



Civil Resolution Tribunal

Date Issued: May 3, 2019

File: SC-2018-008344

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DENNINGTON v. ANAND*, 2019 BCCRT 530

B E T W E E N :

MICHAEL DENNINGTON

APPLICANT

A N D :

SUSHIL ANAND

RESPONDENT

A N D :

MICHAEL DENNINGTON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant and respondent by counterclaim, MICHAEL DENNINGTON, says he had 2 separate contracts with the respondent and applicant by counterclaim, SUSHIL ANAND. He says the first contract was a verbal lease agreement under which he was to be paid \$1,000 per month, and the second was a written management contract under which he was to be paid an additional \$1,000 per month. Mr. Dennington says he has been paid under the lease agreement but not the management contract. He wants Mr. Anand to pay him \$5,000 for unpaid management services he says he provided under the management contract.
2. Mr. Anand says there was no lease agreement and says he has already paid Mr. Dennington for his management services under the management contract. Mr. Anand counterclaims for \$5,000 in cleaning fees and in damages he says he incurred because Mr. Dennington terminated the employment of Mr. Anand's employee without authorization.
3. Both parties are self-represented.

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*. 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined

solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 9.3 (2), 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.
8. Mr. Anand indicates he has difficulty speaking English. The hearing process was conducted strictly through written submissions, and while Mr. Anand does not specifically indicate that he has difficulty reading or writing English, I appreciate that communicating in English may be a challenge for him. However, having reviewed his submissions and evidence, I find he is proficient in English such that I am able to understand all of his submissions, and he has responded to Mr. Dennington's submissions and evidence such that I am satisfied he understood them. In these circumstances I find I am able to decide this dispute based on the written submissions and evidence before me.

ISSUES

9. The issues in this dispute are:
 - a. Is Mr. Anand required to pay Mr. Dennington \$5,000 for management services under the management contract?
 - b. Is Mr. Dennington required to pay Mr. Anand \$5,000 in damages for terminating Mr. Anand's employee and overcharging for cleaning fees?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, Mr. Dennington must prove his claim on a balance of probabilities. This means I must find it is more likely than not that his position is correct. Likewise, Mr. Anand must prove his counterclaim on a balance of probabilities.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. It is undisputed that the parties entered into a contract of purchase and sale in January 2017 for Mr. Anand to buy the Princeton Motel from Mr. Dennington, with Mr. Anand to take possession on October 1, 2017. The contract provided that Mr. Anand would take over operations of the motel starting May 1, 2017. That contract of purchase and sale is not in evidence.

Is Mr. Anand required to pay Mr. Dennington \$5,000 for management services under the management contract?

13. In March 2017 the parties entered into a contract for Mr. Dennington to manage the functions of the motel from May 1, 2017 until October 1, 2017 (management contract). Under the management contract Mr. Dennington's management duties included looking after guests, resolving issues, finding and training a new manager, and assisting with "shut off's, breakers, local tradespersons etc." It also states that in exchange for his services Mr. Dennington would live in the motel until October 1,

2017 free of charge and be paid \$1,000 per month. It also stipulates that Mr. Anand would be responsible for 100% of the motel's expenses on a pro-rated basis.

14. It is undisputed that between May 1, 2017 and October 1, 2017, Mr. Anand paid Mr. Dennington \$1,000 per month. Mr. Anand says these payments were made under the management contract. Mr. Dennington says these payments were made under a separate verbal lease agreement, and he says he was not paid the \$1,000 per month he was entitled to under the management contract.
15. Mr. Dennington says that, in addition to the management contract, in March 2017 the parties entered into a verbal lease agreement, under the terms of which Mr. Dennington was to be paid \$1,000 per month out of the motel's monthly revenue. The purpose of the lease agreement is unclear, and I address this in further detail below. Mr. Dennington submitted a statement from A.N. who claimed to have witnessed the parties enter into the verbal lease agreement in March 2017. A.N. said Mr. Anand agreed to pay Mr. Dennington \$1,000 per month for a lease of the business to be taken from the motel's revenues. A.N. said Mr. Anand also agreed to pay Mr. Dennington \$1,000 per month to manage the business, but that this would not be paid until October 2017. A.N. said Mr. Dennington wrote out a contract and both parties signed it, and that Mr. Anand may have had trouble with his English.
16. As further proof of the lease agreement Mr. Dennington submitted the motel's reconciliation account statement (statement) which has a line item for "MD payment, lease as agreed" for \$1,000 per month, for a total of \$5,000.
17. Mr. Anand says there was no lease agreement, and that he paid Mr. Dennington in accordance with the terms of the management contract. He submitted email correspondence between his agent and Mr. Dennington. On May 4, 2017, Mr. Dennington wrote, "...There is no lease agreement...As there is no lease agreement, because the buyer would not sign one already sent, then fair and reasonable practice in civil law would prevail. The payment of \$1000 per month would not be seen as unreasonable..."

