



Civil Resolution Tribunal

Date Issued: November 2, 2022

File: SC-2022-001509

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fernando v. Ma*, 2022 BCCRT 1202

BETWEEN:

AYLWIN FERNANDO

APPLICANT

AND:

MAN CHEONG MA, WINSTON KING LOON KUIT,
and DARREN SMITH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute was initially about payment for unpaid invoices. The applicant, Aylwin Fernando, said the respondents, Man Cheong Ma, Winston King Loon Kuit, and Darren Smith, failed to pay for marketing materials Mr. Fernando provided. Mr. Fernando claimed \$2,145 in the Dispute Notice that started this proceeding. After

starting the proceeding, Mr. Fernando was undisputedly paid in full. Now, Mr. Fernando only claims for reimbursement of the \$125 he paid for tribunal fees.

2. The respondents deny any responsibility for Mr. Fernando's fees in this dispute.
3. Each of the parties is self-represented.

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. 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.

8. As noted above, after this dispute began Mr. Fernando was paid the \$2,145 he initially claimed. So, the decision below only addresses the outstanding issue of Mr. Fernando's entitlement to reimbursement of the \$125 he paid in CRT fees.

ISSUE

9. The issue in this dispute is whether the respondents must reimburse Mr. Fernando \$125 for tribunal fees.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Fernando must prove his claim on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
11. As noted, the underlying issue in this dispute was about payment for outstanding invoices for consulting work. The parties have undisputedly settled this debt, but could not agree on who should pay the CRT fees.
12. 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.
13. Mr. Fernando says the respondents are responsible to pay the fees because they refused to pay him until he started the CRT proceeding. In essence, he says starting the CRT proceeding made the respondents pay the debt, so he was successful and should recover his fees. In contrast, the respondents say the debt was paid by the company they work for, not any of them individually. They say are not personally responsible for any fees, as Mr. Fernando's contract was with the company they work for.
14. On May 5, 2021, Mr. Fernando signed a "Consultant Agreement" with "BLMP PTE Ltd." (BLMP). It is undisputed this is the agreement Mr. Fernando provided services and sought payment under. Mr. Fernando addressed his own invoices to BLMP. The

evidence is that each of Mr. Ma, Mr. King, and Mr. Smith are employees of BLMP. BLMP is not a party to this dispute.

15. Mr. Fernando argues that the respondents should be named because BLMP is a company based out of Singapore, and he had “no other choice than to hold the Canadian contacts responsible”. I disagree. Mr. Fernando’s agreement was solely with BLMP. Corporate entities are legally distinct from their officers, shareholders, and employees. There is no indication any of the respondents contracted with Mr. Fernando in their personal capacity, or at all.
16. Given the agreement in evidence, Mr. Fernando’s \$2,145 claim would properly be against BLMP, as the other contracting party. I see no legal basis to hold Mr. Ma, Mr. King, or Mr. Smith personally responsible for it. It follows that they are not responsible for Mr. Fernando’s expenses in starting this dispute. So, I dismiss Mr. Fernando’s claim for tribunal fees. Mr. Fernando did not claim any dispute-related expenses.
17. The respondents were successful in this dispute, but did not pay any tribunal fees.
18. Mr. Ma claims \$3,800 USD in dispute-related expenses for his “time spent dealing with [this] dispute”, based on his “freelancing rates”. In his submissions, he reduced this amount to \$3,680 USD. The CRT’s rules say that compensation for “time spent” is usually not awarded except in extraordinary cases. I find this was not an extraordinary case. Additionally, I note Mr. Ma did not provide any evidence in support of this claim. So, I dismiss Mr. Ma’s claim for time spent.

ORDER

19. I dismiss Mr. Fernando's claim, Mr. Ma's claim for dispute-related expenses, and this dispute.

Andrea Ritchie, Vice Chair