Civil Resolution Tribunal

Date Issued: August 7, 2024

File: SC-2023-006535

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pheedar Mfg. Inc. v. Ashbrooke Quality Assurance Limited*, 2024 BCCRT 754

B E T W E E N :

PHEEDAR MFG. INC.

APPLICANT

A N D :

ASHBROOKE QUALITY ASSURANCE LIMITED

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Alison Wake

INTRODUCTION

1. Pheedar Mfg. Inc. (Pheedar) hired Ashbrooke Quality Assurance Limited (Ashbrooke) to assist it with developing a medical device Quality Management System (QMS). Pheedar says Ashbrooke's QMS did not comply with industry standards, and it claims $5,000 as a partial refund of what it paid to Ashbrooke.

2. Ashbrooke says that its contract with Pheedar did not guarantee a specific outcome, and that it provided the services the parties' contract required. Ashbrooke denies that it was negligent in preparing the QMS, and asks me to dismiss Pheedar's claims.

3. Each of the parties is represented by a director or officer.

4. For the following reasons, I dismiss Pheedar's claims.

JURISDICTION AND PROCEDURE

5. 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

6. 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. Here, neither party requested an oral hearing, and I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. CRTA section 42 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.

Late evidence

8. Pheedar submitted several pieces of evidence after its deadline to do so. While some of this evidence duplicates evidence Pheedar had already submitted, some of it is new. Ashbrooke objects to Pheedar's late evidence and says that it is unfair for the CRT to consider evidence submitted after the deadline.

9. I find Pheedar's new late evidence is generally relevant to this dispute. Ashbrooke had an opportunity to review and respond to Pheedar's late evidence, so I find it is

not procedurally unfair for me to consider it. Considering the CRT's mandate that includes flexibility, I admit Pheedar's late evidence and have considered it in this decision, along with Ashbrooke's additional submissions about it.

ISSUE

10. The issue in this dispute is whether Ashbrooke was negligent or breached its contract with Pheedar, and if so, whether Ashbrooke must refund Pheedar the claimed $5,000.

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Pheedar must prove its claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

Background

12. On March 5, 2018, Pheedar contacted Ashbrooke to discuss its proposal for an International Standards Organization (ISO) certification. Specifically, Pheedar said that it needed help with its proposal for ISO 13485, which is a compliance certification for medical devices. I infer that Pheedar was developing a medical device and needed to develop a QMS for the device that complied with ISO 13495 requirements.

13. On March 25, 2018, Pheedar and Ashbrooke entered into an agreement for a QMS development project. The agreement said that the scope of work was to:

    a. Develop a QMS with ISO 13485 and Medical Device Single Audit Program (MDSAP),

    b. Conduct a pre-audit prior to a registrar certification audit, and

    c. Coordinate Pheedar's certification needs with the Registrar.

14. The agreement said that the project's target start date was April 1, 2018, with a target certification date by the end of December. However, the agreement said that all dates would be "subject to final agreement and confirmation by both parties."

15. Ashbrooke proceed with developing Pheedar's QMS. The parties agree that the project took longer than originally anticipated, although each party blames the other for the delays, as discussed below.

16. Ultimately, a third-party company conducted a "stage 1" audit of Pheedar's QMS on June 15, 2020. The audit evaluated the QMS's compliance with ISO 13485 and MDSAP standards. A June 29, 2020 audit report shows that the auditor identified several "areas of concern" with the QMS, and ultimately found that it was "noncompliant to the requirements of the referenced standard". In an email to the parties, the auditor recommended that the areas of concern be addressed before the "stage 2" audit.

17. Following the stage 1 audit, the parties continued to revise the QMS. On July 21, 2021, Ashbrooke informed Pheedar that the auditor would require a new stage 1 audit before proceeding to stage 2, because it had been over a year since the original stage 1 audit.

18. On October 11, 2021, Pheedar terminated the parties' agreement by email. Invoices in evidence show that Pheedar had paid Ashbrooke $14,553 before terminating the agreement. In this dispute, Pheedar claims $5,000 (the CRT's small claims monetary limit) as a partial refund of its payments to Ashbrooke.

Analysis

19. Pheedar says Ashbrooke was negligent in its preparation of the QMS. To prove negligence, Pheedar must show that Ashbrooke owed it a duty of care, Ashbrooke breached the standard of care, and Pheedar sustained damage that was caused by

Ashbrooke's breach.[1] Although it does not use this language, I infer that Pheedar alternatively argues that Ashbrooke breached the parties' contract.

