



Civil Resolution Tribunal

Date Issued: March 1, 2021

File: SC-2020-006965

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bezanson v. Wiebe*, 2021 BCCRT 236

B E T W E E N :

DARREN BEZANSON

APPLICANT

A N D :

TANYA WIEBE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about the alleged purchase of restaurant goods. The applicant, Darren Bezanson, sold his restaurant business to the respondent, Tanya Wiebe. Mr. Bezanson says that in addition to purchasing the business, Ms. Wiebe agreed to

purchase his inventory of restaurant goods and supplies. Mr. Bezanson says Ms. Wiebe made several payments towards these goods, but then refused to make further payments. He claims \$4,200 for the amount owing for the restaurant goods.

2. Ms. Wiebe says she did not agree to purchase all of the restaurant goods or to their price, and that she was pressured into paying for them by Mr. Bezanson. She says she owes nothing.
3. The parties are each self-represented in this dispute.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
6. Section 42 of the CRTA says 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.
8. Ms. Wiebe says that Mr. Bezanson acted unfairly and did not provide everything he promised in the sale of his restaurant business to her. She suggests that at some point, she will be seeking damages totalling \$140,000 in wage loss and \$10,000 for pain and suffering in relation to the business sale. However, she does not say that she has begun proceedings for these amounts, which are far beyond the CRT's maximum small claim amount of \$5,000. Further, I find those alleged damages are about the sale of Mr. Bezanson's business to Ms. Wiebe. On the evidence before me, I find that business sale was a different sale than the alleged agreement to purchase goods at issue here. Ms. Wiebe makes no counterclaim in this CRT dispute, including for a refund of any amounts she paid toward the restaurant goods.

ISSUE

9. The issue in this dispute is whether Ms. Wiebe agreed to purchase restaurant goods from Mr. Bezanson, and if so, whether she owes him \$4,200 or another amount.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Bezanson must prove his claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
11. The undisputed evidence is that Mr. Bezanson sold his restaurant business to Ms. Wiebe in 2020, without a written agreement for the purchase. The evidence shows that the parties negotiated terms and prices for that sale over time, and that there was

a “handover” period during which Ms. Wiebe began running more of the business while Mr. Bezanson helped her.

12. Many of the parties’ submissions are about the parties’ interactions and obligations under the business purchase. However, the parties agree, and I find, that the restaurant goods at issue here were not included in that business purchase. These goods included frozen and canned food, cleaning items, utensils and napkins, and other goods. The parties agree that Mr. Bezanson offered to sell the restaurant goods to Ms. Wiebe.
13. There is no signed, written agreement for the restaurant goods’ purchase in evidence. However, a contract may still be agreed to without signing a written agreement. Contracts may even be verbal rather than written, so long as the parties intentionally come to an agreement. However, it is often more difficult to prove the contents of unwritten contracts, or those without a specific contract document. Here, I find that the evidence of any contract between the parties is found in the emails and text messages in evidence.
14. I find the parties’ correspondence shows they agreed Ms. Wiebe would take over the restaurant business on June 1, 2020. In an undated text message, which I find was likely sent before June 1, 2020, Mr. Bezanson told Ms. Wiebe “we can do food inventory if you still want food.” A May 31, 2020 text message from Mr. Bezanson said that he had calculated the inventory of goods. Mr. Bezanson provided a detailed inventory document to Ms. Wiebe, describing each restaurant good to be sold and its price. After subtracting wages that Mr. Bezanson says he owed to Ms. Wiebe, the remaining balance for the goods was \$5,501.62. In the May 31, 2020 email that transmitted the inventory document to Ms. Wiebe, Mr. Bezanson noted that the parties had agreed on the inventory items during a restaurant walk-through the previous week. Mr. Bezanson said that he would accept payment by June 2, 2020. The evidence shows Ms. Wiebe did not immediately respond to Mr. Bezanson’s May 31, 2020 messages, either to confirm the purchase, or to object to the inventory document, prices, or balance owing.

15. I find photos taken by Mr. Bezanson around May 31, 2020 show many of the inventory goods at the restaurant, and are consistent with the inventory document. On balance, I find that Ms. Wiebe took possession of all of the inventory goods when she took over the restaurant on June 1, 2020, which she does not deny.
16. Mr. Bezanson sent several text messages and emails to Ms. Wiebe in the days following June 1, 2020, inquiring about when Ms. Wiebe would be paying for the inventory items. Ms. Wiebe's responses to these messages said that she lacked the funds to pay Mr. Bezanson, and that she was waiting for bank loans to come through and dealing with other aspects of the business. On June 9, 2020, Mr. Bezanson again requested payment for the inventory, and proposed a payment plan if Ms. Wiebe was still having trouble obtaining funds. Ms. Wiebe responded, "We will have to do a payment for now," which I find was her acceptance of the payment plan offer. Mr. Bezanson proposed \$500 per week for 11 weeks starting on June 9, 2020, and Ms. Wiebe said she would e-transfer the money in the morning.
17. I find Mr. Bezanson followed up with Ms. Wiebe about her payments regularly over the next several weeks, and provided her with statements showing the payments received and the amounts still owing. Ms. Wiebe does not deny making the payments shown in these statements, which I accept as accurate. Ms. Wiebe paid \$500 on June 9, 2020, \$200 in each of the next three weeks, \$100 the following week, and nothing after that. The statements show the balance owed after the last payment was received, on July 11, 2020, was \$4,301.62.
18. The evidence shows Mr. Bezanson kept urging Ms. Wiebe to keep to the payment schedule, or to pay even faster, throughout June, July, and August 2020. I find Ms. Wiebe responded that she lacked the ability to pay anything more, and was "broke". As discussed below, Ms. Wiebe says she made payments on the inventory goods because of pressure from Mr. Bezanson, and that she did not agree to buy them because they were worthless. However, I find it significant that in all of the parties' correspondence about the restaurant inventory items, Ms. Wiebe never denied purchasing the items listed in the inventory. I find she never took issue with any

