



Civil Resolution Tribunal

Date Issued: December 6, 2023

File: SC-2023-000269

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Therault v. Sarin Constructions Inc.*, 2023 BCCRT 1065

B E T W E E N :

JOSEPH ALAIN THERIAULT

APPLICANT

A N D :

SARIN CONSTRUCTIONS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about payment for construction work. In 2022 Joseph Alain Theriault worked as a contractor for Sarin Constructions Inc. (Sarin) on 3 construction contracts. Mr. Theriault says Sarin has failed to fully pay him for his construction work. He also says Sarin stole his tools and misrepresented its principal's qualifications. He

claims \$2,500 for unpaid work and \$2,500 for mental distress and punitive damages, for a total of \$5,000.

2. Sarin says it paid Mr. Theriault what it owed him under the parties' verbal agreements. It denies stealing Mr. Theriault's tools or misrepresenting its principal's qualifications. It says it does not owe Mr. Theriault anything.
3. Mr. Theriault is self-represented, and Sarin is represented by its principal.

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.
5. 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.
6. 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.
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. In his submissions Mr. Theriault refers to Sarin defaming and slandering him, though he does not request any specific remedies related to these allegations. Section 119

of the CRTA expressly excludes defamation claims from the CRT's small claims jurisdiction. Mr. Theriault acknowledges this in his submissions. In any event, I find Mr. Theriault has not sufficiently raised these allegations such that Sarin was aware it was required to respond to them. So, I decline to address these allegations further in this decision.

9. I note here that the Employment Standards Branch has exclusive jurisdiction over employee entitlements under the *Employment Standards Act*. However, the parties agree that Mr. Theriault worked for Sarin as an independent contractor, not an employee. I am satisfied that the CRT has jurisdiction over Mr. Theriault's claims.

ISSUES

10. The issues in this dispute are:

- a. Is Mr. Theriault entitled to \$2,500 for his construction work?
- b. Is Mr. Theriault entitled to \$2,500 for mental distress and punitive damages?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Mr. Theriault must prove his claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Mr. Theriault's claims.

Is Mr. Theriault entitled to \$2,500 for his construction work?

12. Mr. Theriault worked as a contractor for Sarin from May to July 2022 under 3 separate construction contracts for roofing and drywall work. Sarin paid Mr. Theriault \$1,550 for his work under the first 2 contracts, and \$1,119 for his work under the third contract.

13. Mr. Theriault says Sarin still owes him \$682.50 for his work under the first 2 contracts, and \$1,506 for his work under the third contract, for a total of \$2,188.50. He says the \$311.50 difference between the \$2,500 he claims in this dispute for unpaid work and the \$2,188.50 he says Sarin owes him for his work is for materials returned to a hardware store. Sarin says it has already paid Mr. Theriault what it owes him for his construction work. For the following reasons, I agree with Sarin.
14. Mr. Theriault provided no explanation or evidence about the \$311.50 he claims for returned materials, so I find this aspect of his claim unproven. I turn now to his \$2,188.50 claim for unpaid work.
15. Mr. Theriault says that at his initial meeting with Sarin the parties agreed to split the net profit on each contract equally. Mr. Theriault says Sarin illegally deducted various expenses from the net profit on these contracts. He says these expenses included truck insurance, truck maintenance and repairs, fuel, WorkSafeBC premiums, and tools. Mr. Theriault says Sarin never provided receipts for these expenses. However, he does not explain how he calculated the \$2,188.50 he claims for his construction work in the absence of these receipts. He also does not explain why Sarin was not permitted to deduct the listed expenses if the parties agreed to split the net profit, as opposed to the gross profit, on each contract.
16. Mr. Theriault also says he did 80% of the total work under the contracts, including all paperwork and carpentry work, but he provided no documentary evidence to support this assertion. Even if he could prove that he did most of the work, I find it would not matter since he says he agreed to a 50/50 profit split with Sarin. Mr. Theriault says Sarin's principal said he was a civil engineer capable of doing carpentry work. Mr. Theriault says that after completing the first 2 contracts he realized Sarin's principal could not do any paperwork and could only do basic labour such as truck driving and cleaning. Again, he provided no evidence to support these assertions.
17. Sarin denies agreeing to evenly split the net profits on each contract with Mr. Theriault. Sarin says that for each of the 3 construction contracts the parties verbally agreed on the amounts Sarin would pay Mr. Theriault. Sarin says it agreed to pay Mr.

