



Civil Resolution Tribunal

Date Issued: November 6, 2019

File: SC-2019-004146

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nagata Management Ltd. v. 0899873 B.C. Ltd.*, 2019 BCCRT 1265

B E T W E E N :

NAGATA MANAGEMENT LTD.

APPLICANT

A N D :

0899873 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is one of two disputes arising from the same situation, involving obligations under two separate but related contracts.

2. In SC-2019-003437, the applicant 652013 B.C. LTD. (Sicon) says it had an agreement with the respondents Russell McDougall and Nagata Management Ltd. (Nagata), to provide signage for what was then the respondents' business Bridgeport Collision Ltd. (signage contract).
3. In a deal that closed at the end of October 2018, Bridgeport Collision Ltd. sold to 0899873 B.C. Ltd. (0899873) (purchase agreement).
4. After the purchase agreement, 0899873 refused to make payments under the signage contract. Sicon seeks payment of \$4,672.20 from Mr. McDougall and Nagata for the remaining term of the signage contract. I address Sicon's claims in SC-2019-003437 in separate Reasons for Decision. Sicon is not a party to this dispute, SC-2019-004146.
5. In SC-2019-004146, Nagata claims that the terms of the purchase agreement obliged 0899873 to assume the signage contract payments. Nagata claims \$5,000 plus interest and costs, which it says is the amount that 0899873 should have paid Sicon under the signage contract.
6. 0899073 denies assuming any liabilities as part of the purchase agreement. 0899073 says it only intended to purchase equipment and Bridgeport Collision Ltd.'s name.
7. Nagata is represented by business contact Kari McDougall. 0899873 is represented by business contact Jia Zuo.

JURISDICTION AND PROCEDURE

8. 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* (CRTA). 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.

9. 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.
10. 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.
11. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

12. The issue in this dispute is whether 0899873 must pay Nagata \$5,000 due to an alleged breach of the purchase agreement for Bridgeport Collision Ltd., caused by 0899873's alleged failure to assume the obligations of the signage contract?

EVIDENCE AND ANALYSIS

13. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.

14. On July 29, 2014, Sicon doing business as Sicon Signs, entered an agreement with Bridgeport Collision Ltd., and a Mr. Russell McDougall in his personal capacity as a “co-advertiser”, for signage rental (signage contract).
15. The signage contract contained the following relevant terms:
 - a. Bridgeport Collision Ltd. agreed to pay Sicon Signs \$150 per month for 77 months, beginning September 1, 2014 to January 31, 2021, with the monthly amount subject to increase, based on inflation, annually,
 - b. overdue payments were subject to 26.8% annual interest,
 - c. terms under the signage contract were transferable only with Sicon’s written consent.
 - d. even if Sicon gave written consent to transfer the contract’s terms, Mr. McDougall and Bridgeport Collision Ltd. agreed to remain liable for the rest of the term,
 - e. Mr. McDougall, who signed as a “co-advertiser”, agreed to be jointly and severally liable for the obligations and liabilities of Bridgeport Collision Ltd. under the signage contract, and
 - f. if any payments under the signage contract were missed, they may be deemed a breach of the contract and all monthly payments are due and payable immediately.
16. The same day, Sicon wrote to Mr. McDougall care of Bridgeport Collision Ltd. saying in the future, if Bridgeport Collision Ltd. sold their business, they should ensure that the buyer signed assumption forms agreeing to continue the payments on its behalf.
17. On August 15, 2018, Bridgeport Collision Ltd. entered the purchase agreement with 0899873 with a closing date of October 30, 2018 at 11:59 p.m.

