



Civil Resolution Tribunal

Date Issued: April 1, 2022

File: SC-2021-008313

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Conteco Manufacturing Ltd. v. MountainCrest Personnel Inc.*,
2022 BCCRT 374

BETWEEN:

CONTECO MANUFACTURING LTD.

APPLICANT

AND:

MOUNTAINCREST PERSONNEL INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the reimbursement of a finder's fee paid by the applicant, Conteco Manufacturing Ltd. (Conteco), to the respondent, MountainCrest Personnel Inc. (MountainCrest).

2. Conteco says the employee it hired (BB) through MountainCrest did not work out, and so it seeks a refund of \$5,000 for what it paid as a finder's fee. MountainCrest says the fee was non-refundable.
3. Conteco is represented by an employee. MountainCrest is represented by its principal, Harvey Fishman.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.
6. Section 42 of the CRTA says that 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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something,

- b. Order a party to pay money, and
- c. Order any other terms or conditions the CRT considers appropriate.

ISSUE

- 8. The issue in this dispute is whether Conteco is entitled to a \$5,000 refund of the finder's fee it paid.

EVIDENCE AND ANALYSIS

- 9. In a civil claim such as this, the applicant Conteco must prove its case on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 10. As a preliminary matter, I will address the amount of Conteco's claim. The monetary limit for claims under the CRT's small claims jurisdiction is \$5,000. Although Conteco undisputedly paid \$5,569.20 in total as a finder's fee, I find Conteco abandoned its claim above \$5,000 to fit within the CRT's monetary limit.
- 11. Turning to the merits of this dispute, on June 9, 2021, Conteco emailed Mr. Fishman and requested his recruitment services for two "mold makers". On June 16, 2021, Mr. Fishman provided Conteco with a resume for a prospective employee, BB. Conteco decided to interview BB and on June 29, 2021 Conteco advised Mr. Fishman that it had hired BB to start employment on July 5, 2021.
- 12. Later on June 29, 2021, Mr. Fishman emailed Conteco attaching the finder's fee invoice for the hiring of BB, due on BB's start date of July 5, 2021. Also attached was MountainCrest's fee schedule, terms, and guarantee. The terms and guarantee stated that if the employee's employment should terminate for any reason during the guarantee period (3 months), MountainCrest would provide replacement candidates for the same position. Whatever time remaining in the original employee's guarantee period would then transfer to the new candidate. In the event a replacement was not

hired or needed, MountainCrest would issue a “credit note” towards future employee placements, on a decreasing scale based on how long the employee worked.

13. On July 7, 2021, Conteco paid MountainCrest a total of \$5,569.20 as a finder’s fee for BB’s employment. By paying this fee, I find Conteco agreed to the terms and conditions MountainCrest had sent and find those terms are part of the parties’ contract.
14. It is undisputed Conteco terminated BB’s employment on July 27, 2021, within his first month. The parties disagree about why BB was fired, but I find those details are not relevant to this decision. According to MountainCrest’s terms, BB’s termination within one month would result in a 100% credit note to be applied against a future placement.
15. On July 28, 2021, Conteco emailed Mr. Fishman to advise him BB “did not work out” and requested a refund of the finder’s fee.
16. A statement from a Conteco employee, KT, states that she contacted Mr. Fishman on July 27, 2021 about BB’s termination. KT incorrectly states the dates of BB’s employment. In any event, KT states she asked Mr. Fishman “if it was at all possible to issue a refund”, but that Mr. Fishman advised he was looking for new employees, and so a refund was not possible. KT states she again contacted Mr. Fishman on August 30, 2021 when Mr. Fishman advised he does not give refunds and that he was having trouble finding a replacement.
17. On October 1, 2021, Conteco sent a letter to Mr. Fishman requesting a refund of the finder’s fee or an appropriate replacement candidate within 14 days. On October 11, 2021, Mr. Fishman replied stating the parties’ contract does not permit a refund, but a credit towards Conteco’s next hire. Mr. Fishman advised he had not been able to find a suitable candidate “due to Covid”, but that he continued to look everyday. Conteco submitted its application for dispute resolution to the CRT on October 29, 2021.

18. There is no indication MountainCrest provided Conteco with any further candidates, and I find it is clear now that the parties' relationship has soured. MountainCrest has stated it does not feel comfortable providing any further candidates to Conteco. I find by failing to provide any suitable candidates within a reasonable amount of time, MountainCrest breached the parties' contract such that Conteco is entitled to a refund of its deposit. Therefore, I find Conteco is entitled to a refund of the \$5,000 it claims.
19. The *Court Order Interest Act* (COIA) applies to the CRT. Conteco is entitled to pre-judgment interest on the \$5,000 from October 28, 2021, when I find a reasonable amount of time had passed for MountainCrest to send new potential candidates, to the date of this decision. This equals \$9.59. The CRT's small claims monetary limit does not include CRT fees and interest under the COIA.
20. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Conteco was successful, I find it is entitled to reimbursement of \$175 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

21. Within 30 days of the date of this decision, I order the respondent, MountainCrest Personnel Inc., to pay the applicant, Conteco Manufacturing Ltd., a total of \$5,184.59, broken down as follows:
 - a. \$5,000 in damages,
 - b. \$9.59 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
22. Conteco is entitled to post-judgment interest, as applicable.

23. Under section 48 of the CRTA, the CRT will not provide the parties with the order giving 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.

24. 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.

Andrea Ritchie, Vice Chair