Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Saunders v. Captain's Cove Holdings Ltd.,* 2020 BCCRT 290

B E T W E E N :

SHELLY SAUNDERS and COREY SAUNDERS

APPLICANTS

A N D :

CAPTAIN'S COVE HOLDINGS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about boat storage fees and related interest charges. The applicants, Shelly Saunders and Corey Saunders, paid the respondent, Captain's Cove Holdings Ltd., $1,549.80 in winter storage fees for their Bayliner boat (Bayliner payment). The applicants say the respondent should refund them the $1,549.80

because the respondent allegedly knew it was going to evict the applicants from their marina when it took the Bayliner payment. The applicants also claim $666.77 they say the respondent overcharged them in interest on past invoices.

2. The respondent denies it received the Bayliner payment knowing it was going to evict the applicants 48 hours later. The respondent says the applicants had repeatedly paid late and that Mr. Saunders had grown hostile while asking for credits on his outstanding account, and so the respondent decided to terminate the applicants' houseboat contract. The respondent says it told the applicants they could continue to moor their Bayliner for the duration of their non-refundable winter storage period, which the applicants deny. The respondent also says it charged 30% annual interest on late-paid invoices as it was contractually entitled to do.

3. The applicants are self-represented. The respondent is represented by RP, its 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* (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.

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.

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. Where permitted by section 118 of the CRTA, 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.

ISSUES

8. The issues in this dispute are:

    a. Must the respondent marina refund the applicants $1,549.80 for the Bayliner payment, or, can the respondent rely on its “no refunds” contractual term?

    b. Did the respondent improperly charge the applicants interest on past invoices, and if so, to what extent does the respondent owe the applicants $666.77?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. In particular, I find the parties’ September 27, 2019 confrontation about the eviction and the requested refund to be irrelevant to my decision on the issues before me, as identified above.

10. The applicants stored 2 boats at the respondent’s marina: a houseboat and the Bayliner. The evidence indicates the applicants lived on the houseboat.

11. The parties agree Mr. Saunders only signed one June 9, 2018 contract, which on its face covers both the houseboat and the Bayliner (although there are 2 separate cover pages, one for each boat). I find the parties implicitly agreed to continue to be bound by the contract’s terms in 2019, even though they did not sign a new contract, which is not disputed.

12. The contract's relevant terms, including the clauses in the incorporated terms and conditions page, are:

    a. The respondent can terminate the contract "at any time", which is written in bold on the contract's first page, though "contract" was misspelled as "contact". In context, I find "contact" was an obvious typographical error and it was clear the agreed-upon term was about the contract, not contact.

    b. Invoices more than 30 days past due are subject to a "2.5% late fee" or 30% per year.

    c. In clause 6 of the terms and conditions page, it reads in all capitals, "NO REFUNDS WITHOUT EXPLICIT WRITTEN CONSENT FROM CAPTAINS COVE MARINA".

    d. Under clause 17 of the terms and conditions, all paid amounts are non-refundable "after they have been received by the marina in good faith".

    e. The contract's final clause #18 says that at the respondent's discretion, the agreement may be cancelled on 10 days' written notice. The clause concludes by reiterating "(NO Refunds)" (capitals in original).

Bayliner winter storage fee - $1,549.80 refund claim

13. As summarized above, the contract states in various sections that there are no refunds. The applicants do not argue that they were not aware of these clauses, Mr. Saunders signed the contract which contained them. I find Mr. Saunders agreed on the applicants' behalf to the no-refunds clauses when he signed the contract.

14. It is undisputed the respondent never gave its explicit written consent for a refund, as required by clause 6 of the contract. When the respondent texted the applicants a notice on September 15 for termination on September 30, I find that complied with the contract's clause 18 that required only 10 days' notice. As noted above, clause 18 also reiterated there were no refunds payable.

15. What about clause 17, which said all paid amounts are non-refundable after the respondent marina received them in “good faith”? The applicants allege the respondent billed them for 2019/2020 winter storage knowing it would evict the applicants. I acknowledge it was only 48-hours between the applicants’ final payment on the Bayliner’s winter storage fee and the respondent’s termination of the contract. However, I find this allegation unproven for the following reasons.

