



# Civil Resolution Tribunal

Date Issued: February 20, 2024

File: SC-2023-000323

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *In-House Receivable Services Ltd. v. Living Water Mechanical Services Ltd.*, 2024 BCCRT 157

B E T W E E N :

IN-HOUSE RECEIVABLE SERVICES LTD.

**APPLICANT**

A N D :

LIVING WATER MECHANICAL SERVICES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. In-House Receivable Services Inc. (IRS) is a debt collection agency. Living Water Mechanical Services Inc. (Living Water) hired IRS to help collect money owed to Living Water by its customers. IRS says that Living Water has refused to pay for some of its debt collection services, and that \$5,026.23 is outstanding. IRS claims \$5,000,

which is the small claims monetary limit at the Civil Resolution Tribunal (CRT), and it expressly abandons its claim to any amount over \$5,000.

2. Living Water says the services IRS provided did not match what it invoiced. Living Water also says the services provided were poorly executed. It specifically disagrees with IRS's invoices and the amount claimed.
3. IRS is represented by an employee. Living Water is represented by its owner, Stuart Kyle.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. 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 to provide proportional and speedy dispute resolution, 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.

## **ISSUE**

8. The issue in this dispute is whether Living Water must pay IRS \$5,000 for debt collection services.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant, IRS must prove its claims on a balance of probabilities (meaning “more likely than not”). I note that IRS did not provide any final reply submissions, despite having the opportunity to do so. I have read all the parties’ submitted arguments and evidence but refer only to what I find is necessary to explain my decision.
10. It is undisputed that Living Water hired IRS to help collect its customers’ outstanding accounts. Living Water and IRS entered into a written contract on January 15, 2021, a copy of which is in evidence. It set out specific collection rates IRS was entitled to based on the amount it collected. It also provided, among other things, that listing an account with IRS was express permission for IRS to litigate the debt, and that Living Water must indemnify IRS for all expenses and legal fees it incurred for an account that was disputed by the debtor or subject to a defense, set off, or counterclaim proceedings.
11. On January 15, 2021, Living Water also signed a Commercial Collection Assignment Form, which listed a specific debt owed by a third-party, DESC, for IRS to collect. The form stated that the principal debt amount was \$13,023.66. Given the terms of the parties’ contract, I find this form generally constituted authorization by Living Water for IRS to proceed with collecting DESC’s account, including by litigation.
12. IRS also provided an undated Request to Litigate form signed by Living Water. This form specifically authorized IRS to litigate DESC’s debt on Living Water’s behalf. I find it is part of the parties’ contract. The relevant terms included:
  - a. Living Water agreed and understood that further legal charges would be incurred in pursuit of the claim.

- b. Living Water was responsible for all court related costs, fees, and disbursements spent pursuing the claim. IRS would pay the costs directly and then bill them to Living Water, and Living Water agreed to repay any legal invoices IRS submitted within 30 days of receipt.
  - c. IRS would not apply any further charges in pursuing the claim, other than the legal charges, fees, and disbursements.
13. IRS says it commenced litigation to recover DESC's debt to Living Water, and that IRS incurred costs for doing so, including legal fees. Living Water does not dispute this. IRS provided 2 invoices for legal services from ASG Law, each addressed to Living Water. The first is dated January 4, 2022, for \$1,435, and the second is dated July 9, 2022, for \$431.20. I am satisfied these invoices relate to legal services for the DESC litigation. I infer IRS paid ASG Law's invoices and seeks repayment of them from Living Water as part of its claim in this dispute. However, this is not entirely clear, as I explain below.
14. In the Dispute Notice, IRS claims Living Water has failed to pay 2 invoices it says it issued to Living Water (1818-20220128 and 1818-20221128). However, IRS did not provide copies of those 2 invoices. It provided only an account aging statement, which set out a list of IRS's various invoice numbers and Living Water's corresponding payments, including the dates and amounts. The statement indicates that invoice 1818-20220128 was dated January 28, 2022, for \$1,435, and invoice 1818-20221128 was dated November 11, 2022, for \$3,591.23. Those are the only 2 invoices listed on the statement for which there is no corresponding payment from Living Water recorded, and they equal the \$5,026.23 IRS says is outstanding.
15. Living Water does not particularly dispute that it has not paid those 2 invoices, but it says it disagrees with them and the amounts charged. The difficulty for IRS is that without the invoices themselves, I cannot determine what IRS billed Living Water for and whether the charges were billed according to the parties' contract.

