

CANADA / JUDGMENT

Roy's Tile Installation & Decoration Ltd. v. Acouteria Renovations Inc.

2022 BCSC 2266

COURT

Supreme Court of British Columbia

DECIDED

29 December 2022

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2022 BCSC 2266 Roy's Tile Installation & Decoration Ltd. v. Acouteria Renovations Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Roy's Tile Installation & Decoration Ltd. v. Acouteria Renovations Inc.,

2022 BCSC 2266

Date: 20221229

Docket: S245798

Registry: New Westminster

Between:

Roy's Tile Installation & Decoration Ltd.

Petitioner

And

Acouteria Renovations Inc. and Matthew Doering

Respondents

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

Representatives of the Petitioner, appearing in person:

Y. Liu

J. Ma

No other appearances

Place and Date of Hearing:

New Westminster, B.C.

December 6, 2022

Place and Date of Judgment:

New Westminster, B.C.

December 29, 2022

I. Introduction

- [1] This matter came before this Court on December 6, 2022. It was one of many cases on a busy chambers list that day. Due to language difficulties and a shortage of time, the petitioner's representative was unable to fully present his case and so I reserved my decision in order to review his materials.
- [2] From my subsequent review of the petition materials I have come to the unfortunate conclusion that there are procedural flaws that the petitioner must remedy before the Court can render a decision.

II. Background

- [3] The petitioner brought proceedings before the Civil Resolution Tribunal ("CRT") in order to collect amounts it says it is owed for tile installation work done on four separate projects. The named respondents in that proceeding were Acouteria Renovations Inc. ("Acouteria") and Matthew Doering.
- [4] The petitioner brought four separate claims totalling \$17,600, which had the effect of bringing each claim within the CRT's \$5,000 limit. In the CRT decision, the tribunal member found that each of the matters was associated with separate projects and so it was not improper to split the claims in that fashion.
- [5] Acouteria did not file a dispute response, and so only Mr. Doering defended the matter. The tribunal member decided the matter on the basis of the documentary evidence and submissions only. There was no hearing.
- [6] There were two main issues before the CRT: (1) which of the respondents, Acouteria or Mr. Doering, was the contracting party; and (2) whether any amounts had been paid towards the debts. In a decision dated August 25, 2022, the CRT member concluded, based on the materials submitted, that Acouteria was the contracting party, Mr. Doering was likely an authorized Acouteria employee, and that the petitioner therefore contracted with Acouteria, not with Mr. Doering personally. The CRT member also found that the petitioner had been paid a number of substantial amounts towards the amounts owing. In the result, the CRT

member determined that Acouteria owed the petitioner \$3,200.

III. The Petition for Judicial Review

- [7] Unhappy with the result, the petitioner filed a petition for judicial review. As a result of recent legislative amendments, as of July 1, 2022 this is the sole method available for challenging a CRT decision made within its small claims jurisdiction in a contested matter.
- [8] On October 12, 2022, the petitioner obtained an order allowing it to serve the respondents by ordinary mail. The petitioner mailed to the respondents copies of the petition, supporting affidavit and related documents on October 21, 2022, as per a filed affidavit of service.
- [9] At the hearing of the petition on December 6, 2022, the respondents did not appear. The petitioner appeared through its principal, Mr. Yao Liu, who was accompanied by his spouse, Ms. Jia Ma.
- [10] I began the hearing by attempting to identify the documents that were before the CRT. I explained to Mr. Liu that a judicial review is a review of a decision based on the record before the tribunal below, and it is not a re-hearing of the case.
- [11] I then inquired about the reasons why Mr. Liu felt the decision was in error, and in reply I was referred to several documents that were not before the CRT. Mr. Liu and Ms. Ma also referred to some documents that had been submitted by Mr. Doering in the CRT proceeding. They said all of their points of argument were set out in the written argument that was included in the petitioner's chambers binder.
- [12] When asked what evidence they had supplied to the CRT about who the contract was with, Mr. Liu referred to several documents in the petitioner's chambers brief.
- [13] When asked why he named Acouteria if he felt his contract was with Mr. Doering, Mr. Liu said although his dealings were with Mr. Doering, it was Acouteria who was dealing with the customer. He said he named both parties because he was not sure.
- [14] I concluded that I needed more time to review the materials and so I reserved judgment.

