



Civil Resolution Tribunal

Date Issued: October 17, 2022

File: SC-2022-001798

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1220670 B.C. Ltd. v. Jon M. Duncan Law Corporation*, 2022 BCCRT 1129

B E T W E E N :

1220670 B.C. LTD.

APPLICANT

A N D :

JON M. DUNCAN LAW CORPORATION and DERRICK BURGART

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about administration charges. The applicant, 1220670 B.C. Ltd. (122), says the respondents, Jon M. Duncan Law Corporation (JDLC) and Derrick Burgart, requested its services related to expert testimony at a BC Supreme Court trial that was later adjourned. 122 says it submitted an invoice for 122's administration charges based on fees agreed to in a professional service agreement (PSA) signed by Derrick

Burgart on May 3, 2021. 122 says Derrick Burgart and JDLC failed to pay the invoice. 122 claims \$551.25 for its unpaid invoice.

2. JDLC says it did not enter into any agreement with 122 and is not responsible to pay for 122's claimed administration charges.
3. Derrick Burgart did not file a Dispute Response as required and is therefore in default, which I will address below.
4. 122 is represented by its director, Leanne Toews. JDLC is represented by its director, Jon Duncan.

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. Did 122 have an agreement with either Derrick Burgart or JDLC?
10. To what extent, if any, must JDLC or Derrick Burgart pay 122 the claimed \$551.25 for administration charges.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant 122 must prove its claims on a balance of probabilities (meaning more likely than not). I have read the submissions and evidence but refer only to what I find relevant to provide context for my decision.
12. Derrick Burgart is in default for failing to file a Dispute Response. Ordinarily, liability is assumed in default. However, for the following reasons, I find 122 has not proved that it had an agreement with either Derrick Burgart or JDLC to pay the claimed administration charges. So, I dismiss 122's claims.

Did 122 have an agreement with Derrick Burgart?

13. The applicant 122 submitted a September 25, 2019 professional services agreement (2019 agreement) signed by Derrick Burgart, for professional services related to Derrick Burgart's BC Supreme Court matter. In submissions, 122 relies on this 2019 agreement to show that Derrick Burgart agreed to pay for 122's claimed administration charges at a rate of \$120 per hour. I note that this is a different agreement than the alleged May 3, 2021 agreement (2021 agreement) that 122 relied on in its application for dispute resolution. The 2021 agreement is not in evidence, so I find 122 has not proved that Derrick Burgart agreed to any administration charges based on the alleged 2021 agreement.

14. The 2019 agreement is in evidence. However, the parties to the 2019 agreement are listed as Derrick Burgart and Leanne Toews. 122 is not listed as party to the 2019 agreement. Leanne Toews is 122's director, but there is no indication that Leanne Toews signed on 122's behalf.
15. Section 27 of the *Business Corporations Act* says that a corporation must display its name on all of its contracts, business letters, and invoices, among other things. Here, there is no explicit mention of the existence of a corporation in the 2019 agreement. Therefore, I find the evidence before me does not show that 122 was a party to the 2019 agreement. Further, the invoice 122 claims payment of does not refer to 122, and only lists Leanne Toews' name. There is also no mention of 122 in any of the lengthy email correspondence in evidence. While Leanne Toews acts as 122's representative in this dispute, she herself is not a party to this dispute. I also note Leanne Toews named herself, and not 122, in a separate and recent CRT dispute, *Toews v. Cowan*, 2022 BCCRT 528.
16. The legal doctrine known as "privity of contract" is relevant here. Privity of contract means that a contract cannot give rights or impose obligations on anyone who is not a party to a contract. In other words, a person must first agree to a contract in order to be bound by it. A non-party is not entitled to collect money owing under an agreement entered into by two other parties. See *Housewise Construction Ltd. v. Whitgift Holdings Ltd.*, 2015 BCPC 297.
17. As noted above, as the applicant 122 bears the burden of proving its claims. Given that 122 was not a party to the 2019 agreement, and Leanne Toews did not explicitly indicate that she entered into the 2019 agreement on 122's behalf, I find that 122 does not have any enforceable rights under that 2019 agreement. As noted, 122 did not provide the alleged 2021 agreement in evidence, and did not rely on it in its submissions in any event. So, I find that 122 has not proved that it had any agreement with Derrick Burgart. In the absence of an agreement to pay administration fees, I dismiss 122's claim against Derrick Burgart.

Did 122 have an agreement with JDLC?

18. 122 also says JDLC made itself a party to 122's alleged agreement with Derrick Burgart. 122 says JDLC did so by specifying that 122's invoice should be made out to JDLC, and JDLC is responsible for the administration charges because one of JDLC's lawyers confirmed that they had "control of [Derrick Burgart's] file on behalf of the firm" and "confirmed representation" of Derrick Burgart. JDLC says it was acting on Derrick Burgart's behalf, and says there was never any agreement between JDLC and 122.
19. As discussed above, I find 122 has not proved that it had an agreement with Derrick Burgart. However, even if it did, I find the evidence does not show that JDLC made itself a party to the alleged agreement.
20. The fact that 122 says it was directed to provide an invoice to JDLC is not sufficient to prove that JDLC was a party to the 2019 agreement, or otherwise agreed to 122's administration charges. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter contracts with third parties on its behalf. So long as the agent discloses that they are acting as an agent for the principal, the agent will generally not be liable under a contract they make between the principal and third party. Here, the evidence shows a JDLC lawyer explicitly confirmed they were acting as Derrick Burgart's lawyer and representing Derrick Burgart in his BC Supreme Court matter. So, I find JDLC clearly disclosed that it was acting as Derrick Burgart's agent, and JDLC is not liable under any agreement it made on Derrick Burgart's behalf.
21. The evidence also does not show that JDLC ever entered into any written agreement directly with 122, or otherwise agreed to pay 122's administration charges. Therefore, I find 122 has not proved that JDLC is responsible for 122's claimed administration charges.
22. Given all the above, I find 122 has not proved its claims against Derrick Burgart or JDLC.

CRT fees and dispute-related expenses

23. 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. As 122 was unsuccessful, I dismiss its fee claim and its claim for dispute-related expenses.

24. Neither JDLC nor Derrick Burgart paid any CRT fees or claimed any dispute-related expenses, so I award none.

ORDER

25. I dismiss 122's claims and this dispute.

Leah Volkens, Tribunal Member