16. First, the parties agree that on September 13, 2019, the applicants pre-paid $2,112.70 for the Bayliner’s upcoming winter storage, further to the respondent’s April 15, 2019 invoice. This timeline does not support the applicants’ position that the respondent intentionally sought payment from them knowing they planned to evict them, since the payment was sought in April.

17. Second, as noted above, the respondent says the applicants had paid many invoices late. I acknowledge the applicants’ argument that the respondent had some confusing accounting issues and based on the respondent’s bookkeeping records in evidence, I agree. However, the applicants do not dispute the respondent’s assertion that Mr. Saunders sought additional credits on his account (after some had been given), though they deny he swore at the respondent’s representative. The respondent says it was after Mr. Saunders’ continued request for credits that it decided not to renew the applicants’ houseboat contract. I will address separately below the issue of whether the termination included the Bayliner.

18. On balance, I find the weight of the evidence supports a conclusion the respondent acted in good faith, even if they were mistaken about the extent to which the applicants had in fact paid late. The burden is on the applicants to prove the respondent did not act in good faith, and I find they have not done so.

19. Third, was the termination just for the houseboat or the Bayliner too? As noted, the respondent says it was just for the houseboat, which the applicants deny. I find the respondent’s representative’s ”termination notice” text on September 15, 2019 could be read either way. However, I find nothing turns on this. I say that because the

applicants say they would not want to keep their boats in two separate places, and they removed the Bayliner on September 27, 2019.

20. Most importantly, having found the respondent gave the required termination notice in good faith, I find the contract clearly provided there were no refunds. So, it follows that the applicants' claim for a refund of the Bayliner payment must be dismissed.

Interest charges - $666.77 claim

21. The applicants claim a $666.77 refund which is what they paid under the respondent's May 7, 2019 interest invoice #FC 274. The applicants say they only paid this invoice in September 2019 because the respondent said otherwise it would not allow them to put their boat in the water in the spring of 2020.

22. The applicants say the respondent charged interest on two September 6, 2018 invoices, which the applicants say they did not receive until a year later. The applicants say the respondent justified the interest charges on the grounds the applicants knew they needed to pay to stay at the marina and so should have made payment without an invoice. The respondent does not particularly dispute this, but submits the total finance charges (interest) since the May 7, 2019 invoice #FC 274 "would have been $2,828.56" because all invoices were not fully paid until September 2019. The respondent says the $666.77 is for 5 months' interest (May 7 to the applicants' September 13 payment), given its admitted accounting "glitch".

23. To the extent the respondent argues it can charge interest on an invoice based on its stated date rather than on the delivery date, I disagree. The parties' contract provides for 30% annual interest on invoices that are 30 days past due. I find that an invoice must have been delivered to the applicants in order for it to be due. The respondent's admitted accounting "glitch", which it says "resulted in all our customers not getting invoices on time", cannot require the applicants to pay interest on invoices they did not in fact receive. The duration of the "glitch" is not in evidence.

24. Given the respondent's admitted accounting "glitch", I place limited weight on the screenshot of its "Customer Information" ledger in its Quickbooks program, that shows dates invoices were emailed to the applicants. More on this below.

25. The respondent's $666.77 invoice does not provide a breakdown of what amount of interest was charged to which invoice. The applicants say they repeatedly asked the respondent for a breakdown of their calculation, noting they did not receive many invoices until much later, and that the respondent's accounting system was generally confusing. As noted, I agree the respondent's bookkeeping records are difficult to reconcile and to some extent are just the respondent's representative's handwritten notations.

26. The $666.77 invoice set out the following invoices and their balances, on which interest was charged. After each invoice, I have addressed the parties' respective submissions and my findings about whether interest is payable.