20. First, I agree with Ashbrooke's submission that the contract does not guarantee a timeline for Ashbrooke to complete the QMS, and it also does not guarantee a specific audit outcome. So, I find Ashbrooke has not breached an explicit contractual term. However, in contracts for professional or trade services, there is also an implied term that the professional will perform the work to a reasonably competent standard.[2]

21. Whether its claim is based in negligence or the implied contractual term, as the party alleging deficient work, Pheedar bears the burden of proving that Ashbrooke failed to perform its services in a reasonably competent manner.[3] Typically, expert evidence is required to show the applicable professional standard. This is because the standards of a particular industry are often outside an ordinary person's knowledge and experience. However, expert evidence is not required if the work is obviously substandard, or if the alleged deficiencies relate to something non-technical.[4]

22. Here, I find Ashbrooke's work was not obviously substandard. As noted, Ashbrooke did not guarantee a particular outcome of the stage 1 audit. While Pheedar says that Ashbrooke's QMS "failed" the audit, Ashbrooke says that ISO compliance audits do not have a pass or fail outcome. Instead, it says that the auditor simply identified items in the QMS that required additional attention before proceeding to stage 2. I find this is consistent with the auditor's June 29, 2020 email to the parties, which said that the parties did not have to send any "corrective actions" for the identified areas of concern. The auditor also said that no findings are recorded during the audit, so I accept that their comment that the QMS was "noncompliant" was not fatal to the certification process.

---

[1] *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27 at paragraph 3.
[2] *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 18.
[3] *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61.
[4] *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, affirmed 2020 BCCA 22, at paragraph 112.

23. I also considered whether Ashbrooke failed to complete the project in a reasonable time, particularly given that the auditor required a second stage 1 audit because of the time that passed after the original stage 1 audit without proceeding to stage 2. First, I find there is no documentary evidence to support Pheedar's assertion that Ashbrooke assured Pheedar that it would convince the auditor to extend the deadline. Second, as noted above, both parties say that the other party caused unnecessary delays. Pheedar says that one of Ashbrooke's consultants was unavailable to attend some meetings, and Ashbrooke says that Pheedar was slow in responding to emails and taking steps to move the project forward. Both parties provided emails that support their delay allegations to some degree. Overall, I find Pheedar has not established that Ashbrooke obviously delayed the project to the point that the stage 1 audit expired.

24. Finally, in reply submissions, Pheedar asks that Ashbrooke provide information about its projects for other companies and whether those companies obtained the ISO 13485 certification. While Ashbrooke provided some information about other projects in its response to Pheedar's late evidence, I find the work that Ashbrooke has done for other companies is irrelevant to whether it completed Pheedar's QMS to a reasonable standard in this particular case.

25. In the absence of obviously substandard work, I find the question of whether Ashbrooke prepared the QMS to a reasonably competent standard is outside ordinary knowledge, and requires expert evidence.

26. Pheedar relies on a November 16, 2021 email from another quality assurance company, Quality Systems Services (QSS). In it, a QSS representative says that they agree with the gaps identified in the stage 1 audit report and that "many adjustments" will be needed to meet the ISO 13485 and MDSAP requirements. They estimate the cost of revising the QMS at $3,000.

27. I do not accept this email as expert evidence, as it does not identify the author's qualifications as required by the CRT's rules. In any event, I find that this email does not say that Ashbrooke's work was substandard. For example, it does not say that a

reasonably competent quality assurance company would be expected to prepare a QMS that would not reveal any areas of concern during a stage 1 audit.

28. Lastly, Pheedar says that it suspects Ashbrooke based its QMS on a different ISO standard, ISO 9001. Ashbrooke says that the ISO 13485 requirements are based on ISO 9001, so there are some similarities. However, it says it prepared its QMS to meet the ISO 13485 requirements. Again, I find the question of whether Ashbrooke's work complied with industry standards is beyond ordinary knowledge and requires expert evidence. The QSS email does not say anything about the similarities or differences between ISO 13485 and ISO 9001, and Pheedar did not provide any other independent evidence about Ashbrooke's work product.

29. In the absence of expert evidence, I find Pheedar has not established that Ashbrooke was negligent or breached its obligation to prepare the QMS to a reasonably competent standard. So, I dismiss Pheedar's claim for a $5,000 refund.

CRT FEES AND EXPENSES

30. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Pheedar was unsuccessful, I dismiss its claim for CRT fees. Neither party claimed dispute-related expenses, so I make no order for them.

ORDER

31. I dismiss Pheedar's claims and this dispute.

Alison Wake, Tribunal Member