



Civil Resolution Tribunal

Date Issued: July 31, 2020

File: SC-2020-000657

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gordon Food Service Canada Ltd. v. Action Mart Loans Inc.*, 2020 BCCRT
855

B E T W E E N :

GORDON FOOD SERVICE CANADA LTD.

APPLICANT

A N D :

ACTION MART LOANS INC. and JAYCEE LYNN MCKENZIE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about an overdue account for groceries provided to a pub business.
2. The applicant Gordon Food Service Canada Ltd. (Gordon Food) says it sold and delivered produce, meat, fish, chicken and related products to the respondents

Action Mart Loans Inc. (Action Mart) and Jaycee Lynn McKenzie, but was not paid. Gordon Food claims \$3,075.31 for goods, plus contractual interest of 18% per year.

3. Ms. McKenzie says she is not responsible for Action Mart's debt to Gordon Food, because she was pushed out of Action Mart's business in July 2019. She asks me to dismiss the dispute against her.
4. Action Mart did not file a Dispute Response and is in default, as discussed below.
5. The applicant is represented by business contact BF. Ms. McKenzie represents herself.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. 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.

9. 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.

ISSUE

10. The issue in this dispute is whether Action Mart, Ms. McKenzie or both are responsible to pay the outstanding \$3,075.31, plus interest, for groceries provided by Gordon Food.

EVIDENCE AND ANALYSIS

11. In this civil claim, Gordon Food bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
12. Where a respondent is in default, liability is assumed. This means that because the respondent Action Mart refused to participate, it is generally reasonable to assume that Gordon's Food's position is correct on the issue at hand. Because Ms. McKenzie participated, I have considered her evidence and submissions as well as those from Gordon Food.
13. On April 23, 2019, Ms. McKenzie signed an indemnity agreement (Agreement) with Gordon Food agreeing to pay the obligations of Murphy's Pub and Grill DBA Action Mart under a customer account application for grocery purchase and delivery, if Action Mart did not pay.
14. It is not disputed that Gordon Food delivered groceries to Murphy's Pub and Grill DBA Action Mart Loans Inc. in July 2019.
15. Gordon Food issued the following invoices for food and related items it provided to Action Mart:
 - a. \$1,838.98 on July 16, 2019, and

- b. \$1,560.86 on July 5, 2019.
16. I accept Gordon Food's uncontested evidence that Action Mart has a \$3,075.31 balance owing against these invoices. The invoices specify an 18 % annual interest charge on any balances owing, as required by section 4 of the federal *Interest Act*. Because the interest rate is uncontested given Action Mart's default, I also find Action Mart and Gordon Food agreed to 18% annual interest.
 17. Because Action Mart is in default, I find that it must pay Gordon Food \$3,075.31 plus contractual interest of 18% annually.
 18. The next question is whether Ms. McKenzie is also liable to pay this amount in her personal capacity.
 19. Ms. McKenzie submits that she did not know or understand that the April 23, 2019 Agreement included her personal guarantee for the credit extended to Action Mart. I find that Ms. McKenzie was aware of the commitment she made in the Agreement. I base this finding on the wording of the Agreement which provides that the indemnitor understands that they are providing a personal guarantee of punctual payment of all Action Mart's accounts owing to Gordon Food.
 20. For these reasons, I find Ms. McKenzie personally guaranteed the credit extended to Action Mart for grocery purchases from Gordon Food. Therefore, she is also responsible to pay the \$3,075.31 plus 18 % annual contractual interest.
 21. My finding is that the respondents are jointly and severally liable for the debt, meaning that Gordon Food can collect the debt from either of them.
 22. Given my finding about the personal guarantee, it is unnecessary for me to make a finding about whether Ms. McKenzie had any obligation regarding this debt arising from her role as a corporate officer.
 23. Gordon Food is entitled to pre-judgement contractual interest of 18% per year on the \$3,075.31 balance, from August 1, 2019 to the date of this decision. This equals \$553.55.

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. I find Gordon Food is entitled to reimbursement of \$175 in CRT fees. Gordon Food did not claim dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order Jaycee Lynn McKenzie and Action Mart Loans Inc. to pay Gordon Food Service Canada Ltd. a total of \$3,803.86, broken down as follows:

- a. \$3,075.31 in debt for overdue invoices,
- b. \$553.55 in contractual interest at 18% per year, and
- c. \$175 CRT fees.

26. 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.

27. 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.

Julie K. Gibson, Tribunal Member