27. *Invoice #2815 for $221.61 on September 6, 2018*. Invoice #2815 dated September 6, 2018 is for $5,292. I find the respondent incorrectly attributed $221.61 as a balance owing under #2815, when that was the combined total owing under invoices #2814 ($181.14, a separate invoice but also dated September 6, 2018) and #2778 ($40.47, dated July 26, 2018). In support of my conclusion, the respondent says for invoice #2815 Mr. Saunders made a $1,000 payment on March 11, 2019, and its records show a $2,000 credit card payment on April 30, 2019, and a "direct payment" of $2,292 on May 4, 2019. These 3 payments total the $5,292 invoice amount. The respondent says it started charging interest as of May 7, 2019. Yet by May 7, 2019, the applicants had already paid invoice #2815 in full (as of May 4, 2019). So, I find the respondent was not entitled to charge interest on invoice #2815.

28. While the respondent says it emailed the July 26, 2018 and September 6, 2018 invoices #2778 and #2814 on their stated dates, given the admitted "glitch" there is insufficient evidence before me it did so. What I do have is the respondent's September 10 and 28, 2019 emails to the applicants that attached invoices #2778

and #2814, over one year later. I find the respondent was not entitled to charge interest on invoices #2814 and #2778 because the evidence shows the applicants paid them within 30 days of receiving them in September 2019.

29. *Invoice #2962 for $160.28 on October 24, 2018*. The respondent says this invoice was "paid in full" on July 19, 2019, 9 months past due. The respondent's own Quickbooks ledger does not list this invoice and when it was sent to the applicants. Given the admitted "glitch", I find no interest payable on this invoice because the evidence does not show when it was sent to the applicants and so I find I cannot conclude it was paid more than 30 days past due.

30. *Invoice #2963 for $1,417.50 on October 24, 2018*. The respondent says this was "paid in full" on July 19, 2019, 9 months past due. The respondent says it started accruing the interest on May 7, 2019, given the "glitch". That means only just over 2 months of interest would be payable, which I calculate as $85.05. The applicants note the respondent's ledger shows it was sent to them on February 13, 2019, and they do not say they received it later than that nor do they say they paid it before May 7, 2019. I find the applicants owed $85.05 in interest for this invoice.

31. *Invoice #2983 for $756.63 on October 29, 2018*. It is undisputed the respondent cancelled this invoice, which is consistent with the red pen line crossing through it on the respondent's submitted copy. I agree with the applicants and I find there is no interest payable on this cancelled invoice.

32. *Invoice #3045 for $5,367.60 on March 11, 2019*. This invoice includes the Bayliner's winter storage that I have addressed above. The respondent says there was a "carry forward" balance of $4,923.62, then a $1,000 payment on August 7 and a $2,000 payment on September 6, 2019, leaving a $1,923.62 balance. As noted above, the applicants paid this invoice off on September 13, 2019. The respondent has this invoice listed twice on its Quickbooks ledger that purportedly tracked when invoices were sent out: March 11, 2019 and again on September 11, 2019. Bearing in mind the admitted "glitch", I find the August 7, 2019 payment date is the best evidence I have for the invoice's delivery date, and so the invoice did not start to

accrue interest until September 7, 2019. Given the applicants’ September 13, 2019 payment, I find they owed interest on $1,923.62 for 6 days, which equals $9.49.

33. Given my conclusions above, I find the respondent should only have charged the applicants a total of $94.54 in interest, on invoices #2963 ($85.05) and #3045 ($9.49). Deducting the $94.54 from the $666.77 invoice, this leaves a $572.23 refund owing to the applicants.

34. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicants’ $572.23 award is a debt claim based on an overpayment, and so the applicants are entitled to pre-judgment interest on the $527.23. This equals $5.56, calculated from September 13, 2019 to the date of this decision.

35. Under the CRTA and the tribunal’s rules, I find the partially successful applicants are entitled to reimbursement of half the $125 paid in tribunal fees, namely $62.50. There were no dispute-related expenses claimed.

ORDERS

36. Within 30 days of this decision, I order the respondent to pay the applicants a total of $640.29, broken down as follows:

    a. $572.23 as a refund of interest paid,

    b. $5.56 in pre-judgment interest under the COIA, and

    c. $62.50 in tribunal fees.

37. The applicants’ remaining claims are dismissed. They are entitled to post-judgment interest on the award above, as applicable.

38. 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.

39. 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.

Shelley Lopez, Vice Chair