



Civil Resolution Tribunal

Date Issued: August 7, 2024

File: SC-2023-007539

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lindsay Dispute Resolution Services Corporation v. Knight*, 2024 BCCRT
750

B E T W E E N :

LINDSAY DISPUTE RESOLUTION SERVICES CORPORATION

APPLICANT

A N D :

TRACEY KNIGHT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Deanna Rivers

INTRODUCTION

1. This is a dispute about payment of an invoice for mediation.
2. The applicant, Lindsay Dispute Resolution Services Corporation, says it provided mediation services to the respondent, Tracey Knight, but has not been paid. It claims \$1,470.
3. The respondent says they did not want to participate in the mediation, and they do not want to pay for it.
4. The applicant's administrative assistant represents it. The respondent is self-represented.

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 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.
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, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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.

ISSUE

8. The issue in this dispute is whether the respondent must pay the applicant \$1,470 for mediation services.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.
10. The respondent was a defendant in a lawsuit which went to mediation. On May 24, 2022, the parties to the lawsuit and the mediator, Richard Lindsay, signed a contract for mediation services. The mediation occurred but the matter did not settle.
11. The applicant says that the respondent agreed to pay for 1/3 of the mediation costs, and they attended the mediation. The applicant says it invoiced them as agreed, but they have not paid.

Parties

12. The contract for mediation services is between Mr. Lindsay, the respondent, and others. The applicant is not mentioned in the contract. I note that a contract can only give rights to people who are parties to it. This legal concept is known as "privity of contract." However, this is not an absolute rule and there are exceptions to privity. In certain circumstances, people who are not a party to a contract can claim the contract's benefits if it was intended to benefit them. See *Fraser River Pile & Dredge v. Can-Dive Services Ltd.*, 1999 CanLII 654 (SCC).
13. So, through CRT staff, I asked the parties to provide submissions on this issue. The respondent did not provide submissions. I consider the applicant's submissions below.

14. The applicant submitted that Richard Lindsay is its agent, sole shareholder, and alter ego. It says that in any event, the debt is assignable from Mr. Lindsay to the applicant.
15. The company search shows that Mr. Lindsay is the applicant's sole director. The applicant says the company was incorporated only for Mr. Lindsay's mediation services.
16. I considered the assignment of the debt from Mr. Lindsay to the applicant. The applicant submitted that Mr. Lindsay could assign his right to collect the debt from the respondent, and that he implicitly did so. However, it did not provide any documentary evidence in support of this, or submissions from Mr. Lindsay. Therefore, the evidence does not show that Mr. Lindsay assigned the respondent's alleged debt to the applicant.
17. I considered whether Mr. Lindsay was acting as an agent for the applicant when he signed the mediation contract. It is a well-established legal principle that if a person signs a contract as an agent for a corporation, they must advise the other party of that fact. See *Pageant Media Ltd. v. Piche*, 2013 BCCA 537, at paragraph 41. Where a person contracts as an agent, the contract is that of the principal (in this case the applicant) and not of the agent. See *Greenwood Shopping Plaza v. Beattie*, [1980] 2 SCR 228 at paragraph 238. However, the mediation contract makes no reference to the applicant. The emails between the parties do not refer to the applicant. As there was no reference to the applicant at any time, a reasonable person would assume that Mr. Lindsay signed the contract in his personal capacity.
18. Although the applicant did not specifically argue this, in stating that Mr. Lindsay was the alter-ego of the applicant, I find it is arguing that the applicant and Mr. Lindsay are an exception to the doctrine of privity of contract. This means it is arguing that Mr. Lindsay's interest and the applicant's interest are the same. In *Mega Structures Ltd. v. Ledcor Construction Limited*, 2012 BCSC 1678, the court found that individuals who own or control a company, and the company itself, are privies to one another. See also *Giles v Westminster Savings Credit Union*, 2006 BCSC 1600 at paragraph 45.

19. However, the privity of interest exception can only be used in defence of an action. It cannot be used to give a right to commence an action. See *Kitimat (District of) v Alcan, Inc.*, [2005] B.C.J. No. 58. As the applicant seeks to use the exception to privity of contract as a platform for commencing this dispute, I find it cannot do so.
20. While it may be the case that Mr. Lindsay would have given the fees paid by the respondent to the applicant, the contract between the parties does not require this.
21. As discussed above, the applicant must prove its claim. There is no evidence that the respondent has any legal obligation to pay any debts owing under their mediation contract to the applicant.
22. So, I find that the applicant has not proved its claim and I dismiss it.

Fees and Dispute-related Expenses

23. 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 see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in CRT fees.
24. As the applicant was not successful, I do not order reimbursement of the tribunal fees. The respondent did not pay CRT fees. Neither party claimed dispute-related expenses.

ORDER

25. I dismiss the applicant's claim and this dispute.

Deanna Rivers, Tribunal Member