



Civil Resolution Tribunal

Date Issued: June 29, 2020

File: SC-2019-009078

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Palmero v. Azani*, 2020 BCCRT 716

BETWEEN:

LUIS PALMERO

APPLICANT

AND:

HAMID AZANI and Sabor Foods Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Luis Palmero, was previously employed by the respondent, Sabor Foods Ltd. (Sabor). The other respondent, Hamid Azani, is Sabor's sole director.
2. Mr. Palmero says that Sabor failed to pay the agreed wages and benefits under their employment contract. He also says that Sabor fired him without cause and did

not pay the severance as set out in the contract. In his application for dispute resolution, he alleged that Sabor owes him \$10,760.56 in wages, benefits and expenses, plus \$13,440 in severance pay. However, in this dispute he seeks only \$5,000, which is the monetary limit of the Civil Resolution Tribunal's (CRT) small claims jurisdiction.

3. Mr. Azani and Sabor deny the claims. Mr. Azani says that Sabor paid the amounts owing under the employment contract, including severance pay.
4. Mr. Palmero is self-represented. Mr. Azani represents both himself and Sabo in this dispute.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Preliminary Matters

9. During the case management phase, the case manager referred two jurisdiction issues for a preliminary decision. The first issue was whether Mr. Azani was a proper respondent to the CRT dispute as Sabor's sole director. The second issue was whether the CRT has jurisdiction to hear the claims.
10. A tribunal member issued a preliminary decision on January 20, 2020. Mr. Palmero had not named Sabor as a respondent in his initial dispute application. The tribunal member granted leave to allow Mr. Palmero to add Sabor as a respondent within 14 days of his decision. On February 5, 2020, Mr. Palmero added Sabor as a respondent to the dispute. Sabor submitted a dispute response on February 17, 2020.
11. On the second issue, Mr. Azani argued that Mr. Palmero's claims for unpaid wages and benefits fall within the exclusive jurisdiction of the Director of Employment Standards, with the Employment Standards Branch (ESB). Mr. Azani argued that Mr. Palmero's other claims fall under section 79 of the *Employment Standards Act* (ESA) and also within ESB's jurisdiction. The ESB is a specialized administrative body that deals with employment disputes under the ESA.
12. Relying on the BC Court of Appeal's decision in *Macaraeg v. E Care Contact Centers Ltd.*, 2008 BCCA 182, the tribunal member found that an employee is only prevented from bringing a civil action when the employee is seeking to enforce a right that they *only* have under the ESA. Where an employment contract and the ESA provide the same benefits, the employee may pursue a remedy either with the ESB or by civil action, such as a court action or CRT dispute. The tribunal member

held that Mr. Palmero's claims may arise either from the ESA or under his employment contract. The tribunal member noted that there was no evidence before him about whether Mr. Palmero had brought a complaint to the ESB, or if he had, what the scope of the complaint was. So, the tribunal member allowed the dispute to proceed but said their preliminary decision was not a final decision about the CRT's jurisdiction over this dispute.

13. However, Mr. Palmero had brought a complaint to the ESB in September 2019. The parties do not explain why this information was not provided to the tribunal member when deciding the preliminary jurisdiction issue.
14. On my request, Mr. Palmero provided a copy of his complaint to the ESB. In his September 19, 2019 ESB complaint against Sabor, Mr. Palmero requested unpaid wages (\$5,040), overtime (\$1,606.50), unauthorized deductions (\$1,196), compensation for length of service or severance pay (\$13,440), and unspecified amounts for vacation and statutory holiday pay, tips and "hours deducted". To my knowledge, the ESB has not issued a decision.
15. Mr. Palmero submits that Sabor owes him for unpaid wages, unauthorized deductions in pay, overtime, and severance pay. Given the substance of Mr. Palmero's ESB complaint summarized above, I find these claims are substantively before the ESB.
16. Under section 11 of the CRTA, the tribunal may refuse to resolve a claim or a dispute within its jurisdiction if it considers that the claim would be more appropriate for another legally binding process or dispute resolution process.
17. I find there is potential overlap between Mr. Palmero's ESA entitlements and common law damages for breach of contract or wrongful dismissal. I find it would be inappropriate for the CRT to adjudicate the same subject matter for the same substantive claims before the ESB as it could result in inconsistent findings. The BC Court of Appeal in *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457, stated that "as between enforcement of the [ESA] in the

