



Civil Resolution Tribunal

Date Issued: October 3, 2022

File: SC-2021-009697

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Henderson v. Cayer*, 2022 BCCRT 1084

BETWEEN:

WAYNE HENDERSON

APPLICANT

AND:

CURTIS CAYER, CAYER CONTRACTING INC. and 4 BOYS MFG.
INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Wayne Henderson, attempted to purchase a boat loader from the respondent 4 Boys Mfg Inc. (4 Boys). A boat loader is a device that loads a small boat onto the top of a truck for transport.

2. Mr. Henderson says he bought the boat loader through the individual respondent Curtis Cayer, who was held out as director of sales and marketing for 4 Boys. Curtis Cayer is also the sole director of the other respondent, Cayer Contracting Inc. (CCI).
3. Mr. Henderson undisputedly never received the boat loader despite paying \$5,899.40 to CCI toward the purchase price. CCI later refunded Mr. Henderson \$4,500, so Mr. Henderson claims \$1,399.40 from CCI in this dispute.
4. Mr. Henderson says Curtis Cayer is personally liable because of their trickery and deception. Mr. Henderson also says 4 Boys is liable as Curtis Cayer's employer.
5. CCI did not provide a dispute response and is technically in default, which I discuss further below. Curtis Cayer admits that CCI failed to meet its contractual obligations but personally denies engaging in any trickery or deception. 4 Boys says Curtis Cayer and CCI had no authority to invoice or collect payments on behalf of 4 Boys, and therefore 4 Boys is not responsible for any refund owed.
6. Mr. Henderson represents himself. 4 Boys is represented by a principal. Curtis Cayer is self-represented.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. 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.

ISSUES

11. The issues to be decided in this dispute are:
 - a. Did CCI have authority to make a binding contract between 4 Boys and Mr. Henderson such that 4 Boys is liable to Mr. Henderson for the refund?
 - b. Which of the respondents, if any, are liable for the claimed \$1,399.40 debt?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Mr. Henderson must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Curtis Cayer provided a Dispute Response but no submissions or evidence despite having the opportunity to do so.
13. As noted, CCI is in default, which means liability is assumed. Moreover, Curtis Cayer acknowledged that CCI breached its contractual obligations to Mr. Henderson. None of the respondents disputed that Mr. Henderson paid CCI \$5,899.40, or explained why CCI only refunded \$4,500. I therefore find that CCI is liable for the claimed \$1,399.40 debt.

14. The background facts are undisputed. In December 2013, 4 Boys entered into an agreement with CCI. Under the agreement, CCI was to sell 4 Boys' boat loaders as a third-party contractor in exchange for sales commissions. 4 Boys provided CCI with a cell phone, email address (curtis@4boysmfg.com) and travel budget.
15. Mr. Henderson met Curtis Cayer at a trade show in 2018 where Curtis Cayer was working a booth for 4 Boys. Mr. Henderson took Curtis Cayer's 4 Boys business card. In January 2021, Mr. Henderson texted Curtis Cayer's 4 Boys cell phone and emailed curtis@4boysmfg.com for a quote for a boat loader and accessories. By February, they had confirmed the order details and Mr. Henderson began making payments. Curtis Cayer requested payments by e-transfer to CCI at loadmyboat@gmail.com.
16. Mr. Henderson undisputedly paid CCI \$5,899.40 by several e-transfers in February 2021. On August 10, 2021, Mr. Henderson received an invoice acknowledging the payments and indicating a balance owing of \$423. I find Mr. Henderson did not pay this balance because he does not allege that he did. The invoice says it is from CCI "providing sales & installs for" 4 Boys.
17. Mr. Henderson says after some delay he became suspicious and confirmed that Curtis Cayer and CCI were no longer associated with 4 Boys. He asked for a refund, and in September and October 2021, CCI refunded Mr. Henderson \$4,500. For reasons that are not explained, CCI either refused or was unable to refund the \$1,399.40 balance.
18. Mr. Henderson says he believed his transaction was with 4 Boys. While Mr. Henderson does not use this language, I find he argues that CCI or Curtis Cayer was an agent for 4 Boys.
19. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter into contracts with third parties on the principal's behalf.
20. 4 Boys says it was never aware of Mr. Henderson's order, and CCI acted without authority and accepted the payment for its own benefit. 4 Boys provided its 2013 letter of engagement to CCI. Although the letter is unsigned, neither CCI nor Curtis Cayer

disputes that it accurately reflected CCI's agreement with 4 Boys to provide sales and marketing services in exchange for commission.