18. Under the purchase agreement, 0899873 agreed to assume “all obligations and liabilities” arising under “the Assigned Contracts” from October 30, 2018 onward. Based on the purchase agreement, I find that the Assigned Contracts included the signage contract.
19. On October 31, 2018, Bridgeport Collision Ltd. and 0899873 also signed an agreement called a General Assignment of Contracts, Goodwill and Name (assignment contract). Under the assignment contract, 0899873 agreed to be bound by and liable under every agreement and obligation including the signage contract, from that date onward. 0899873 also agreed to indemnify Bridgeport Collision Ltd. from any actions, suits, losses or damages which it may suffer due to 0899873’s failure to perform obligations under signage contract on or after the closing date.
20. On November 26, 2018, Bridgeport Collision Ltd. was renamed Nagata.
21. On February 1, 2019, Sicon wrote to 0899873 saying that the signage contract had been purchased by 0899873 under the purchase agreement and demanded the overdue monthly payments for the signage.
22. It is undisputed, and I find, that 0899873 has not made any payments to Sicon under the signage contract since the October 30, 2018 closing date of the purchase agreement.
23. It is undisputed, and I find, that 0899873 did not sign an assumption agreement for the signage contract with Sicon.
24. Nagata submits that, as a term of the purchase agreement, 0899873 assumed any obligations under the signage contract.
25. I find that, under the purchase agreement and the assignment agreement, 0899873 agreed to assume the signage contract liabilities and obligations as of the end of October 2018. The purchase agreement was signed by an authorized representative of 0899873.

26. 0899873 submits that both parties agreed that the purchase agreement would be limited to the equipment and name of Bridgeport Collision Ltd. only, before signing the purchase agreement. Having considered the documentary evidence, I do not agree. The evidence includes an August 2018 email chain between 0899873 and a Nagata representative where 0899873 specifically asks about the duration and cost of the signage contract. After obtaining this information, 0899873 proceeded to sign the purchase agreement under which it expressly agreed to be responsible for payments under the signage contract.
27. I also do not accept the 0899873's submission that, because it intended or desired to purchase only the equipment and name of Bridgeport Collision Ltd., it is excused from obligations under the purchase and assignment agreements.
28. 0899873 also referred to a draft agreement to attempt to show that it did not assume the obligations of the signage agreement. I disagree. In these circumstances, a draft agreement is not proof of the contractual terms. I have based my decision on the signed agreements filed in evidence.
29. In SC-2019-003437, I allowed the claim of Sicon against Nagata and Mr. McDougall in the amount of \$5,175. In that dispute, Sicon was entitled to collect against Nagata and Mr. McDougall. However, Nagata's claim in this dispute, SC-2019-004146, is essentially a third party claim against 0899873 and they are entitled to indemnity from 0899873 for the amount awarded in SC-2019-003437. The \$5,175 award was only made because 0899873 improperly failed to assume the signage contract's obligations, despite agreeing to do so.
30. In the assignment agreement 0899873 agreed to indemnify Bridgeport Collision Ltd. (now Nagata) from any actions, suits, losses or damages which it may suffer due to 0899873's failure to perform obligations under signage contract after October 30, 2018.
31. The word indemnify means an agreement to compensate for a loss that may occur to another party due to a specified event. Here, the event was 0899873 failing to

assume its obligations under the signage contract after agreeing to do so. This event caused a loss of \$5,175 to Nagata.

32. While the tribunal fees in SC-2019-003437 form part of the losses to Nagata flowing from 0899873's breach of the purchase and assignment agreements, the tribunal can only allow claims up to \$5,000 per substantive small claim. Based on 0899873's agreement to indemnify Nagata, I find that 0899873 must pay Nagata \$5,000 plus the \$125 in tribunal fees Nagata paid in this dispute, within 30 days of this decision. Nagata did not claim dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order 0899873 B.C. Ltd. to pay Nagata Management Ltd. a total of \$5,125, broken down as follows:
- a. \$5,000 in payment for losses caused to Nagata Management Ltd. by 0899873 B.C Ltd.'s breach of the purchase agreement and assignment agreement,
 - b. \$125 in tribunal fees.
34. Nagata Management Ltd. is entitled to post-judgment interest, as applicable.
35. Under section 48 of the CRTA, 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.

36. Under section 58.1 of the CRTA, 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