Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *B.C.D. Holdings Ltd. v. Ironhorse Shoring and Deep Foundation Ltd.*, 2024 BCCRT 746

B E T W E E N :

B.C.D. HOLDINGS LTD.

APPLICANT

A N D :

IRONHORSE SHORING & DEEP FOUNDATION LTD. and FRANK FEZZA

RESPONDENTS

A N D :

B.C.D. HOLDINGS LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Amanda Binnie

INTRODUCTION

1. These disputes are about invoices for crane work. The applicant and respondent by counterclaim, B.C.D. Holdings Ltd (BCD), claims the respondents, Frank Fezza and Ironhorse Shoring & Deep Foundation Ltd. s(Ironhorse), owe $2,443.49 in unpaid invoices for material delivery services.

2. Ironhorse says it has paid all invoices, except one BCD refused to accept payment for. Ironhorse counterclaims for $1,909.66 for an overcharge it paid on a previous invoice.

3. BCD is represented by an employee or principal. Ironhorse is represented by Frank Fezza. Frank Fezza did not file a separate Dispute Respone and is technically in default, which I will discuss below.

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. I also find the parties do not dispute the main facts surrounding the case, only the appropriateness of BCD's invoice. 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 court.

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.

ISSUES

8. The issues in this dispute are:

    a. Is BCD entitled to payment for its unpaid invoices?

    b. Is Ironhorse entitled to a refund from BCD for an overcharge on an earlier invoice?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, BCD must prove its claims on a balance of probabilities, meaning more likely than not. Ironhorse has the same standard for its counterclaim. I note that Ironhorse provided no evidence, other than its Dispute Response and Dispute Notice in the counterclaim, despite being given repeated opportunities to do so. I have read all of BCD's submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

The Respondents

10. As mentioned above, Frank Fezza did not file their own Dispute Response. However, based on the company search, I accept Frank Fezza is a director of Ironhorse. Frank Fezza also filed the Dispute Response on behalf of Ironhorse and I infer they intended to have it apply to them as well. So, I accept Ironhorse's Dispute Response was

intended to apply to Frank Fezza as well, and exercise my discretion not to assume liability against Frank Fezza, despite their technical default status.

11. In any event, I find Frank Fezza is not a proper respondent to this dispute. A corporation is a distinct legal entity, separate from its directors, shareholders, officers, or employees. Officers, directors and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation (see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121).

12. Ironhorse is incorporated, and BCD has provided no evidence or allegation that Frank Fezza interacted with BCD in any other capacity than as an employee of Ironhorse. So, I find there is no legal basis for BCD's claims against Frank Fezza personally, and I dismiss BCD's claims against them. This leaves BCD's claim against Ironhorse, and Ironhorse's counterclaim, which I now turn to.

Background

13. BCD provides material delivery services. Though Ironhorse does not specifically say what it does, I infer it is a construction business.

14. Neither party provided a copy of a contract between them. BCD says the parties entered into an agreement in October 2022, but I infer there was never a written contract.

15. Based on the date of the first of BCD's invoices, I accept BCD began to do deliveries for Ironhorse around October 2022. It would complete deliveries between Ironhorse's shop and its jobsites, as well as between jobsites.

16. BCD provided copies of all invoices it sent to Ironhorse. From October until December 2022, BCD invoiced Ironhorse a total of $5,168.94, which Ironhorse paid.

17. The difficulties between the parties related to a December 14, 2022 invoice for $3,819.30. I note before this point, the deliveries had all been in roughly the same geographical area. The December 14 invoice was for a significantly farther delivery.

18. It is undisputed Ironhorse initially paid the $3,819.30 invoice, and BCD continued to make deliveries for Ironhorse. BCD issued another 10 invoices for a total of $2,443.49 for work done in January to March 2023.

19. In its Dispute Response, Ironhorse admits it still owes BCD $2,443.49. However, it says it overpaid BCD for the $3,819.30, so says BCD should reimburse it $1,909.66 for the over payment. Ironhorse says this leaves a final payment to BCD of $533.83.

What, if any, payment is BCD entitled to for unpaid invoices?

20. Ironhorse issued a cheque for 2023 invoices on March 21. However, that cheque contained a "credit" for the December 14 invoice of $1,909.66, and so the cheque was only for $346.72. BCD does not say why it did not accept Ironhorse's cheque, but I infer this was because it was not for the full amount and BCD did not accept the "credit" Ironhorse applied.

