



Civil Resolution Tribunal

Date Issued: September 1, 2020

File: SC-2020-002762

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1125098 BC Ltd. v. Kingsbridge Management Ltd.*, 2020 BCCRT 970

B E T W E E N :

1125098 BC LTD.

APPLICANT

A N D :

KINGSBRIDGE MANAGEMENT LTD. and SUZANNE GATRELL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about unpaid rental revenue. The applicant, 1125098 BC Ltd. (112), says the respondent, Kingsbridge Management Ltd. (Kingsbridge), did not make payments under the terms of a rental pool management agreement.

2. 112 says the respondent, Suzanne Gatrell, as Kingsbridge's sole director and officer should be held personally responsible for the payments. 112 seeks \$4,718.20 for unpaid net rental revenue and \$161.29 for Furniture Fixtures & Equipment contributions (FFE).
3. Ms. Gatrell admits Kingsbridge did not make payments to 112. Kingsbridge did not file a Dispute Response, as discussed in further detail below.
4. 112 is represented by its directors, KB and JW. Ms. Gatrell is self-represented.

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. 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.
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.

9. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. In her submissions, Ms. Gatrell stated that Kingsbridge was no longer in operation and undergoing dissolution or bankruptcy. Section 69(1) of the *Bankruptcy and Insolvency Act* (BIA) states that on filing a notice of intention, no remedy or action may be taken (or continued) against a bankrupt without leave of the court in bankruptcy.
10. I asked the parties for further submissions on Kingsbridge's bankruptcy status. 112 says it is not aware of a bankruptcy filing. Ms. Gatrell says although she met with bankruptcy trustees, she could not afford the fees for starting bankruptcy proceedings. She says she is in the process of closing and dissolving Kingsbridge instead. Based on the lack of evidence, I am not satisfied that Kingsbridge has filed for bankruptcy or that a bankruptcy stay of proceedings under the BIA is in effect. I find that I have jurisdiction to adjudicate 112's claims against Kingsbridge.

ISSUES

11. The issues in this dispute are:
 - a. To what extent, if any, does Kingsbridge owe 112 monies under the rental pool management agreement?
 - b. If so, is Ms. Gatrell personally responsible?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, 112 as the applicant must prove its 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.
13. As noted above, Kingsbridge did not file a Dispute Response after being served with a Dispute Notice, as required by the CRT rules. However, Kingsbridge's sole director and shareholder, Ms. Gatrell, filed a Dispute Response in which she provided her version of events and addressed 112's claims against herself and

against Kingsbridge. I find Ms. Gatrell intended to represent both herself and Kingsbridge with the Dispute Response she filed. I also find Kingsbridge is not in default for failing to file a separate formal Dispute Response.

14. 112 owns a residential strata lot in OH, a hotel. It says all residential strata lot owners (owners) in this hotel were signatories to a rental pool management agreement (agreement) with Kingsbridge. According to the agreement, Kingsbridge was required to do the following:

- Maintain a trust account to deposit the gross rental revenue for each owner's strata lot and to use the funds to pay stipulated expenses. The remaining net rental revenue was to be disbursed to the respective owners.
- Provide owners with monthly statements showing the income, expenses, and net rental revenue owed to the respective owners within 30 days of the month end.
- Pay the owners the net rental revenue held in the trust account within 30 days of the month end.

15. Kingsbridge provided monthly statements to 112 that showed 112 was entitled to receive net rental revenue in the amount of \$1,241.34 for November 2019, \$1,118.71 for December 2019, and \$1,150.31 for January 2020. 112 says it estimated the net rental revenue for February 2020 to be \$1,207.84 based on the statements for February 2018 and February 2019. Since Ms. Gatrell did not contest the estimate for February 2019, I accept it is reasonable. Ms. Gatrell also agrees that 112 is owed \$161.29 for FFE for January 2020 and February 2020.

