



Civil Resolution Tribunal

Date Issued: March 15, 2021

File: SC-2020-007259

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Le Francois v. Advanced Industrial Group Inc.*, 2021 BCCRT 284

BETWEEN:

LAWRENCE LE FRANCOIS

APPLICANT

AND:

ADVANCED INDUSTRIAL GROUP INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Lawrence Le Francois (LLF), says that in 2014 the respondent, Advanced Industrial Group Inc. (AIG), agreed to pay his annual golf membership fees each year. LLF says that in 2020 AIG failed to pay his membership fees. He wants AIG to pay him \$1,200 for the cost of the annual golf membership, plus

contractual interest. Initially LLF also wanted AIG to pay him an additional \$3,800 for his time spent on the dispute, but he has since withdrawn that part of his claim.

2. AIG says it never agreed to pay for LLF's annual golf membership fees, and that any such payments before 2020 were a gift. AIG wants LLF to reimburse it \$2,456.82 in legal fees.
3. LLF is self-represented, and AIG is represented by NC, a principal. NC is LLF's daughter.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the

tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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. I note LLF submitted some evidence one day late, specifically a draft share purchase agreement. AIG says it would be prejudiced if this evidence were admitted since it did not have an opportunity to provide additional evidence in response. AIG also says the evidence is not determinative of the issues in this dispute. However, AIG did not specify what additional evidence it would have submitted, and it provided a thorough response to the late evidence in its submissions. Given this, and my ultimate findings below, I find that AIG would not be prejudiced by the admission of the late evidence. While the draft share purchase agreement is not determinative of the issues in this dispute, I find it is helpful for providing context. So, I have allowed LLF's late evidence and I have considered it in my decision.

ISSUES

9. The issues in this dispute are:
 - a. Is AIG required to pay LLF \$1,200 for the cost of his 2020 golf membership, plus contractual interest?
 - b. Is LLF required to reimburse AIG \$2,456.82 for legal expenses?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant, LLF, must prove his claim on a balance of probabilities. This means I must find it is more likely than not that LLF's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss both parties' claims.

Is AIG required to pay LLF \$1,200 for the cost of his 2020 golf membership, plus contractual interest?

12. LLF says that in 2014 he entered into a written agreement with AIG which included some verbal agreements, one of which was for AIG to pay for his annual golf membership fees. AIG says it never had a written or verbal agreement with LLF, and that it never agreed to pay for his annual golf membership fees each year. It says any payments for LLF's golf membership fees before 2020 were a gift. For the following reasons, I agree.
13. It is undisputed that before 2014 LLF owned AIG. It is also undisputed that in 2014 LLF sold AIG through a share purchase agreement which effectively gave his daughter NC and JC, who I infer is NC's partner or family member, control of AIG (share purchase agreement). The final share purchase agreement is not in evidence. LLF did submit what appears to be an unsigned draft of the share purchase agreement, much of which contains redlined comments suggesting changes to the draft. This is the evidence LLF submitted a day late, as discussed above. There is no mention of a golf membership in this document. AIG is not a party to the draft agreement, and it says it was not a party to the final share purchase agreement. There is no other written agreement in evidence.
14. While it is undisputed that LLF was party to the final share purchase agreement, I find there is no evidence that LLF has a written agreement with AIG. Therefore, I

find I must determine whether LLF had an independent verbal agreement with AIG for it to pay for his golf membership fees each year.

