



Civil Resolution Tribunal

Date Issued: October 8, 2019

File: SC-2019-003094

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Quickway Paint & Drywall Inc. v. Konkin et al*, 2019 BCCRT 1173

B E T W E E N :

QUICKWAY PAINT & DRYWALL INC.

APPLICANT

A N D :

KEN KONKIN and COAST ISLAND TRADING COMPANY LIMITED

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute involves payment for work performed at the respondent Ken Konkin's home. The respondent, Coast Island Trading Company Limited (Coast Island) was the general contractor. The applicant, Quickway Paint & Drywall Inc. (Quickway)

was the subcontractor. Quickway claims payment for its work and supplies, in the amount of \$4,637.22 plus 18% in annual interest.

2. Coast Island says when Mr. Konkin pays it, it will then pay Quickway. Mr. Konkin says it has no contract with Quickway and he already paid Coast Island, though he also says he cancelled certain cheques because Coast Island performed poor quality work. Neither Mr. Konkin, nor Coast Island, brought third-party claims against each other.
3. Mr. Konkin is self-represented. Quickway and Coast Island are represented by company staff or principals.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:

- a. order a party to do or stop doing something;
- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 8. There is no dispute that Quickway is entitled to payment of its invoice. The issues in this dispute are who is required to pay Quickway for the work and the payment due date.

EVIDENCE AND ANALYSIS

- 9. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 10. The facts in this case are largely undisputed. Mr. Konkin hired Coast Island to perform work on his property. Coast Island then hired Quickway to supply and install the insulation and drywall. Quickway completed the work and on January 21, 2019, it invoiced Coast Island a total of \$4,637.22. The invoice remains unpaid.
- 11. The common law principle of “privity of contract” applies to this dispute. This means that a contract cannot give rights or impose obligations on persons who are not parties or beneficiaries of the contract. It is undisputed that there was no contract between Mr. Konkin and Quickway. I find Mr. Konkin had no contractual obligation to pay Quickway even though the work was on his property and he benefited from it. The parties agree Mr. Konkin’s contractual obligations were with Coast Island.
- 12. Coast Island agrees it had a contract with Quickway and that it owes Quickway \$4,637.22. Coast Island does not dispute the quality of Quickway’s work or that it was complete. However, Coast Island takes the position that it does not have to pay

Quickway until Mr. Konkin first pays Coast Island's own invoice. Once Mr. Konkin pays, Coast Island says it will also pay.

13. I have reviewed the parties' emails, quotation and invoices. I find no condition that would allow Coast Island to withhold payment from Quickway until it is paid by Mr. Konkin. There is also no evidence that Quickway agreed to such a condition. I find instead, that their contract required Coast Island to pay Quickway by the due date on the invoice. I find Coast Island was required to pay Quickway \$4,637.22 on January 21, 2019.
14. While Coast Island agrees the contractual interest rate was 18% per year, if I were to apply that rate, it would bring the claim over the tribunal's small claim monetary limit. I will allow interest only up to the monetary limit of \$5,000.00. This equals \$362.78.
15. I find Coast Island must pay Quickway \$5,000.00, calculated as \$4,637.22 for the unpaid invoice and \$362.78 in contractual interest. I dismiss Quickway's claim against Mr. Konkin.
16. I infer from its submissions, that Coast Island is requesting an order that Mr. Konkin pay Coast Island's invoices. However, to be entitled to such an order, Coast Island would need to bring a claim against Mr. Konkin and establish, on a balance of probabilities, that it is entitled to payment. I find that nothing in this decision prevents Coast Island from bringing a claim against Mr. Konkin. However, as Coast Island did not file a third-party action against Mr. Konkin, I have not considered its claim against Mr. Konkin here.
17. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Quickway claimed no dispute-related expenses, so I award none. As he was successful in this dispute, I find Mr. Konkin is not required to pay any fees. As the

unsuccessful party, I find Coast Island is required to pay Quickway \$175.00 in tribunal fees.

ORDERS

18. Within 30 days of the date of this decision, I order Coast Island to pay Quickway a total of \$5,175.00, broken down as follows:
 - a. \$4,637.22 for the unpaid invoice,
 - b. \$362.78 in contractual interest, and
 - c. \$175.00 in tribunal fees.
19. Quickway is entitled to post-judgment interest, as applicable.
20. Quickway's claims against Mr. Konkin are dismissed.
21. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
22. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Trisha Apland, Tribunal Member