



Civil Resolution Tribunal

Date Issued: April 3, 2019

File: SC-2018-007339

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MBP FOODS LTD et al v. CHEEMA FOODS LTD*, 2019 BCCRT 420

B E T W E E N :

MBP FOODS LTD and Sandeep Kaur Sekhon

APPLICANTS

A N D :

CHEEMA FOODS LTD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicants MBP Foods Ltd (MBP) and Sandeep Kaur Sekhon say that the respondent Cheema Foods Ltd (Cheema) owes them \$3,960.41 for expenses from the landlord for the OPA! Souvlaki (OPA!) franchise Cheema owned in 2015, but which MBP purchased in 2016. Specifically, the applicants say the purchase

agreement specified that Cheema would be responsible for any 2015 adjustments, since Cheema was the franchisee at the time.

2. The applicant MBP Foods Ltd is represented by its president Sandeep Kaur Sekhon, who also represents herself personally. The respondent is represented by principal Susan Cheema.

JURISDICTION AND PROCEDURE

3. 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*. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "it said, it said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
5. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether MBS or Cheema is responsible to pay the 2015 adjustments on the lease for the physical space for the OPA! franchise.

EVIDENCE AND ANALYSIS

9. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
10. In 2016, the applicants bought the OPA! franchise from Cheema.
11. On March 27, 2016, Cheema entered a Franchise Termination Agreement with OPA!.
12. On April 26, 2016, the landlord for OPA! issued it an invoice of \$3,960.41 for 2015 year-end adjustments.
13. On May 3, 2018, MBP paid the invoice.

14. This dispute turns on whether Cheema or MBP is responsible for pay for rent-type tenant expenses for the 2015 year. During that time, Cheema was the owner of OPA! and tenant for purposes of those expenses.
15. The Purchase Agreement contains a clause in which Cheema agrees to be responsible for the 2015 adjustments.
16. Cheema argued that, based on the agreement between OPA! as franchisor and the either Cheema or the new owner as franchisee, it was somehow excused from paying the 2015 adjustments. I disagree. The applicable agreement is the one between Cheema and MBP on this issue, not the one between franchisor and franchisee.
17. Therefore, I find that Cheema must pay the MBP \$3,960.41, to reimburse it for the payment it made to the landlord for the 2015 adjustments. I will calculate post-judgement interest from May 3, 2018, when MBP paid the invoice.
18. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal 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 \$175 in tribunal fees.

ORDERS

19. Within 30 days of the date of this order, I order Cheema Foods Ltd to pay MBP Foods Ltd a total of \$4,191.01, broken down as follows:
 - a. \$3,960.41 as reimbursement for the 2015 adjustments,
 - b. \$55.60 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
20. The applicant is entitled to post-judgment interest, 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 final 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. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member