



# Civil Resolution Tribunal

Date Issued: July 31, 2018

File: SC-2018-001010

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hanzek Enterprises Inc v. 1129987 B.C. LTD.*, 2018 BCCRT 409

B E T W E E N :

Hanzek Enterprises Inc

**APPLICANT**

A N D :

1129987 B.C. LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant, Hanzek Enterprises Inc, sold its tanning salon business to the respondent, 1129987 B.C. LTD. The issue of transferring a debit terminal lease, from the applicant as lessee to the respondent company as lessee, was resolved

through the facilitation process in the facilitation process of the Civil Resolution Tribunal (tribunal).

2. The outstanding issue for decision is the respondent's alleged inaction and delay in failing to assume the debit terminal lease as part of the sale, which the applicant says caused it to incur NSF bank charges and additional lease payment expenses, totaling \$717.27.
3. The parties are represented by their respective principals, Robert Hanzek for the applicant and Corri Dangerfield for the respondent.

## **JURISDICTION AND PROCEDURE**

4. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under the Act and tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is to what extent, if any, the respondent owes the applicant for expenses the applicant incurred in relation to a debit terminal lease.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that the respondent took possession of the tanning salon business on September 1, 2017. It is also undisputed that the parties agreed that the respondent would assume the debit terminal lease. The debit terminal lease was held by Northern Leasing, as the lessor. It is undisputed that Northern Leasing continued to charge the applicant for the lease payments, through February 2018. The evidence is unclear whether the applicant also paid for March 2018, and I find that the applicant has not proven that claim.
11. Notably, the applicant has not provided a copy of its purchase and sale agreement with the respondent. Based on the evidence before me, I find the contract had an implicit term that the respondent would take reasonable steps to have the debit terminal lease transferred. As discussed further below, I find it did so. I find there is no evidence before me to support a conclusion that the respondent is responsible for the applicant's expenses, largely NSF charges resulting from Northern Leasing's ongoing debits from its bank account, simply because the debit terminal lease did not happen as quickly as the parties would have liked.
12. It is undisputed, and evident from the parties' text messages at the material times, that Northern Leasing was challenging to deal with from both Ms. Dangerfield's

and Mr. Hanzek's perspectives. It is undisputed that Northern Leasing did not receive Ms. Dangerfield's lease transfer package, which she sent with the deposit check that Northern Leasing cashed.

13. The evidence is clear that in October and November 2017 Ms. Dangerfield exchanged a number of emails with Northern Leasing about the lease transfer package and the fact that the applicant was still getting charged the debit fees. There was a delay of about a month in Ms. Dangerfield sending a replacement lease transfer package, because she objected to having to pay a notary fee a second time, and because she wanted to speak to a supervisor. I accept this occurred and that Ms. Dangerfield's position at the time was not unreasonable. She maintained timely contact with Northern Leasing. She asked that Northern Leasing refund the applicant and change their paperwork. Northern Leasing emailed Ms. Dangerfield on November 6, 2017 that it would refund the applicant 2 lease payments, totaling \$130. I do not accept the applicant's unsupported assertion that Ms. Dangerfield refused to answer Northern Leasing's telephone calls.
14. On December 1, 2017, Ms. Dangerfield said her lawyer's advice was for the applicant to close its account to stop the lease company from making its automatic withdrawals. Ms. Dangerfield wrote that all paperwork "has been resent" but that Northern Leasing told her it would take about 6 to 8 weeks to transfer everything over once they receive it. The applicant explained it could not close the account as it was waiting for a cheque to cash out of that account.
15. On balance, given the evidence before me, I find the applicant has not proved the respondent acted unreasonably in handling the debit terminal lease transfer.
16. The respondent refunded the applicant \$216.27 on January 18, 2018, representing the September, October, and November 2017 debit terminal payments to Northern Leasing. Northern Leasing refunded the applicant \$130, the 2 lease payments referenced above. This totals \$346.27. The respondent agrees that the applicant paid \$447.54 in lease payments after September 1, 2017, leaving a net balance of

\$101.27 owing to it. There is insufficient evidence before me that the applicant paid anything more than this.

17. As noted above, the amounts claimed by the applicant largely appear to be NSF charges. I do not allow those charges, given my conclusion the respondent acted reasonably in getting the debit terminal lease transferred. I order the respondent to pay the applicant \$101.27 for lease payments for which I find the applicant has not been reimbursed. I dismiss the balance of the applicant's claims as unproven.
18. In accordance with the Act and the tribunal's rules, while the applicant was partially successful in this dispute I find it is not entitled to reimbursement of \$125 in tribunal fees paid. This is because the respondent offered the \$101.27 and the applicant refused. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$101.27, from February 28, 2018, which I find is appropriate.

## **ORDERS**

19. I order the respondent to immediately pay the applicant a total of \$101.78, broken down as follows:
  - a. \$101.27 in damages for the debit terminal lease payments, and
  - b. \$.51 in pre-judgment interest under the COIA.
20. I dismiss the applicant's remaining claims. The applicant is entitled to post-judgment interest under the COIA, as applicable.
21. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's decision.

22. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed.
23. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shelley Lopez, Vice Chair