21. On review of the 2013 letter, I agree with 4 Boys' submission that it did not give Curtis Cayer or CCI authority to invoice or collect on 4 Boys' transactions. The agreement indicates that 4 Boys was to receive the payments for sales of boat loaders and determine the commission payable to CCI. I find the scope of CCI's actual authority was limited to soliciting customers to purchase 4 Boys' product, but not taking payment. So, I find CCI had authority to solicit orders but did not have actual authority to take Mr. Henderson's payments.
22. I pause to note that there is a July 30, 2020 letter in evidence from 4 Boys revoking CCI's authority as of August 31, 2020. However, 4 Boys submits that the letter was dated 2020 in error and the dates should have read 2021. I accept that unchallenged submission and I find 4 Boys still had authority under the 2013 letter when interacting with Mr. Henderson.
23. The next question is whether Curtis Cayer or CCI had apparent authority to take Mr. Henderson's payments and contract on behalf of 4 Boys. For the following reasons, I find that they did. Curtis Cayer undisputedly represented 4 Boys at a trade show and held the title of 4 Boys' director of sales and marketing. At the trade show they undisputedly gave Mr. Henderson their 4 Boys business card that had their 4 Boys email address and cell phone number, which Mr. Henderson used to contact them. To a reasonable person in Mr. Henderson's position, Curtis Cayer and CCI appeared to have authority to accept payments on 4 Boys' behalf like any director of sales and marketing would.
24. Although Curtis Cayer directed Mr. Henderson to pay loadmyboat@gmail.com, that email address incorporated the name of the website at which 4 Boys undisputedly promoted its boat loader. As well, statements from witnesses who said they were also victimized by Curtis Cayer indicate the website loadmyboat.com identified Curtis Cayer as a 4 Boys representative. In the circumstances, I find the use of a gmail account would not be enough to cause a reasonable person to question CCI's

authority to accept payment. For these reasons, I find Curtis Cayer and CCI had apparent authority to accept Mr. Henderson's payment and enter a binding contract on 4 Boys' behalf.

25. Even where a principal expressly limits an agent's authority, if that fact is unknown to the third party and the agent contracts with the third party in a manner that exceeds the limits of their authority, the principal is bound to the third party (see *Barnett v. Rademaker, et al*, 2004 BCSC 1060 at paragraph 31). So, I find 4 Boys contracted with Mr. Henderson, and therefore 4 Boys is responsible for the breach of contract. I therefore find 4 Boys liable to Mr. Henderson for the claimed \$1,399.40. As I found CCI liable based on its default status, acceptance of payment and partial refund, CCI and 4 Boys are jointly and severally liable.

Alternative liability in tort

26. Mr. Henderson also says Curtis Cayer or CCI engaged in trickery or deception to misappropriate the money he paid for the boat loader. He says 4 Boys is vicariously liable for Curtis Cayer's fraud as their employer. 4 Boys' position is that CCI was an independent contractor that accepted boat loader orders to be fulfilled by 4 Boys. I find nothing turns on Curtis Cayer's employment status because vicarious liability for torts (legal wrongs) can attach to a principal-agent relationship outside of the employment context (see *Thiessen v. Clarica Life Insurance Co.*, 2002 BCCA 501, at paragraph 30).
27. I acknowledge that CCI says, through Curtis Cayer, that it acted in good faith. However, CCI did not itself participate in this dispute and provided no further submissions or evidence. On the evidence I find CCI was at least negligent in failing to ensure that it advised 4 Boys about Mr. Henderson's boat loader purchase. CCI owed Mr. Henderson a duty of care when acting in the role of salesperson to carefully handle any payments received and to ensure that the product was actually ordered and delivered. By taking the payments but making no efforts to ensure a boat loader was ordered and delivered, CCI breached the standard of care. I accept that Mr. Henderson lost his payments, less what CCI refunded, as a result. So, I would find

CCI liable to Mr. Henderson for the claimed \$1,399.40 under negligence even if it were not in default.

28. When an agent commits a tort in the scope of their agency role, then the agent and principal are jointly and severally liable. I find CCI's negligent act was directly related to the authority 4 Boys gave it to solicit orders through Curtis Cayer, the director of sales and marketing. So, had I not found liability under contract, I would nonetheless find 4 Boys vicariously liable for CCI's negligence for the claimed \$1,399.40 in damages.

Is Curtis Cayer personally liable?

29. On the evidence before me, I am satisfied that Curtis Cayer acted as CCI's principal and not in his personal capacity. Mr. Henderson says this is a case where I should "pierce the corporate veil", meaning I should hold Curtis Cayer personally liable rather than treating CCI as a separate legal person. Typically, the corporate veil is pierced when the company is incorporated for fraudulent purpose, or when those in control expressly direct the company to do a wrongful thing (see *Yongfeng Holdings Inc. v Zheng*, 2019 BCSC 1534, at paragraph 197). There is insufficient evidence to conclude that CCI was created for a fraudulent purpose or that Curtis Cayer expressly directed CCI to act wrongfully. So, I dismiss the claim against Curtis Cayer.
30. The *Court Order Interest Act* applies to the CRT. Mr. Henderson is entitled to pre-judgment interest on the \$1,399.40 from September 1, 2021, the date I estimate the cause of action arose, to the date of this decision. This equals \$11.03.
31. 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 find Mr. Henderson is entitled to reimbursement of \$125 in CRT fees. None of the parties claimed dispute-related expenses.

ORDERS

32. Within 14 days of the date of this order, I order 4 Boys and CCI, jointly and severally, to pay Mr. Henderson a total of \$1,535.43, broken down as follows:
- a. \$1,399.40 in debt,
 - b. \$11.03 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 in CRT fees.
33. Mr. Henderson is entitled to post-judgment interest, as applicable.
34. I dismiss Mr. Henderson's claims against Curtis Cayer.
35. 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.

Micah Carmody, Tribunal Member