



Civil Resolution Tribunal

Date Issued: June 25, 2019

File: SC-2018-008413

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thompson v. 665409 Alberta Ltd.*, 2019 BCCRT 770

B E T W E E N :

Gary Thompson

APPLICANT

A N D :

665409 Alberta Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Gary Thompson says he loaned \$3,790.35 to the respondent 665409 Alberta Ltd. to pay for mineral rights in Saskatchewan, a portion of annual operating costs and to have the respondent reinstated. The applicant claims \$3,790.35.

2. The respondent says the Civil Resolution Tribunal (tribunal) lacks jurisdiction to decide this dispute. The respondent says the company is an Alberta corporation with its sole assets being real property in Saskatchewan. The respondent says it has never carried on business in British Columbia.
3. The respondent also denies having any loans outstanding from the applicant nor any other monies owing to him.
4. The respondent also says the applicant's claims are barred by the *Limitation Act* of Alberta and the *Limitations Act* of Saskatchewan.
5. The applicant is self-represented. The respondent is represented by a lawyer, Genevieve Schrader.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. Under tribunal rule 9.3(2), 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

10. The central issue is whether I should refuse to resolve this dispute under section 11(1)(a)(i) of the Act.

EVIDENCE AND ANALYSIS

11. I have reviewed all of the evidence and submissions but refer to them here only to the extent needed to explain my decision.
12. On January 2, 2019, I issued a preliminary decision that this dispute fell within the tribunal's jurisdiction. I found an open question remained as to whether there was another, more appropriate, forum in which the dispute should be resolved. Since then, the parties filed additional evidence relevant to the question of whether the tribunal should refuse to resolve this dispute.
13. Section 11(1)(a)(i) of the Act says the tribunal may refuse to resolve a dispute if it considers that the dispute would be more appropriate for another legally binding process or dispute resolution process.
14. If the tribunal has jurisdiction under the Act, but a party argues that some other forum is better for resolving the dispute, the test to be applied is called *forum non conveniens*. According to the Supreme Court of Canada's decision in *Club Resorts Ltd v. Van Breda* 2012 SCC 17, the burden is on the respondent to the dispute to show that some other forum is "clearly more appropriate" than having the dispute

determined before the tribunal. The analysis includes consideration of where the alleged wrong occurred, where the parties carry on business, fairness to the parties, and the need for an efficient process to resolve the dispute.

15. For the reasons set out below, I refuse to resolve this dispute.
16. Based on the Alberta Corporation search filed in evidence I find that the respondent is registered in Alberta. The respondent's mailing address is also in Alberta.
17. The respondent's sole director is in Alberta.
18. Of the respondent's four voting shareholders, two are in Alberta, one is in Saskatchewan, and the fourth, the applicant, is in British Columbia.
19. I have reviewed all of the documents filed by the applicant regarding his claim of loans made to the respondent, to consider the question of forum.
20. The applicant claims for loans he says he made to the respondent as follows:
 - a. \$480.00 on July 12, 2007,
 - b. \$151.00 on July 25, 2013,
 - c. \$264.35 on January 15, 2017,
 - d. \$1,185.00 on March 22, 2017,
 - e. \$450.00 on July 25, 2013 and
 - f. \$1,260.00 on March 22, 2017.
21. In an October 9, 2013 demand letter, the applicant refers to a July 25, 2013 loan of \$151.00, not \$450.00, and for the March 22, 2017 loan, he refers to \$1,185.00, not the \$1,260.00 he claims in submissions.

22. For the July 12, 2007 loan of \$480.00, the applicant filed a cheque written to Keith Thompson in evidence.
23. On September 7, 2013, the applicant wrote to the respondent requesting payment of \$151.00 for paper work and \$450 for accounting and communications in helping balance the records.
24. For the \$264.35 amount, the applicant filed a receipt in evidence, showing that the respondent received \$264.35 from Gary Thompson in July 2016.
25. On March 13, 2017 a company called Heritage Energy Corporation offered \$45,000 for the respondent's "mineral rights only." Based on the documents filed in evidence, it was not clear whether this deal was completed.
26. The applicant describes these loans as no interest on demand loans made to pay the respondent's day to day business expenses.
27. On October 15, 2018 Gary Thompson wrote to one of the other voting shareholders regarding loans that he says were made to the respondent, being \$450 on July 25, 2013, and \$1260 on March 22, 2017.
28. An undated document titled "Invoice for Sale of Assets" shows that the respondent's mine and mineral rights were being offered for sale. The document says that Gary Thompson held 1 class A share (25%) of the respondent and that an "interest free loan" of \$1,185 Canadian had been made by him to the respondent, "to mature August 23, 2017" with an option to renew for one year.
29. Based on documents filed in evidence, it appears that the respondent was dissolved on December 6, 2018. At that time, assets were distributed to the shareholders, including the applicant, who received a 1/3rd interest in two different mineral parcels.
30. In its submissions, the respondent referred to the decision in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, which is cited in *Club Resorts* and from the same line of authority about *forum non conveniens*.

31. I find that the connections between this dispute and British Columbia are tenuous. The applicant resides in British Columbia. He asserted that he made the loans in British Columbia but I find that he did not provide sufficient evidence to prove this assertion, on a balance of probabilities.
32. The dispute's remaining connections are all to Alberta or Saskatchewan. The respondent is an Alberta company. Most of its shareholders reside outside British Columbia. The respondent's only real property assets were in Saskatchewan.
33. The applicant did not contest, and I find, that the respondent did not carry on business in British Columbia.
34. With the benefit of a full review of the evidence and submissions, aside from the applicant's physical location, I find no demonstrated connection between this dispute and British Columbia.
35. Efficiency is a factor to be considered in determining whether Alberta is a clearly more appropriate forum. While the tribunal process aims to be efficient and relatively inexpensive, which weighs in favour of determining the dispute in British Columbia, the applicant's own reply argument addresses the *Business Corporations Act* of Alberta in some detail. The respondent seeks to argue limitation period defences based in the Alberta and Saskatchewan legislation. Based on these submissions, I find that the consideration of the parties' legal arguments would be better made in Alberta than in British Columbia.
36. For these reasons, I find that the respondent has demonstrated that Alberta is a clearly more appropriate forum for resolving this dispute.
37. I refuse to resolve this dispute under section 11(1)(a)(i) of the Act. I find that the dispute would be more appropriate for another legally binding process, specifically a court or tribunal in Alberta.

38. In the circumstances of this dispute, I find it is appropriate for the tribunal to refund the applicant's tribunal fees.

Julie K. Gibson, Tribunal Member