



# Civil Resolution Tribunal

Date Issued: July 15, 2020

File: SC-2020-000795

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DePasquale v. Kingsbridge Management Ltd.*, 2020 BCCRT 790

B E T W E E N :

DAVID DEPASQUALE

**APPLICANT**

A N D :

KINGSBRIDGE MANAGEMENT LTD.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about a rental pool management contract (contract). The applicant, David DePasquale, says the respondent, Kingsbridge Management Ltd. (Kingsbridge), breached the contract by overcharging management fees. Mr. DePasquale claims Kingsbridge owes \$4,406.39 for reimbursement of excessive

fees. Mr. DePasquale also requests an order forcing Kingsbridge to comply with the contract.

2. Kingsbridge says that the contract was modified because it was no longer financially feasible. Kingsbridge says the contract amendment was approved by the majority of owners. Kingsbridge also says that they were willing to end the contract if Mr. DePasquale did not agree to the proposed amendment.
3. Mr. DePasquale is self-represented. Kingsbridge is represented by its president.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). 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.
5. The CRT 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 submission because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.
7. 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Kingsbridge breach the contract by overcharging management fees? If so, how much does Kingsbridge owe Mr. DePasquale?
  - b. Should Kingsbridge be ordered to comply with contract?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove their case on the balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The parties entered into the contract on January 1, 2016. The contract says Mr. DePasquale's strata lot will be rented out as part of a shared pool with other owners. Mr. DePasquale receives a fixed share of the total shared pool rental revenue. Kingsbridge manages the property and they retain a management fee from Mr. DePasquale's revenue share.
11. The contract's relevant terms included:
  - Clause 2.5: The contract continues to 2032.
  - Clause 5.1: Kingsbridge's management fee is 50% of the unit revenue share up to February 28, 2017. After that date, their management fee is 45%.
  - Clause 8.9: The contract can only be modified in writing and signed by each party.
12. Kingsbridge proposed an amendment on June 7, 2018 which increased the management fee to 52%. Mr. DePasquale says, and Kingsbridge does not dispute that, he never agreed to proposed amendment.

13. Kingsbridge argues that the contract amendment was justified because the original contract was not financially sustainable. I find that Kingsbridge's financial difficulties under the contract are not relevant. Mr. DePasquale does not have an obligation to amend the contract merely because Kingsbridge has made an unprofitable agreement.
14. Kingsbridge also argues that Mr. DePasquale can end the contract if he does not agree to the amendment. I do not find this argument persuasive. While the parties can mutually end the contract if they both want to, I find that the parties have a binding agreement and Mr. DePasquale is entitled to enforce the existing contract.
15. Also, Kingsbridge argues that the contract amendment was agreed to by a majority of the other strata lot owners in the rental pool. However, I do not find Kingsbridge's contracts with the other strata lot owners relevant to its contract with Mr. DePasquale. The only parties to this contract are Mr. DePasquale and Kingsbridge. Kingsbridge's contracts with the other strata lot owners do not affect the contractual rights and responsibilities of the parties in this contract.
16. Based on the submissions of both parties, I find that Mr. DePasquale did not agree to Kingsbridge's proposed changes to the contract. Clause 8.9 of the contract says the contract can only be modified in writing with the agreement of both parties. Since Mr. DePasquale did not agree to the amendment, I find that Kingsbridge's proposed amendment is not effective.
17. So, did Kingsbridge breach the contract?
18. On February 20, 2019, MY, Kingsbridge's accountant, sent Mr. DePasquale a financial statement showing increased management fees. The statement shows that Kingsbridge increased Mr. DePasquale's management fees by a total of \$1,728.10 from May 2018 to December 2018. I find that Kingsbridge raised their management fee from 45% to 52% retroactively to May 2018.
19. I find that Kingsbridge breached the contract by retaining a 52% management fee from May 2018 to December 2018 when they were only entitled to a 45%

management fee under the contract. I find that Kingsbridge overcharged Mr. DePasquale \$1,728.10 over that time period. Mr. DePasquale is entitled to reimbursement of that amount.

20. Mr. DePasquale also claims Kingsbridge overcharged its management fees by an additional \$2,678.28 in 2019. However, the only supporting evidence Mr. DePasquale provided is his own spreadsheet. Mr. DePasquale did not provide any financial statements or cheques to prove the amount that Kingsbridge charged him in 2019. As the applicant, Mr. DePasquale has the burden of proving his claim. I find that Mr. Pasquale has not proved the amount he was overcharged in 2019. So, I dismiss Mr. Pasquale's claim in relation to the 2019 management fees.
21. The *Court Order Interest Act* applies to the CRT. Mr. DePasquale is entitled to pre-judgment interest on the overcharged management fees of \$1,728.10, from February 20, 2019, the date Kingsbridge retroactively overcharged the management fees, to the date of this decision. This equals \$46.20.

***Should Kingsbridge be ordered to comply with the contract?***

22. Mr. DePasquale also asks for an order compelling Kingsbridge to comply with the contract and only collect the contractually agreed management fees.
23. An order requiring a party to do something is called "specific performance." I am authorized by section 118(1)(c) of the CRTA to order specific performance of an agreement relating to services. The CRT will only order specific performance when a monetary order will not suffice. In this matter, I find that a monetary order sufficiently compensates Mr. DePasquale for his losses and, if Kingsbridge breaches the contract again in the future, Mr. DePasquale could seek further financial compensation at that time. So, I find that a monetary order is sufficient and I dismiss Mr. DePasquale's request for specific performance.
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. DePasquale is partially successful in this matter, I find he is entitled to reimbursement of one-half of the CRT filing fees, being \$87.50.

## **ORDERS**

25. Within 30 days of the date of this order, I order Kingsbridge to pay Mr. DePasquale a total of \$1,861.80, broken down as follows:

- a. \$1,728.10 as reimbursement of overbilling of management fees,
- b. \$46.20 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

26. Mr. DePasquale is entitled to post-judgment interest, as applicable.

27. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Richard McAndrew, Tribunal Member