16. Ms. Gatrell says Kingsbridge is no longer operating and does not have any assets. She also says she "gifted" her OH assets to the management company that replaced Kingsbridge, GMI. She says GMI agreed to pay the outstanding net rental revenue to the owners since she was not financially able to. Ms. Gatrell did not produce any evidence to support her submission. She also did not explain what the OH assets were, whether they belonged to her personally, if she acted on behalf of

Kingsbridge when she gifted them, or when and how the assets were transferred to GMI. For this reason, I give Ms. Gatrell's submission no weight.

17. 112 says Ms. Gatrell has personal assets and owns real property in BC. It says Ms. Gatrell should be held personally liable and seeks to pierce or lift the corporate veil. 112 relies on the Ontario Court of Appeal's decision in *Shoppers Drug Mart Inc. v. 6470360 Canada Inc. (Energyshop Consulting Inc./Powerhouse Energy Management Inc.)*, 2014 ONCA 85. In *Shoppers*, the Ontario Court of Appeal stated that only exceptional cases that result in flagrant injustice warrant going behind the corporate veil. It also stated the corporate veil can be pierced if those in control expressly direct a wrongful act to be done.
18. *Shoppers* was cited in *Tresoro Mining Corporation v. Mercer Gold Corp. (B.C.)*, 2015 BCSC 1822 at paragraph 30 where the court stated that two elements must be established to pierce the corporate the corporate veil. First, the corporate entity must be "completely dominated and controlled" by the individual, and second, the corporate entity must have been "used as a shield for fraudulent or improper conduct".
19. 112 says that as Kingsbridge's sole director and officer, Ms. Gatrell improperly and wrongfully used monies held in trust for purposes other than what they were intended for under the agreement.
20. Ms. Gatrell did not explain why the net rental revenue held in the trust account for 112 was not paid to 112. In her December 5, 2019 Kingsbridge Management Report, Ms. Gatrell acknowledged that Kingsbridge was in arrears for net rental revenue payments but did not explain why. She also admitted that Kingsbridge was using FF&E funds for arrear payments. In a January 2, 2020 letter Ms. Gatrell stated that late payments were due to a low season and losses in 2019. Again, she did not explain or provide an accounting for the trust account.
21. I find as the sole shareholder and director, Ms. Gatrell had complete control over the trust account and was obligated to administer it in accordance to the terms of

the agreement. I find it appropriate to draw an adverse inference against Ms. Gatrell since she did not provide a satisfactory explanation about what happened to the net rental revenue that was supposed to be in the trust account. I find Ms. Gatrell acted improperly by not accounting for the net rental revenue held in the trust account on behalf of 112. And so, I find she is personally responsible for paying the outstanding amounts.

22. I find Kingsbridge and Ms. Gatrell must pay 112 \$4,718.20 for the net rental revenue arrears and \$161.29 for the FFE. I find Ms. Gatrell and Kingsbridge are joint and severally liable for this amount. This means that 112 can collect the award ordered below from either Ms. Gatrell or Kingsbridge.

INTEREST, CRT FEES, AND DISPUTE RELATED EXPENSES

23. The *Court Order Interest Act* applies to the CRT. 112 is entitled to pre-judgement interest on each month's net rental revenue 30 days after it was payable to the date of this decision. This equals \$13.02 for the November 2019 payment, \$9.88 for the December 2019 payment, \$8.44 for the January 2020 payment, and \$6.80 for the February 2020 payment), for a total of \$38.14.
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 1125098 is entitled to reimbursement of \$175 in CRT fees. It did not seek dispute-related expenses.

ORDERS

25. Within 14 days of the date of this order, I order Kingsbridge Management Ltd. and Suzanne Gatrell to pay 1125098 BC Ltd. a total of \$5,092.69, broken down as follows:
- a. \$4,879.49 as debt,

- b. \$38.44 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
26. The applicant 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.
28. The Province of British Columbia has enacted a provision under the COVID-19 Related Measures Act which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
29. 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.
30. Since Kingsbridge is in default, it has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

