from the respondents in any event.
26. In the alternative, Phoenix says that “if the interest was to remain unpaid, it would be a case of unjust enrichment” for both the strata and strata lot owners who benefitted from Phoenix’s work. I note Phoenix can make no unjust enrichment claim against unnamed owners who are not parties to this dispute. I turn to its claims against the strata.
27. The legal test for unjust enrichment is that the applicant must show that the respondent was enriched, that the applicant suffered a corresponding deprivation or loss, and there is no valid basis for the enrichment: see *Kosaka v. Chan*, 2009 BCCA 467. I find Phoenix’s failure to support its invoices justifies any enrichment the strata might have received, such as from accrued bank interest and so, I dismiss Phoenix’s unjust enrichment claims.
28. For the reasons above, I find Phoenix has not proven that the respondents are liable for damages or interest on any of its invoices and I dismiss its claims in these 7 disputes.
29. 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 Phoenix was the unsuccessful party, I dismiss its claims for CRT fees. The respondents did not pay CRT fees and none of the parties claimed specific dispute-related expenses.

ORDER

30. I dismiss all of Phoenix's claims and each of the 7 disputes.

Trisha Apland, Tribunal Member