21. I have found Ironhorse does not dispute any of the 2023 invoices, and explicitly acknowledges in its Dispute Response it owes BCD $2,443.49. So, I find Ironhorse must pay BCD $2,443.49 for unpaid invoices.

Is BCD entitled to payment for its unpaid invoices?

22. The December 14 invoice was for $3,819.30. Ironhorse says it should have been roughly half this, or $1,909.64. It does not say how it came to this amount. As mentioned above, Ironhorse has already paid the December 14 invoice.

23. It is undisputed no quote was provided before the December 14 delivery, which was for a farther delivery than BCD had done for Ironhorse. BCD says this delivery was made during snowy weather, and I accept given the month and location of the delivery, weather was likely poor.

24. The December 14 invoice itself does not provide a breakdown of the cost, other than fuel of $330.68, taxes of $181.97 and "override" of $3,306.75. I infer "override" means a custom fee for a longer or more complicated delivery.

25. BCD provided an email from DW, an employee of BCD, who details the quote. This email is dated March 11, 2024 and I infer it was created for this dispute. DW says the December 14 invoice included charges for:

    a. $330 for preload

    b. $2,983.20 for delivery

    c. $130 for “trip permits plan, worst case scenario”

    d. $134.75 for “hotel worst case 1 night”

    e. Plus 10% fsc and 5% tax

26. I infer “fsc” is the fuel surcharge. I note though DW listed fsc separately, it was inadvertently listed at the bottom of their email again, and I accept it was only meant to be charged once. This brings the total to $3,756.85, and BCD does not explain the difference between this and the amount on BCD’s invoice to Ironhorse. DW’s email does not say whether permits or the hotel were required, so I find BCD was not entitled to bill Ironhorse for this.

27. As mentioned above, the parties did not have a written contract, and BCD did not provide a quote before the December 14 delivery. Ironhorse says it would not have had BCD do the delivery if it knew the cost. Where parties do not have a binding contract, a contractor is still entitled to be paid a reasonable amount for work performed based on quantum meruit, meaning “value for work done” (see *Johnson v. North Shore Yacht Works Corp*., 2014 BCSC 2057 at paragraph 100).

28. BCD submitted 6 other invoices for deliveries done along the same route as the December 14 delivery it did for Ironhorse. These invoices range from $2,822.40 to $5,250. All but one of these invoices use “quotes” instead of “override”, so I infer the party to those invoices was aware of the charge in advance. There is also no separate fuel surcharge on any of those invoices. There is no breakdown of how BCD arrived at those fees.

29. So, what is BCD entitled to for the December 14 delivery? I find, based on its own practice for longer trips shown in the provided invoices, the fuel surcharge is normally included, and I find by charging Ironhorse a fuel surcharge in addition to an "override" rate, BCD is double charging. So, I find it is not entitled to fuel of $330.68, permit fees of $130 or hotel fee of $134.75. This brings the invoice down to $3,042 plus tax, or $3,194.10.

30. I have found Ironhorse paid BCD's invoice of $3,819.30, so I find it is entitled to a refund of $625.20. As I have found Ironhorse owes BCD $2,443.49, the net result is that BCD is entitled to payment of $1,818.29.

Interest and CRT fees

31. The *Court Order Interest Act* (COIA) applies to the CRT. A party is not entitled to interest under COIA if there is an agreement about interest. However, there is no evidence Ironhorse agreed to a contractual interest rate, despite a 2% interest rate listed on the BCD's invoices (see *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.,* 1999 BCCA 775). So, I find BCD is entitled to pre-judgment interest on the $1,818.29 from March 21, 2023, the date of Ironhorse's reduced cheque to the date of this decision. This equals $123.27.

32. 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 BCD was successful in its claim, and is entitled to reimbursement of $175 in CRT fees. However, Ironhorse was partially successful in its counterclaim, so I find it is entitled to reimbursement of $67.50, which is half of the CRT fees it paid. So, I find BCD is entitled to a net reimbursement of $107.50 in CRT fees. Frank Fezza was successful, but did not pay any CRT fees personally. No party claimed any dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Ironhorse to pay BCD a total of $2,049.06, broken down as follows:

    a. $1,818.29 in debt,

    b. $123.27 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $107.50 in CRT fees.

34. BCD is entitled to post-judgment interest, as applicable.

35. BCD's claims against Frank Fezza are dismissed.

36. This is a validated decision and order. 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.

Amanda Binnie, Tribunal Member