courts or on the administrative setting provided by that statute, the nod goes to the administrative apparatus”. I find the Court of Appeal’s decision applies to favour the ESB over the CRT where there is overlap. I also note that ESB does not have the \$5,000 monetary limit as under the CRT’s small claims jurisdiction. In the circumstances here, I find that the ESB is the appropriate process to resolve the claims that Mr. Palmero already initiated. I refuse to resolve Mr. Palmero’s claims against Sabor that are currently before the ESB.

18. I find the only aspect of Mr. Palmero’s claims that are not substantively before the ESB at this time is his \$4,000 claim for moving expenses, plus unspecified “fees” that he says were part of his job offer.

ISSUE

19. To what extent if any, do the respondents owe Mr. Palmero \$5,000 under his employment contract for moving expenses and unspecified fees?

EVIDENCE AND ANALYSIS

20. In a civil claim such as this, Mr. Palmero as the applicant must prove his case on a balance of probabilities. I have reviewed all the evidence and arguments but only refer to them to the extent necessary to explain and give context to my decision.
21. On July 29, 2019, Sabor offered Mr. Palmero employment as a cook supervisor at its Whistler restaurant, which Mr. Palmero accepted. Mr. Palmero started employment on August 7, 2019. Sabor terminated Mr. Palmero’s employment on September 15, 2019. The parties dispute whether Sabor paid Mr. Palmero as required under the employment contract.
22. Based on the correspondence in evidence, I find that the employment contract was between Mr. Palmero and Sabor. Sabor is a separate legal entity that is distinct from its directors and officers. When a corporation enters into a contract, it does not automatically bind its directors or officers. Its directors and officers are also not

generally liable for a corporation's actions, a concept commonly referred to as the "corporate veil". As stated by Honourable Judge Skilnick in *E.M. Plastics. v. Abby Signs and Lardeur*, 2009 BCPC 18 at paragraph 8, "courts have permitted the veil to be lifted if the corporate personality was being used as a cloak for fraud or improper conduct". I find no evidence before me of fraud or improper conduct that requires me to lift the corporate veil. Mr. Palmero has also not proven that Mr. Azani engaged in a separate wrongful act that would give rise to personal liability. I dismiss Mr. Palmero's claims against Mr. Azani.

23. As noted, Mr. Palmero seeks reimbursement of \$4,000 in moving expenses, plus other unspecified "fees" that he says were included in the initial job offer. It is undisputed that Mr. Palmero was not living in Whistler at the time of the job offer. However, the July 29, 2019 written job offer does not make any mention of payment of expenses for moving or fees. I find there is no objective evidence that Sabor agreed to pay Mr. Palmero to move to Whistler or for unspecified fees. I dismiss Mr. Palmero's \$5,000 claim against Sabor for moving expenses and fees.
24. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Mr. Palmero is the unsuccessful party, I find he is not entitled to reimbursement of his CRT fees or dispute-related expenses.
25. Mr. Azani and Sabor paid no CRT fees. However, Mr. Azani claims reimbursement of \$893.77 in legal fees on behalf of both respondents. CRT rule 9.5(3) says that the CRT will not order a party to pay another party any fees charged by a lawyer unless there are extraordinary circumstances. I find that the respondents have not shown that there were any extraordinary circumstances here. Consistent with the CRT's practice, I dismiss the respondents' claim for legal fees.

ORDER

26. I dismiss Mr. Palmero's claims for moving expenses and unspecified fees, CRT fees, and dispute-related expenses.

27. I dismiss the respondents' claim for legal fees.

Trisha Apland, Tribunal Member