



Civil Resolution Tribunal

Date Issued: January 9, 2019

File: SC-2017-006128

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *North American Dynasty & Antique Investment Ltd. v. 0879585 B.C. LTD.*,
2019 BCCRT 42

B E T W E E N :

North American Dynasty & Antique Investment Ltd.

APPLICANT

A N D :

0879585 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, North American Dynasty & Antique Investment Ltd., wants its \$5,000 deposit back from the respondent, 0879585 B.C. LTD. The applicant paid the deposit under a March 28, 2017 contract, as part of a Purchase of Business Agreement (contract) to buy a Waves Coffee store at a particular location. However, the applicant says its purchase of the business did not complete due to breaches by the respondent seller. The applicant says the contract requires the deposit to be returned.
2. In its Dispute Response filed at the outset of this proceeding, the respondent, which operates as “Waves Coffee” in Steveston B.C., said the applicant is the party who breached the agreement, and that the respondent did not receive any notice or request from the applicant to terminate or revise the agreement before the closing date, as required under the contract. The respondent said the deposit should be retained by it, the seller. However, the respondent later chose not to provide any evidence or submissions for this decision, despite being given the opportunity to do so.
3. The applicant is represented by Dichen Hu, an employee or principal. While it participated, the respondent was represented by Steve Zhu, who I infer was either an employee or principal.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
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 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 must refund the applicant a \$5,000 deposit paid under a failed purchase agreement of the respondent seller's business.

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 submissions below as necessary to explain my decision.
10. The parties' written contract explains the purchase was to be of the assets of the respondent seller's business, for a purchase price of \$338,000. It is undisputed the

applicant paid the respondent the \$5,000 deposit on March 31, 2017, and a receipt in evidence supports its payment. This is the amount the applicant wants refunded in this dispute.

11. The contract contains the following relevant provisions:

- a. The closing will take place on May 31, 2017, at the seller's office or as the parties otherwise mutually agree (clause 5).
- b. A \$5,000 CAD deposit is payable by the purchaser on or before March 28, 2017. The \$5,000 was handwritten onto the contract, over a pre-printed "\$0.00". The remainder of clause 6 was left as pre-printed: The balance of \$0.00 is payable on the closing date, but I infer the parties agreed that the balance would be adjusted to reflect the deposit paid.
- c. If all required conditions in the contract were waived or satisfied, but the transaction does not close due to the seller's failure to satisfy its obligations, the deposit will be returned to the purchaser (the applicant) (clause 11).
- d. If all required conditions in the contract were waived or satisfied, but the transaction does not close due to the purchaser's failure to satisfy its obligations, the deposit will be retained by the seller (the respondent) (clause 12).
- e. The respondent seller does not have any outstanding contracts, agreements, or commitments "of any kind" about the assets, other than as set out in the contract (clause 13(g)).
- f. If either party fails to satisfy any of its conditions as set out in the contract before the closing date, and that condition was not waived, the agreement is void and "any deposits will be returned to the Purchaser" and there will be no further liability as between the parties (clause 27).

12. The applicant submits that when it signed the contract the seller failed to advise that a \$80,000 interior renovation would be required by the Waves Coffee franchise,

which the applicant says would unreasonably increase the price. The applicant alleges the respondent hid the upcoming mandatory improvement cost, which the applicant says was “the major reason” it did not complete the purchase.

13. The contract is lengthy. I find it is unnecessary to review it in detail. I find clause 13(g) supports the applicant’s position that the respondent seller breached the agreement, by failing to specify the upcoming mandatory renovation, which appears to be a “commitment”. Clause 27 also supports the applicant’s position. As referenced above, the respondent provided no evidence and no submissions for this decision. I therefore place no weight on the respondent’s general assertions set out in its Dispute Response that the applicant purchaser breached the contract. I draw an adverse inference against the respondent and find the applicant’s position is likely correct. I therefore find the respondent breached the contract and thus the applicant is entitled to the return of the \$5,000 deposit.
14. The applicant is entitled to pre-judgment interest on the \$5,000 deposit under the *Court Order Interest Act* (COIA), from March 31, 2017 when the deposit was paid. The applicant was successful in this dispute. In accordance with the Act and the tribunal rules, I find they are entitled to reimbursement of \$175 in tribunal fees.

ORDERS

15. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$5,270.17, broken down as follows:
 - a. \$5,000 in debt, for the return of the deposit,
 - b. \$95.17
 - c. \$175 in tribunal fees.
16. The applicant is entitled to post-judgment interest, as applicable.
17. 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 final decision.

18. 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. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair