



Civil Resolution Tribunal

Date Issued: August 31, 2022

File: SC-2021-009652

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dwernychuk v. Manning Elliott LLP*, 2022 BCCRT 977

B E T W E E N :

BARRY DWERNYCHUK

APPLICANT

A N D :

MANNING ELLIOTT LLP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about information technology support work. The applicant, Barry Dwernychuk, claims the respondent, Manning Elliott LLP (Manning), hired him to perform technical support work. Mr. Dwernychuk claims \$481.95 in unpaid work.

2. Manning denies Mr. Dwernychuk's claim. Manning says that it did not authorize the alleged work and also denies that the work was performed.
3. Mr. Dwernychuk, a lawyer, is self-represented. Manning is represented by an employee.

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. 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.
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.

ISSUE

8. The issue in this dispute is whether Manning owes Mr. Dwernychuk \$481.95 for unpaid work.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Dwernychuk must prove his claim on a balance of probabilities, (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. Mr. Dwernychuk previously had a contract with Manning to provide informational technology support work. Both parties agree that this contract expired in the summer of 2019. Manning says the contract expired on July 31, 2019 and Mr. Dwernychuk says the contract expired on June 30, 2019. However, I find that nothing turns on this discrepancy.
11. Mr. Dwernychuk says that after the contract had expired, Manning's employees continued to request technical support until January 2020. Specifically, Mr. Dwernychuk claims that Manning's employee, S.C., requested technical support 3 times in December 2019 and January 2020. Mr. Dwernychuk says he provided S.C. technical support on each occasion. In contrast, Manning says that it did not authorize any work after the contract expired and Manning also denies Mr. Dwernychuk's claim that any such work was performed.
12. Mr. Dwernychuk issued Manning a December 31, 2019 invoice for \$321.30 for technical support provided to S.C. on December 16 and December 18, 2019. Mr. Dwernychuk also issued Manning a March 11, 2020 invoice for \$160.65 for telephone support allegedly provided to S.C. on January 9, 2020. It is undisputed that Manning has not paid either of these invoices.

Authorization of Mr. Dwernychuk's alleged work

13. Though the parties' previous contract had expired, S.C. could have hired Mr. Dwernychuk on Manning's behalf if Manning gave S.C. actual or apparent authority to do so. Manning says that S.C. was not authorized to hire Mr. Dwernychuk. Further, Manning sent all of its employees an August 2, 2019 email saying that Mr. Dwernychuk's technical support contract had ended. Based on Manning's submission and this email, I find that S.C. did not have actual authority to hire Mr. Dwernychuk's services.
14. Next, if an employee has apparent authority to enter into an agreement, the agreement is valid and enforceable even if the employer did not actually give the employee the power to do so. The burden is on Mr. Dwernychuk to prove that S.C. had apparent authority to hire him on Manning's behalf. Mr. Dwernychuk must prove that Manning, not S.C., represented through words or actions that S.C. had the authority to hire him. Mr. Dwernychuk must also prove that he reasonably believed that S.C. had the authority to do so (see, *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295, at paragraphs 84 to 86).
15. Manning's August 2, 2022 email says that S.C. held a position of "IT Support, Network." Neither party provided evidence or submission describing the level of S.C.'s authority at Manning. However, based on S.C.'s employment title, I infer that S.C. was likely not a senior employee. Further, I find that it would not be reasonable for a contractor to believe that S.C. was authorized to enter contracts on Manning's behalf based on their employment title.
16. Mr. Dwernychuk argues that Manning represented that it had agreed to his ongoing technical support by allegedly continuing to pay for technical support after the contract expired. Mr. Dwernychuk provided a December 5, 2019 invoice issued to Manning. This invoice charged Manning \$1,102.50 for support provided on 7 undated incidents, between October 15 to December 5, 2019. The invoice says that Manning had paid the amount charged. In contrast, Manning says that it has not paid Mr. Dwernychuk for any work after the previous contract expired.

17. Though Mr. Dwernychuk's December 5, 2019 invoice says that Manning paid for services after the contract expired, I find this invoice to be unreliable. I reach this conclusion because there is no explanation as to how could have Manning had known the amount of Mr. Dwernychuk's alleged charges, and allegedly paid them, before the invoice was issued. Further, Mr. Dwernychuk has not provided financial records showing the receipt of payments from Manning. In the absence of an explanation or further supporting evidence, I find Manning's submission that it did not pay Mr. Dwernychuk after the contract expired equally likely as Mr. Dwernychuk's submission that it did. So, I find that Mr. Dwernychuk has not proved that Manning continued to pay for work after the contract expired.
18. In the absence of further evidence or submissions, I find that Mr. Dwernychuk has failed to prove that Manning did or said anything that would reasonably suggest that S.C. had the authority to hire his services. So, I find that S.C. did not have actual or apparent authority to hire Mr. Dwernychuk on Manning's behalf.
19. Based on the above, I find that Manning that did not authorize Mr. Dwernychuk's alleged work. Given this conclusion, I find it unnecessary to determine whether S.C. requested Mr. Dwernychuk's work or whether the alleged work was performed.

Unjust enrichment

20. Mr. Dwernychuk also argues that Manning was unjustly enriched by receiving the benefit of his work and materials without paying him. Unjust enrichment is a common law doctrine. The legal test for unjust enrichment is that Mr. Dwernychuk must show: a) that Manning was enriched, b) that he suffered a corresponding deprivation or loss, and c) that there is no "juristic reason" or valid basis for the enrichment: *Kerr v. Baranow*, 2011 SCC 10.
21. In the previous CRT decision in *B.C. Ltd. v. RKI Properties Ltd.*, 2021 BCCRT 572, another tribunal member consider the existence of a "juristic reason" for enrichment in similar circumstances. In 572927, an applicant performed unpaid flooring work which the respondent had not authorized. The tribunal member found that the

respondent's non-authorization of the flooring work was a valid basis or "juristic reason" for the respondent's enrichment. The tribunal member found that the respondent's flooring work enrichment was not unjust, given that the respondent did not authorize the work and did not have a contract for the work. Though the decision in 572927 is not binding on me, I find the reasoning persuasive and apply it here. Similarly, as discussed above, I find that Manning did not agree to Mr. Dwernychuk's alleged work. I find no legitimate reason to charge Manning for alleged work it did not agree to. So, I find that Manning was not unjustly enriched.

22. Based on the above, I dismiss Mr. Dwernychuk's claim.

CRT fees and expenses

23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Dwernychuk was unsuccessful and so I dismiss his claim for reimbursement of CRT fees. Manning paid \$50 in CRT fees to set aside the default judgment that Mr. Dwernychuk previously obtained in this dispute. Since Manning was successful, I order Mr. Dwernychuk to reimburse it that \$50. No dispute-related expenses were claimed and I make no order for them.

ORDERS

24. I dismiss Mr. Dwernychuk's claims.

25. Within 30 days of this decision, I order Mr. Dwernychuk to pay Manning \$50 as reimbursement of paid CRT fees.

26. Manning is entitled to post-judgment interest, as applicable.

27. 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. 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