18. Mr. Anand submitted 2 different versions of the statement. One is identical to the version Mr. Dennington submitted. The other is the same, except the relevant line item states, "MD payment as agreed" and does not include the word "lease." Mr. Anand says this is the version he agreed to, and that Mr. Dennington subsequently altered the document to add the word "lease." Mr. Dennington denies altering the statement and alleges that Mr. Anand altered the statement. There are no signatures on either of these documents, and I cannot determine which document was created first or who edited it.
19. On balance, I am not satisfied there was a separate lease agreement. I find Mr. Dennington's May 4, 2017 email directly contradicts his claim that there was one. While that email suggests he wanted a lease agreement, there is no indication Mr. Anand agreed to one.
20. Even if the parties did have a lease agreement, it is unclear what consideration Mr. Dennington would have given, and what benefit Mr. Anand would have received from such an agreement. In Mr. Dennington's May 4, 2017 email, when mentioning a potential lease agreement, he mentioned the work he would do at the motel on a daily basis including cleaning, repairs, maintenance and garbage. However, I find these tasks all fall under management of the motel's functions, which services are contemplated and compensated under the management contract. Under the management contract Mr. Anand was responsible for all motel expenses, so it is unclear what purpose a lease would have served.
21. For these reasons, I find Mr. Dennington has not established that there was a separate lease agreement. Therefore, I find the monthly \$1,000 payments Mr. Anand made to Mr. Dennington were in satisfaction of the management contract, and I find Mr. Dennington has not established that Mr. Anand breached the management contract.
22. Mr. Dennington submitted an invoice for services he said he provided at the motel between May 1, 2017 and September 15, 2017 (invoice). The invoice states that Mr. Anand breached the contract of purchase and sale by failing to take over the

management of the motel on May 1, 2017. The invoice claims Mr. Dennington worked 1656 hours between May 1, 2017 and September 15, 2017 and deducts \$800 per month for accommodation and utilities for a total of \$13,388 including GST. The invoice is undated but given its description of events it was clearly created after May 1, 2017. It is unclear how this invoice relates to the management contract which clearly stipulates that Mr. Dennington would manage the motel from May 1, 2017 to October 1, 2017.

23. On February 22, 2018 Mr. Dennington filed a Notice of Claim in Provincial Court for the \$13,388 amount of the invoice. This claim states that at the end of May 2017 Mr. Anand sent someone to take over management of the motel, but that the person was unsuitable. Mr. Dennington claimed he had no choice but to stay and manage the motel. Mr. Dennington says the parties attended a settlement conference on November 26, 2018 before Judge R. Smith. It is undisputed that the parties signed a settlement agreement, but that agreement is not in evidence. I do not have jurisdiction to revisit the same matter that was resolved by the court.
24. Mr. Anand says Mr. Dennington's claim in this dispute is the same as his claim in Provincial Court. Mr. Dennington says the Provincial Court claim was for extra work beyond what was contemplated in the management contract, including dealing with a sinkhole, arranging for extra security, and dealing with the insurance company. However, the management contract contemplates Mr. Dennington "resolving issues," and I find that can be interpreted to cover all of the "extra" work Mr. Dennington describes. The invoice upon which Mr. Dennington's Provincial Court Claim is based covers all of his time spent managing the hotel during the relevant time period, not just time spent on "extra" work. On the evidence before me, I find Mr. Dennington's Provincial Court claim overlaps significantly, if not entirely, with his claim in this dispute. Even if I found that Mr. Anand had breached the management contract, which I have not, it appears the parties have already reached a settlement in relation to management services Mr. Dennington provided at the motel during the relevant time period.