particular inventory item or its price, or the credit for the wages Mr. Bezanson owed to her. On the evidence before me, I find Ms. Wiebe did not deny owing the inventory items' listed prices until she responded to this CRT dispute. Until then, I find Ms. Wiebe only said she was having trouble paying the amounts owed. I note that lack of ability to pay does not mean a debt is not owed.

19. Given the parties' correspondence, I find that Ms. Wiebe agreed to pay for the restaurant goods listed in Mr. Bezanson's inventory document. I find that the parties agreed Ms. Wiebe would pay the price set out in the inventory document, and that she failed to pay for those goods as required under the June 9, 2020 payment plan.
20. Ms. Wiebe says Mr. Bezanson threatened to cut off the restaurant's business licenses and supplier contracts if she did not pay for the restaurant inventory, so she made some payments because she was "forced" to. However, I find the evidence shows Ms. Wiebe did not tell Mr. Bezanson she did not agree to purchase the inventory, and Ms. Wiebe did not make any payments under protest. Further, the parties do not dispute that the restaurant became Ms. Wiebe's on June 1, 2020. I find there is nothing in the evidence before me showing that Mr. Bezanson was required to maintain any business licenses, health certifications, supplier relationships, or other aspects of the restaurant business in his own name after he sold it to Ms. Wiebe. I find it likely that Mr. Bezanson only maintained these aspects of the business in his own name as a goodwill gesture, to assist Ms. Wiebe with the ownership transition and give her more time to transfer those aspects to herself. Given Ms. Wiebe's repeated failures to pay for the restaurant inventory as agreed, and lack of response to many of Mr. Bezanson's payment inquiries, I find it was reasonable for Mr. Bezanson not to maintain these goodwill gestures in the circumstances. I find the evidence fails to show Ms. Wiebe was improperly "forced" into making payments for the restaurant goods.
21. Ms. Wiebe also says that Mr. Bezanson removed point of sale terminals and other items from the restaurant, suggesting that he might owe her for those items. I find that the parties' text messages confirmed that Ms. Wiebe arranged to get her own,

new point of sale systems, and that Mr. Bezanson was entitled to remove his terminals. Further, I find the evidence does not show that Mr. Bezanson removed any of Ms. Wiebe's other, unspecified "essential equipment" as she alleges.

22. Ms. Wiebe also says she never agreed to pay for expired food, open bottles, or mouse and rat feces. I find the inventory photos submitted by Mr. Bezanson do not show any obviously expired food, open bottles that were no longer usable, or obvious mouse and rat feces. Ms. Wiebe provided no photos or other evidence showing that any of the inventory was unusable, or was not as described in the inventory document. Further, I find Ms. Wiebe does not explain which of the items in the inventory document were defective, if any. I find that the evidence fails to show that any of the inventory items purchased by Ms. Wiebe were incorrectly described, defective, or unusable.
23. I acknowledge Ms. Wiebe's statements that running the restaurant business has been difficult. But as noted, difficulty making payments does not excuse one from valid debts. Having weighed the evidence, I find that Ms. Wiebe failed to pay Mr. Bezanson for the inventory of restaurant goods as agreed. I allow Mr. Bezanson's claim for \$4,200.

CRT FEES, EXPENSES, AND INTEREST

24. Under the *Court Order Interest Act*, Mr. Bezanson is entitled to pre-judgment interest on the \$4,200 owing. I find the parties' text message correspondence shows that Mr. Bezanson last requested payment from Ms. Wiebe on August 26, 2020. So, I find pre-judgment interest is calculated from August 27, 2020 until the date of this decision. This equals \$9.73.
25. 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. Mr. Bezanson was successful here, so I find he is entitled to reimbursement of the \$175 he paid in CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Ms. Wiebe to pay Mr. Bezanson a total of \$4,384.68, broken down as follows:
- a. \$4,200 in debt for purchased restaurant goods,
 - b. \$9.68 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
27. Mr. Bezanson is entitled to post-judgment interest, as applicable.
28. 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 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.

Chad McCarthy, Tribunal Member