



Civil Resolution Tribunal

Date Issued: March 1, 2024

File: SC-2023-000312

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lawrence (dba Sirocco Food + Wine Consulting) v. Emkao Foods Inc.*,
2024 BCCRT 208

B E T W E E N :

KARINE LAWRENCE (Doing Business As SIROCCO FOOD + WINE
CONSULTING)

APPLICANT

A N D :

EMKAO FOODS INC. and MARIE MADELEINE NYEMBA AYISSI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. The respondent, Emkao Foods Inc., hired the applicant, Karine Lawrence, to prepare a food safety report and manual. The applicant does business as Sirocco Food +

Wine Consulting. The applicant says that Emkao failed to pay their \$4,200 invoice. They claim reimbursement of that amount from Emkao and the other respondent, Maria Madeleine Nyemba Ayissi, who is Emkao's CEO.

2. The respondents say that the materials the applicant produced were useless and Emkao failed a compliance audit. They ask me to dismiss the applicant's claim. They also suggest that the applicant is not entitled to payment because they already marked Emkao's invoice as "paid". Ms. Ayissi represents both respondents.

JURISDICTION AND PROCEDURE

3. 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 says 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.
4. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, any potential benefit of an oral hearing is outweighed by 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.
5. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
6. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUE

7. The issue in this dispute is whether either of the respondents must pay the applicant's \$4,200 invoice.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove their claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. I will start by briefly dealing with the claim against Ms. Ayissi. All the evidence before me indicates that the applicant's contract was with Emkao, not Ms. Ayissi personally. In their submissions, the applicant explicitly says that they want Emkao to pay their invoice. The applicant does not say anything about why Ms. Ayissi is personally responsible for the invoice. Corporations are separate legal entities from the individuals that own and run them. A corporation's officers and directors are not liable for the corporation's debts except in rare circumstances that do not apply here. I dismiss the claim against Ms. Ayissi. I turn then to the applicant's claim against Emkao.
10. The applicant provided Emkao with a quote on February 12, 2022. The quote outlined several services the applicant said would help Emkao get the necessary certification to export food to the United States. Specifically, the applicant offered to perform a food safety gap assessment and develop food safety procedures for \$4,000 plus tax. The applicant offered several "optional" services, which Emkao did not purchase.
11. There is no signed contract in evidence. However, the applicant prepared a food safety gap assessment and developed food safety procedures as outlined in the quote for \$4,000 plus GST. I infer from this that Emkao accepted the quote as presented.

12. The applicant provided a \$4,200 invoice dated August 2, 2022. There is no evidence about when the applicant first sent this invoice to Emkao, but I infer it was sometime in August because Emkao wrote the applicant a \$4,200 cheque on September 2.
13. On September 26, the applicant emailed Emkao a copy of several documents to use in an audit. The applicant also told Emkao that they would let Emkao know when they had received the cheque.
14. On September 28, the applicant emailed Emkao a copy of the August 2 invoice. It showed a \$4,200 payment and a zero balance. The applicant says they provided this invoice before Emkao's cheque had cleared to help Emkao claim a government grant. Contrary to Emkao's suggestion, providing the invoice marked "paid" did not relieve Emkao of its obligation to pay the invoice. The applicant simply trusted that Emkao's cheque would clear. However, on September 29, Emkao emailed the applicant that "we might have some issues with this check". The cheque bounced.
15. Throughout November, the applicant repeatedly asked Emkao to pay the invoice. At one point, Emkao suggested that it would only pay if it passed the audit scheduled for December 5. Ultimately, however, Emkao acknowledged that it had to pay the invoice and apologized for the delay. On November 25, Emkao told the applicant it would pay by e-transfer one to three weeks later.
16. On December 6, the applicant emailed Emkao asking how the audit had gone. Emkao responded that they had not felt well prepared and attached the auditor's report. The report in evidence shows an 86% score and a list of outstanding deficiencies that Emkao had 30 days to correct.
17. Emkao did not immediately rely on the audit result as a reason not to pay the applicant's invoice. In mid-December, Emkao mailed the applicant a series of post-dated cheques. Both parties provided these cheques in evidence, which add up to \$4,000. The applicant says the first one bounced, and I infer they did not attempt to cash the rest. I say this because the applicant insisted in an email that Emkao pay by

money order, credit card, or e-transfer, not by cheque. There is no suggestion from either party that Emkao has paid any part of the invoice.

18. Emkao now argues that there were deficiencies in the applicant's work product that it had to pay another consultant to correct. Emkao provided no evidence to prove it paid another consultant to fix or supplement the applicant's work. Emkao also did not explain what in the audit report indicates a problem with the applicant's work. As noted, the audit report contains a list of things Emkao had to correct, but none of them are obviously connected to the applicant's work. Emkao says that the auditor said there were problems with the applicant's work, but there is no evidence from the auditor. Notably, there is also no evidence that Emkao raised concerns about the applicant's work immediately after the audit.
19. I find that expert evidence is required to prove that the applicant's work fell below a reasonable standard. The mere facts that the audit report contained deficiencies and achieved a score under 100% do not prove that the applicant's work was to blame. In short, I find that Emkao has failed to prove any deficiencies with the applicant's work. I order Emkao to pay the \$4,200 balance owing.
20. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the invoice from August 2, 2022, to the date of this decision. This equals \$263.72.
21. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicant was successful, so they are entitled to reimbursement of \$225 in CRT fees. The applicant did not claim any dispute-related expenses.

ORDERS

22. Within 30 days of this decision, I order Emkao to pay the applicant a total of \$4,688.72, broken down as follows:
 - a. \$4,200 in debt,

- b. \$263.72 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$225 in CRT fees.

23. I dismiss the applicant's claim against Ms. Ayissi.

24. The applicant is entitled to post-judgment interest, as applicable.

25. This is a validated decision and order. Under CRTA section 58.1, 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.

Eric Regehr, Vice Chair