



# Civil Resolution Tribunal

Date Issued: October 21, 2022

File: SC-2022-001451

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *BMS Solutions Ltd. v. Weir (dba Sean Weir Cleaning)*, 2022 BCCRT 1151

B E T W E E N :

BMS SOLUTIONS LTD.

**APPLICANT**

A N D :

SEAN P WEIR (Doing Business As SEAN WEIR CLEANING)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about 3 unpaid invoices for cleaning services. The respondent, Sean P Weir (Doing Business As Sean Weir Cleaning), subcontracted the applicant, BMS Solutions Ltd. (BMS), to provide the services. BMS claims \$4,658.15 as the balance owing under the invoices.

2. Mr. Weir denies liability. He says BMS breached their agreement by directly soliciting Mr. Weir's clients. He also says BMS' workers were caught sleeping at work numerous times.
3. BMS' employee or principal represents it. Mr. Weir represents himself.
4. For the reasons that follow, I find BMS has proven its claims.

## **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. Some of the evidence in this dispute amounts to a "they said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

## **ISSUES**

9. The issues in this dispute are as follows:
  - a. Did BMS breach the parties' contract?
  - b. Is BMS entitled to \$4,658.15 or some other amount?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, BMS must prove its claims on a balance of probabilities. This means 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. BMS did not provide final reply submissions though it had the opportunity to do so.
11. I begin with the undisputed background. Mr. Weir subcontracted BMS to provide cleaning services. BMS claims for the unpaid balance of invoices dated October 31 and December 31, 2020, and January 31, 2021. Aside from the invoices, the parties did not document their agreement. The invoices total \$6,728.28, but it is undisputed that the balance owing is only the claimed \$4,658.15.
12. Although BMS bears the burden of proving its claim, Mr. Weir bears the burden of showing the work was deficient. See *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91. Mr. Weir alleges that BMS' employees slept at work. I find this is a

bare allegation unsupported by evidence. So, I find Mr. Weir must pay the claimed amount unless he can show BMS breached a term against soliciting Mr. Weir's current clients or customers, as he alleges. For the reasons that follow, I find this unproven as well.

13. As evidence, Mr. Weir provided text messages dated December 24, 2020, between himself and an unnamed individual. The sender texted to Mr. Weir that "Kenny" sent quotes to Mr. Weir's client for the price of directly hiring BMS. I find it likely that Kenny refers to BMS' principal or employee.
14. As noted above, BMS did not provide final reply submissions. It did not refute or otherwise address these allegations. Ultimately, I find nothing turns on this for the reasons discussed below.
15. There is no evidence that BMS agreed to a non-solicitation clause as it is not stated in the invoices. However, I find that even if BMS breached an implied term against soliciting Mr. Weir's clients, there is no proof that Mr. Weir sustained any loss. The text messages do not prove that any of Mr. Weir's customers decided to hire BMS. There is no evidence that Mr. Weir lost any business. So, I conclude this is not a reason to reduce the amount owing to BMS.
16. Given the above, I order Mr. Weir to pay BMS \$4,658.15 in debt. The *Court Order Interest Act* applies to the CRT. Mr. Weir is entitled to pre-judgment interest on the debt from January 31, 2021, the date of the last invoice, to the date of this decision. This equals \$54.15.
17. 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. I find BMS is entitled to reimbursement of \$175 in CRT fees.

## ORDERS

18. Within 30 days of the date of this order, I order Mr. Weir to pay BMS a total of \$4,887.30, broken down as follows:
  - a. \$4,658.15 in debt,
  - b. \$54.15 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
19. BMS is entitled to post-judgment interest, as applicable.
20. 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.

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David Jiang, Tribunal Member