



Civil Resolution Tribunal

Date Issued: October 31, 2023

File: SC-2022-006418

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Khachane v. MacDonald*, 2023 BCCRT 938

B E T W E E N :

PIERRE KHACHANE

APPLICANT

A N D :

KYLE MACDONALD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for painting services.
2. The applicant, Pierre Khachane, says he was hired by the respondent, Kyle MacDonald, to do some interior painting. Mr. Khachane says he completed the agreed work, but that Mr. MacDonald has failed to pay. Mr. Khachane claims \$4,200.

3. Mr. MacDonald says he has “no personal interest” in this claim. I infer it is Mr. MacDonald’s position that this claim should be dismissed.
4. The parties are each self-represented.

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.
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.

ISSUE

8. The issue in this dispute is the extent to which, if any, Mr. MacDonald owes Mr. Khachane \$4,200 for painting services?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Khachane must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the

parties' submissions and evidence but refer only to what I find is necessary to provide context for my decision.

10. Mr. Khachane says that Mr. MacDonald was hired by a third-party homeowner, RD, to do excavating and blasting work next to a newly built house. He says Mr. MacDonald's work damaged the new home's interior paint by causing drywall nails to pop and corner beads to crack. Mr. Khachane says that Mr. MacDonald was responsible for the costs of fixing that damage. Mr. MacDonald did not specifically dispute these background facts, and so I accept they are true. RD is not a party to this dispute.
11. Mr. Khachane provided a series of emails between himself, RD, and Mr. MacDonald. I find the emails show that Mr. MacDonald gave RD authority to act as his agent to enter into a contract with Mr. Khachane to do the painting required to fix the damage Mr. MacDonald caused.
12. Specifically, the emails show that Mr. Khachane emailed RD an estimate for the paint job totalling \$4,000 plus GST on June 8, 2022. RD then forwarded that estimate to Mr. MacDonald and asked him to advise how to proceed. Mr. MacDonald asked when Mr. Khachane could start, and RD later confirmed Mr. Khachane could start the week of June 20, 2022. I find Mr. MacDonald likely instructed RD to arrange for Mr. Khachane to proceed with the painting job, as there is no indication to the contrary.
13. The final email was from RD to Mr. MacDonald on June 29, 2022, stating that the painting was completed, and they would get Mr. Khachane to invoice Mr. MacDonald directly. There is no evidence that Mr. MacDonald responded or that he disputed his responsibility to pay for Mr. Khachane's painting services.
14. So, based on the emails, I find that through RD acting as his agent, Mr. MacDonald agreed to pay for Mr. Khachane's services, and that he accepted Mr. Khachane's estimate for \$4,000 plus GST.
15. Mr. MacDonald argues that he was not hired in his personal capacity "to do any job". I infer that he means RD hired Mr. MacDonald's company to do the excavating and

blasting work, though I note that Mr. MacDonald did not provide a copy of that contract or any other evidence about it. I also infer it is Mr. MacDonald's position that Mr. Khachane should have filed this claim against Mr. MacDonald's company, and not Mr. MacDonald personally.

16. I find that Mr. MacDonald is relying on the principle in law that a corporation is a separate legal entity that can enter into contracts, independent from its shareholders, officers, or employees. The difficulty for Mr. MacDonald is that he did not provide any supporting evidence of his alleged company. The only evidence Mr. MacDonald filed in this dispute was a partial phone bill for Mr. MacDonald "in care of K5 Contracting". There is no indication that K5 Contracting is an incorporated entity, rather than simply a sole proprietorship, for which Mr. MacDonald would be personally liable.
17. Further, even if I accepted that K5 Contracting is a corporation, a person entering into a contract on behalf of a limited liability corporation has an obligation to make that clear to the other party. If that is not done, the person can be held personally liable: *Pageant Media Ltd. v. Piche*, 2013 BCCA 537 at paragraphs 41 to 46. In other words, Mr. MacDonald bears the burden of proving Mr. Khachane knew or should have known he was contracting with Mr. MacDonald's company. However, there is no evidence that either Mr. MacDonald or RD advised Mr. Khachane that he was contracting with Mr. MacDonald's company, rather than with Mr. MacDonald personally. I also note that none of Mr. MacDonald's emails referenced a company name.
18. Overall, I accept Mr. Khachane's evidence that he understood he was dealing with Mr. MacDonald personally. I find there is insufficient evidence that Mr. Khachane knew or should have known he contracted with a corporation. Therefore, I find Mr. MacDonald is personally responsible for Mr. Khachane's invoice.
19. Mr. MacDonald does not dispute that the work was completed according to Mr. Khachane's estimate or that the amount owing is \$4,200. There is also no suggestion or allegation of any deficiencies with Mr. Khachane's work. So, I order Mr. MacDonald to pay Mr. Khachane the claimed \$4,200.

20. The *Court Order Interest Act* applies to the CRT. Mr. Khachane is entitled to pre-judgment interest on the \$4,200 from July 5, 2022, the date he sent Mr. MacDonald his invoice, to the date of this decision. This equals \$197.95.
21. 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. As the successful party, I find Mr. Khachane is entitled to reimbursement of \$175 in paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

22. Within 21 days of the date of this decision, I order Mr. MacDonald to pay Mr. Khachane a total of \$4,572.95, broken down as follows:
- a. \$4,200 in debt,
 - b. \$197.95 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
23. Mr. Khachane is entitled to post-judgment interest, as applicable.
24. 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.

Kristin Gardner, Tribunal Member