25. For all of these reasons, I dismiss Mr. Dennington's claim.

Is Mr. Dennington required to pay Mr. Anand \$5,000 in damages for terminating Mr. Anand's employee and overcharging for cleaning fees?

26. Mr. Anand says he hired an employee, L.T., in May 2017 to live at the motel and train to eventually take over management duties from Mr. Dennington. He says Mr. Dennington agreed to this arrangement by email. In Mr. Dennington's May 4, 2017 email he refers to L.T. and states that going forward L.T. would carry out the functions at the motel with his help.

27. Mr. Dennington says L.T. made derogatory comments to the motel's monthly tenants, 3 of whom told Mr. Dennington they were leaving the motel. There are no statements from these tenants in evidence, nor is there any other evidence to support this claim. Mr. Anand submitted a letter that Mr. Dennington sent to L.T. on May 20, 2017 which states that L.T. made unsubstantiated accusations of theft against him to Mr. Anand, which Mr. Dennington found unacceptable. The letter instructed L.T. to vacate the premises immediately, which they did. I note the reasons Mr. Dennington stated in the letter for terminating L.T.'s employment are different than the reasons he claims in his submissions.

28. Mr. Anand says L.T. had been staying at the motel for free as part of their employment agreement, and when Mr. Dennington terminated her employment and forced her to vacate, Mr. Anand paid for L.T.'s alternate accommodation in Keremeos until October 1, 2017 to fulfill his obligations under their agreement. That agreement is not in evidence, and Mr. Anand has not articulated its terms. He submitted a statement from L.T.'s landlord in Keremeos who said L.T. lived at his property from May 20, 2017 until September 30, 2017 for which they received a total of \$4,050 in rent. However, the statement does not say who paid the \$4,050. Mr. Anand says he provided a receipt for this payment, but no such receipt is in evidence. I find there is no documentary evidence to establish that Mr. Anand paid this amount, or that he was required to do so under the terms of any agreement.

29. Mr. Dennington says that as manager of the motel it was within his authority to terminate L.T.'s employment. He says he had no knowledge of the employment contract between Mr. Anand and L.T., and he is not responsible for any costs Mr. Anand incurred as a result of breaching that agreement.
30. Mr. Dennington also says Mr. Anand already brought this claim as part of his counterclaim in the Provincial Court action. Mr. Anand says that counterclaim was for \$1,000 for L.T.'s moving expenses, but his \$5,000 claim in this dispute is for L.T.'s rent. However, I find Mr. Anand has not established that he paid \$4,050 in rent for L.T., or that he was required to do so because of any act or omission of Mr. Dennington. I dismiss this claim.
31. Mr. Anand also says part of L.T.'s role at the motel was cleaning, and that in a May 19, 2017 email Mr. Dennington agreed that he would do the cleaning himself free of charge, but that he later charged Mr. Anand \$1,300 for that work. That May 19, 2017 email is not in evidence, and there is no other evidence to support this claim. I find Mr. Anand has not established that Mr. Dennington agreed to clean the motel for free, and I dismiss this claim.
32. I also note in Mr. Anand's submissions he says Mr. Dennington unnecessarily closed the motel between June 26, 2017 and August 15, 2017 resulting in a loss of revenue. However, Mr. Anand has not quantified this amount, provided any evidence to support this claim, or specifically claimed lost revenue in this dispute, so I decline to address this issue further.
33. Under section 49 of the Act, and tribunal rules, since both parties were unsuccessful, I find they must each bear their own costs for tribunal fees and dispute-related expenses.

ORDERS

34. I dismiss the applicant's claims.

35. I dismiss the respondent's counterclaims, and this dispute.

Sarah Orr, Tribunal Member