IV. Discussion

- [15] Having now reviewed the materials, I regret to say that there are some procedural deficiencies that prevent the proper judicial review of the decision in question.
- [16] Before I turn to those deficiencies, I will take a moment to explain that judicial review is not a re-hearing of a matter, as the petitioner seems to expect. Instead, It is a hearing to determine whether the tribunal has fulfilled its role properly. In making that determination, the Court applies a particular standard of review, which can vary. Here, the appropriate standard of review appears to be that set out in s. 56.8 of the Civil Resolution Tribunal Act, S.B.C. 2012, c. 25, which reads:

56.8 (1) This section applies to an application for judicial review of a decision of the tribunal other than a decision for which the tribunal must be considered to be an expert tribunal under section 56.7.

- (2) The standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting
 - (a) a finding of fact,
 - (b) the exercise of discretion, or
 - (c) the application of common law rules of natural justice and procedural fairness.
- (3) The Supreme Court must not set aside a finding of fact by the tribunal unless
 - (a) there is no evidence to support the finding, or
 - (b) in light of all the evidence, the finding is otherwise unreasonable.
- (4) The Supreme Court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.
- (5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

[17] In this case, the petitioner appears to be challenging the findings concerning the contracting party and the payments made on the debts. Given the standard of review noted above, if these are considered findings of fact they would not be set aside unless there is no evidence to support the finding or, in light of all the evidence, the finding is otherwise unreasonable. If those findings are considered to be questions of mixed fact and law, the standard of review would be one of correctness.

[18] I turn now to the procedural deficiencies.

[19] The first deficiency is that the materials do not identify the documents and other evidence that were before the tribunal. The petitioner has included at least some documents that were before the CRT, but I am unable to determine whether these are all the materials the CRT member had before them.

[20] From my own review, some of the materials that were before the CRT appear to be missing from the chambers record, including: (1) the dispute notice issued by the CRT; (2) Mr. Doering's response; (3) the submissions (referred to at para. 17 of the decision); (4) two emails from Acouter's CEO, Brad Doering, to the petitioner requesting the petitioner's insurance documentation in relation to damage allegedly caused by the petitioner; and (5) a text message in which Mr. Doering provided the petitioner with an Acouter's email address as part of his contact information.

- [21] The omission of these documents from the petition materials prompts me to conclude that there is no full and proper record of the CRT proceedings on which this Court could conduct a judicial review. In judicial review proceedings, the petitioner must ensure the complete record that was before the tribunal is put before the Court. This record should be verified complete by way of an affidavit. This is often done by the tribunal itself. This brings me to the next issue.
- [22] The second deficiency is that the petition must be served on the decision-maker. This requirement is set out in s. 15 of the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241 [JRPA], which reads:
- 15 (1) For an application for judicial review in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power
- (a) must be served with notice of the application and a copy of the petition, and
 - (b) may be a party to the application, at the person's option.
- [23] It appears the petitioner did not serve the CRT member in this case, as required. It may be that the CRT has a particular process for service on its adjudicators, and the petitioner may wish to make inquiries to the CRT about that.
- [24] The third deficiency arises from the petitioner having included evidence or documents that were not before the CRT. Since the function of a court on judicial review is supervisory, meaning that the court is reviewing what went on before the tribunal and not undertaking a fresh examination of the substantive issues, the review normally concerns itself only with evidence that was before the tribunal. There are some exceptions to that general rule, although those exceptions do not appear to apply here. The court may have to rule on that issue when this petition is ultimately heard.
- [25] I appreciate that these are not easy issues for self-represented litigants to navigate, but the deficiencies I have identified must be addressed before the judicial review can take place.
- [26] Accordingly, I adjourn the petitioner's application generally. The petitioner may set the matter for hearing once the deficiencies have been addressed. While it is open for me to order that a record of the CRT proceedings be filed in this Court (see s. 17 of the JRPA), I do not consider it necessary to make a formal order to that effect as I have made it clear that a complete record is needed.
- [27] I am not seized of this matter, meaning that when this matter is ready for hearing it is not necessary that I hear it and it may be heard by any judge of this Court.

V. Conclusion

[28] For the reasons given, the hearing of this petition is adjourned generally. The matter may be re-set for hearing after the deficiencies have been addressed.

"Blok J."

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