16. That said, invoice 1818-20220128 is for exactly the same amount as ASG Law's January 4, 2022, invoice, and it is dated just over 3 weeks after ASG Law's invoice. Further, Living Water provided an October 11, 2022, email to IRS about invoice 1818-20220128, which set out Living Water's concerns over the lawyer's billed time and performance and requested a phone call with IRS to discuss those concerns. Overall, I am satisfied that IRS's claimed invoice 1818-20220128 is for repayment of ASG Law's January 4, 2022, invoice for legal services related to the DESC litigation.
17. As noted above, Living Water expressly agreed in the Request to Litigate form that it was responsible for all court related costs and fees, and that it would reimburse IRS for any legal services related to the DESC litigation within 30 days. Therefore, I find Living Water must pay IRS's invoice 1818-20220128, subject to any applicable set-off discussed below.
18. A set-off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue. The burden of proving a set-off is on the party alleging it, in this case, Living Water. See *Wilson v. Fotsch*, 2010 BCCA 226.
19. Living Water argues the Request to Litigate form said a different law firm would be its legal representative, and that Living Water never authorized IRS to pay ASG Law to represent it. Living Water says that IRS switched lawyers 3 times, and so work was duplicated at Living Water's expense. Living Water also says the lawyers IRS hired were unprepared, and that Living Water asked the last lawyer to withdraw due to their alleged poor performance. It is undisputed that Living Water ultimately settled the matter itself.
20. In short, I find Living Water is arguing it is entitled to a set-off of the amount owing to IRS for ASG Law's invoice, based on allegedly disorganized and substandard legal representation. I generally accept it was an implied term of the parties' contract that IRS would arrange for reasonably competent lawyers to represent Living Water.

21. Living Water provided an audio recording of a pre-trial conference conducted on December 15, 2021, for the DESC litigation. While Living Water's lawyer admitted they had been dealing with some personal issues and asked for a short extension due to an upcoming medical procedure, I find the lawyer appeared otherwise prepared and well informed about the case. In other words, I find the recording does not support Living Water's allegation that it received poor representation.
22. Living Water also provided an audio recording of a phone call between Mr. Kyle and IRS at some point after the pre-trial conference. IRS explained that the lawyer who appeared at the pre-trial conference only did so because Living Water's original lawyer was unavailable. I find nothing unreasonable in the circumstances about IRS arranging for a different lawyer to attend the pre-trial conference based on scheduling availability. Further, during the phone call, Mr. Kyle expressed satisfaction with the new lawyer's performance at the pre-trial conference and requested they continue to represent Living Water.
23. Living Water provided no evidence supporting its submission that it had to repeatedly provide the same documents to multiple lawyers, or that it paid to have the same work duplicated. It also provided no supporting evidence that it fired any lawyers due to dissatisfaction with their services.
24. Overall, I find Living Water has not proven IRS provided disorganized or otherwise substandard legal representation for Living Water. Therefore, I find Living Water has not established it is entitled to any set-off of the amount owing to IRS for ASG Law's legal services. I order Living Water to pay IRS \$1,495 for invoice 1818-20220128.
25. I turn to IRS's invoice 1818-20221128 for \$3,591.23. There is no evidence before me explaining what this invoice is for. Specifically, I find it is unclear whether the invoice included reimbursement of ASM Law's July 9, 2022, invoice for \$431.20. I note that the email evidence before me suggests the DESC litigation settled in June 2022. So, it is unclear what other charges IRS might have included in its invoice, if it even relates to the DESC matter at all, which I find is also not clear on the evidence before me.

26. In the absence of any evidence about what IRS billed Living Water for in its November 11, 2022, invoice, I find IRS has not proven it is entitled to payment of it. So, I dismiss IRS's claim for payment of invoice 1818-20221128.
27. The *Court Order Interest Act* applies to the CRT. IRS is entitled to pre-judgment interest on the \$1,495 from February 27, 2022, which is 30 days after it issued invoice 1818-20220128, to the date of this decision. This equals \$96.26.
28. 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 find IRS was partially successful in its claim, and so it is entitled to reimbursement of half its paid CRT fees, which is \$87.50. Living Water did not pay any fees and neither party claimed dispute-related expenses.

## **ORDERS**

29. Within 30 days of the date of this decision, I order Living Water to pay IRS a total of \$1,678.76, broken down as follows:
  - d. \$1,495 in debt,
  - e. \$96.26 in pre-judgment interest under the *Court Order Interest Act*, and
  - f. \$87.50 in CRT fees.
30. IRS is entitled to post-judgment interest, as applicable.
31. 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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Kristin Gardner, Tribunal Member