



Civil Resolution Tribunal

Date Issued: August 19, 2020

File: SC-2020-001351

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sangha v. Brower*, 2020 BCCRT 922

BETWEEN:

RAVINDER SANGHA and AMAN CHANDOK

APPLICANTS

AND:

DERYK BROWER and KANSAS ENTERPRISES LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about advance property tax payments. The applicants, Ravinder Sangha and Aman Chandok, say that in 2013 they paid some advance property taxes when their company I Vision Enterprises Ltd. (Vision) paid its rent for a store

franchise it bought in 2012. The applicants say the landlord's property manager, the respondent Deryk Brower, or the franchisor, the respondent Kansas Enterprises Ltd. (Kansas), failed to reimburse them those advance taxes when the applicants sold the store franchise in May 2019. The applicants claim \$5,000. The landlord, Warrington PCI Management (Warrington), is not a party to this dispute.

2. Mr. Brower says he gave an accounting to the applicants and denies being responsible for reimbursing the applicants anything.
3. Kansas denies receiving any advance taxes from the applicants. Kansas says that as of May 2019, the statement of account shows there was no outstanding balance on the franchise account.
4. Ravinder Sangha represents both applicants. Mr. Brower is self-represented. Kansas is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT 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.
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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is to what extent, if any, either respondent owes the applicants for the claimed reimbursement of the advance taxes.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. The underlying facts are not particularly clear in the submissions or evidence before me. That said, the evidence shows the following. The applicants were Vision's directors, until May 9, 2019 when Vision's store franchise was sold to a new franchisee through a share purchase agreement. Vision was a sub-tenant in commercial space rented from the landlord Warrington. Mr. Brower was the assigned Warrington property manager. The respondent Kansas was the franchisor and the head tenant. As noted, Warrington and the new franchisee are not parties to this dispute. None of this is disputed. As noted above, the applicants claim \$5,000, as reimbursement of advance taxes.
12. None of the parties submitted Vision's lease agreement for the property. However, based on the evidence before me, under the lease, Vision was required to make advance payments on property taxes. I infer this was because Warrington's lease required the commercial tenant to pay for property taxes and the advance payments were required so that when taxes were due the landlord had the money in hand to

pay them. As noted, the franchisor Kansas was the tenant, who sublet the property to Vision. So, Vision became responsible for the advance taxes.

13. The emails and cheque copies in evidence show that, between April and August 2013, Vision paid a total of \$5,000 in instalment payments to Warrington, which was undisputedly for advance property taxes. Of the \$5,000, \$3,000 was paid before June 1, 2013, as discussed further below. The applicants say Kansas and Mr. Brower never responded to their requests for explanation about the money.
14. In Mr. Brower's May 30, 2019 email to Vision, he stated that the property tax instalments paid from July 2018 to June 2019 would be applied against the tenant's 2019 "actual share of property taxes". Mr. Brower wrote that Vision had paid 11 months of property taxes for 2019 at the end of May, and that the business' purchaser "will have to pay you for five months of property taxes". Mr. Brower did not set out a calculation for Vision.
15. Mr. Brower says that in his July 15, 2019 email to the applicants he explained that if the business was sold at the end of May 2019, the seller would have prepaid 6 months of property taxes from December 2018 to May 2019. Mr. Brower attached a statement with his July 15, 2019 email that he says showed the property tax payments during that period.
16. Kansas says it has not received any advance property taxes from the applicants. Kansas says that as per the statement of account, as of May 2019 there was no outstanding ledger balance. That appears to be true, but it also appears to be because Vision's tax payments zeroed out an earlier invoice issued to Vision. The issue in this dispute is whether those tax payments are reimbursable. So, I find nothing turns on Kansas' argument about the ledger balance.
17. In any event, Kansas also says it was never made aware of any prepaid taxes paid to the landlord. Kansas says the sublease agreement set out it was the sub-tenant's responsibility to pay rent and applicable property taxes to the landlord. Based on the 2013 cheques in evidence, as noted above, Vision did pay advance property taxes

to Warrington. There is no evidence that Vision or the applicants paid any taxes to Kansas.

18. So, based on the evidence before me, it is unclear if the applicants are claiming reimbursement of advance taxes paid in 2013, or, if it is about advance taxes paid for the year 2019 for which they argue a prorated reimbursement given the business was sold. It is also not clear on the evidence before me why there is no dispute about advance property taxes between 2013 and 2019, but given my conclusion below, nothing turns on it.
19. First, the applicants do not allege Mr. Brower owes them money, but instead complain he failed to provide a sufficient explanation when they requested one. I find Mr. Brower in his role as Warrington's property manager had no personal legal obligation to explain the statement of account to the applicants. The applicants could have obtained accounting advice. The applicants had no contract with Mr. Brower personally. Further, the evidence shows all of Mr. Brower's dealings was with Vision, which was the sub-tenant and the corporate entity that paid the rent and the advance taxes. Vision is not an applicant in this dispute. I dismiss the applicants' claims against Mr. Brower.
20. Second, there is no evidence the applicants in their personal capacity had any contract with Kansas. The evidence shows Vision was the franchisee and Kansas the franchisor. Further, the evidence shows Vision paid advance taxes to Warrington, and not Kansas. There is nothing in evidence before me that proves Kansas has in its possession monies owed to the applicants personally. In particular, I am unable to conclude based on the evidence before me, including a statement of account with Warrington, that Kansas owes any reimbursement for advance taxes. I say this in part because I have no evidence about whether advance taxes prepaid by Vision would be recoverable from Kansas or from the new franchisee who bought Vision in May 2019.
21. Third, if the applicants are claiming for monies they say were owed to them as of 2013, at least \$2,000 of their claim would likely be out of time given the June 1,

2013 *Limitation Act* set a 2-year limitation period for debt claims (it is 6 years for debt claims arising before that date), running from the date the debt was discovered or ought to have been discovered. I concluded it was unnecessary to obtain submissions from the parties about the limitation issue, since I have dismissed the applicants' claims on other grounds, primarily that the applicants have no standing to claim repayment of the advance taxes. That would be a claim for Vision to make.

22. I note Kansas says that the applicants signed a "refund deposit contract" and received the security deposit from Kansas. The submitted document shows the applicants signed on Vision's behalf, with Vision noted as the franchisee and Kansas as the franchisor. I find this document only relates to a security deposit, rather than the issue of advance taxes. I say this because the document's title is "Como Lake Deposit Balance Sheet". There is nothing in the document about taxes. So, I find nothing turn on the fact that the document says the applicants signed and acknowledged that no money was "owed to either party".
23. In summary, I find the applicants' claims against both respondents must be dismissed. The tax payments in question were made by Vision, not the applicants personally. There is no evidence Mr. Brower ever received any money in his personal capacity. There is also no evidence that Kansas received the benefit of paid advance taxes such that it is responsible to reimburse those advance taxes.
24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. The applicants were unsuccessful and so I find they are not entitled to reimbursement of paid CRT fees. The successful respondents did not pay fees. No dispute-related expenses were claimed.

ORDER

25. I dismiss the applicants' claims and this dispute.

Shelley Lopez, Vice Chair