Therault \$1,050 for the first contract, \$500 for the second contract, and \$1,119.35 for the third contract. Sarin says it paid Mr. Therault the amounts agreed upon, so it does not owe him anything. It also denies misrepresenting its principal's qualifications and capabilities, and denies that Mr. Therault completed most of the work under the 3 contracts.

18. Sarin submitted a July 7, 2022 invoice it received from Mr. Therault for \$1,550 for his work on the first 2 contracts, which Mr. Therault signed. Sarin says this proves Mr. Therault accepted \$1,550 as payment for his work under the first 2 contracts. Sarin says Mr. Therault refused to send an invoice for the third contract. Mr. Therault does not explain why he issued an invoice for less than the amount he says Sarin owes him under the first 2 contracts.
19. Mr. Therault is responsible for proving his claim. I find he has failed to prove that he is entitled to any additional payment from Sarin for his work on the 3 contracts. I dismiss this claim.

Is Mr. Therault entitled to \$2,500 for mental distress and punitive damages?

20. Mr. Therault claims \$2,500 for mental distress and punitive damages because he says Sarin stole his tools and misrepresented that its principal is a civil engineer. Sarin denies these allegations.
21. In *Eggberry v. Horn et al*, 2018 BCCRT 224, the CRT found there must be some medical evidence to support a claim for mental distress. That decision is not binding on me, but I find it persuasive, and I adopt it here. Mr. Therault has failed to provide medical evidence that any of Sarin's conduct caused him mental distress, so I dismiss this aspect of his claim.
22. Punitive damages are awarded to punish extreme conduct that is worthy of condemnation. Punitive damages can only be awarded to punish harsh, vindictive, reprehensible, and malicious behaviour (see *Vorvis v. ICBC*, [1989] 1 SCR 1085).

Punitive damages should be awarded with restraint, and only in exceptional circumstances (see *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, at paragraph 69).

23. First, Mr. Theriault says he is entitled to punitive damages because Sarin stole his tools. However, I find the evidence does not support this allegation. The texts in evidence show that on July 20, 2022, Mr. Theriault asked Sarin to return his tools the following day. On July 21, 2022, Sarin responded that Mr. Theriault could pick up his tools at his convenience. On the same date Mr. Theriault responded that if Sarin did not immediately bring his tools to “the restaurant” he would file a police report. Sarin asked Mr. Theriault to come to its office to ensure all of his tools were accounted for, after which Sarin offered to drop them off at his home. The texts indicate that Mr. Theriault called the police who went to Sarin’s office, and Sarin gave Mr. Theriault’s tools to the police. The texts also indicate that Mr. Theriault was still missing some tools which Sarin had in its possession. Sarin said it was willing to return the missing tools to Mr. Theriault, but I find the texts show Mr. Theriault did not cooperate. I find there is nothing in the evidence to suggest that Sarin’s conduct with respect to the tools was harsh, vindictive, reprehensible, or malicious. On the contrary, I find the text messages show Sarin’s willingness to cooperate with Mr. Theriault to return his tools to him.
24. Mr. Theriault also says he is entitled to punitive damages because Sarin misrepresented that its principal is a civil engineer. He says Sarin’s misrepresentation caused him to lose contracts, but he provided no documentary evidence that he lost any contracts or the reasons he lost them, so I find this unproven. Sarin says its principal was a civil engineer in India, which is what it told Mr. Theriault. Sarin also says that none of the contracts it completed with Mr. Theriault required civil engineering expertise. Mr. Theriault does not deny this. Without more, I find Mr. Theriault has failed to prove that Sarin misrepresented its principal’s qualifications.
25. In summary, I find Mr. Theriault has failed to prove that Sarin stole his tools or misrepresented its principal’s qualifications. I find there is no evidentiary basis for awarding punitive damages, and I decline to do so. I dismiss this claim.

26. 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. Since Mr. Theriault was unsuccessful, I find he is not entitled to reimbursement of the \$175 he paid in CRT fees or the \$500 he claimed in dispute-related expenses for registered mail, filing fees, and other unspecified expenses. Sarin did not pay any CRT fees or claim any dispute-related expenses.

ORDER

27. I dismiss Mr. Theriault's claims and this dispute.

Sarah Orr, Tribunal Member