15. LLF says he made the verbal agreement with AIG in 2014 around the time of the share purchase agreement, but he does not specify the date or time of the verbal agreement. He says his initial conversation was with JC while having a beer at his golf course, and that he had a meeting with both JC and NC at “the office” the following day, which I gather from his submissions was when he says the verbal agreement was finalized. LLF does not state the specific terms of the alleged verbal agreement, including the cost of the annual golf membership, method of payment, or the date by which it was to be paid each year.
16. In accordance with CRTA section 33 and CRT rule 8.2, LLF served a Summons on JC which asked JC what was discussed and agreed to at their meeting in 2014. The Summons did not specifically ask about golf membership fees. In their Summons Response JC said they had multiple meetings with LLF in 2014 about the share purchase agreement, but they could not recall specific details from any of those meetings.
17. LLF says NC admitted to the verbal agreement in a November 6, 2020 email, but there are no November 6, 2020 emails in evidence. There are, however, several emails dated November 5, 2020 between LLF and NC. However, I find these emails support AIG’s position that it never agreed to pay for LLF’s golf membership every year, and that any such payments were a gift.
18. It is unclear from the parties’ submissions who paid for LLF’s golf membership fees before 2020. LLF provided no invoices, bank records, or other evidence to show the dates, amounts, or source of the alleged payments.
19. On the evidence before me, I find LLF has not established that he had a verbal agreement with AIG, that AIG breached any agreement by failing to pay his golf membership fees in 2020, or that he suffered damages as a result of any breach. I dismiss LLF’s claim for \$1,200 for a golf membership.

20. Having found LLF has not established a verbal contract with AIG, and that AIG does not owe him anything, I find LLF is not entitled to contractual interest. I dismiss this claim.

Is LLF required to reimburse AIG \$2,456.82 for legal expenses?

21. 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. Since LLF was unsuccessful, I find he is not entitled to reimbursement of either his CRT fees or his dispute-related expenses.

22. AIG says the extraordinary circumstances of this dispute warrant its reimbursement of \$2,456.82 in dispute-related expenses for legal fees. LLF chose not to respond to this claim despite having the opportunity to do so.

23. CRT rule 9.5(3) says the CRT will not require a party to reimburse another party's legal expenses except in extraordinary circumstances. When determining whether such extraordinary circumstances exist in a particular dispute, CRT rule 9.5(4) says it may consider the complexity of the dispute, the legal representative's degree of involvement, whether a party's conduct has caused unnecessary delay or expense, and any other factors it considers appropriate.

24. AIG relies on the CRT's decision in *Parfitt et al. v. The Owners, Strata Plan VR 416 et al.*, 2019 BCCRT 330. In that decision the CRT found its ability to order reimbursement of legal fees is different from, but similar to, special costs under the BC Supreme Court Civil Rules. In general, special costs should be awarded against a party when their conduct in the litigation was reprehensible and deserving of punishment or blame. In *Parfitt* the CRT awarded one party half of its legal fees when it found another party had made a significant and specific threat against them with the intention of suppressing evidence in the dispute.

25. While *Parfitt* is not binding on me, I find its reasoning persuasive. I find that in addition to the factors set out in rule 9.5(4), I must determine whether LLF's behaviour during this dispute was reprehensible and deserving of punishment.

26. With respect to the specific factors set out in rule 9.5(4), AIG does not allege that this dispute was particularly complex, and I find it was not. At the start of this dispute the CRT denied AIG's request for legal representation. Evidently AIG engaged its lawyer outside of the CRT's formal process to assist it with this dispute. It submitted a December 29, 2020 invoice from its lawyer for \$2,456.82 which indicates the lawyer spent 14.3 hours working on this dispute. Aside from stating that 1.8 of those hours were devoted to legal research and drafting a non-disclosure agreement which was never fully executed, there is no further detail in the invoice about the lawyer's work.
27. AIG says LLF's conduct caused unnecessary delay and expense. It says LLF submitted over 80 pages of documents, many of which were duplicates, and much of which was irrelevant to his claim. While I agree with the volume of evidence described, I find such submissions from a self-represented litigant do not rise to the level of reprehensible conduct deserving of punishment.
28. AIG claims LLF sent NC a threatening email on November 17, 2020 outside of the CRT process in breach of the CRT rules. However, I note the parties' evidence submission deadline was December 29, 2020, and AIG did not submit this allegedly threatening email into evidence. So, I have not considered it in determining whether AIG is entitled to legal fees.
29. AIG also claims that the CRT warned LLF about his behaviour in a November 19, 2021 email but again, AIG did not submit this email into evidence. Since LLF did not have an opportunity to respond to it in the context of AIG's claim for legal fees, I find I cannot rely on it.
30. AIG also claims that in his submissions LLF implicitly threatened to have a "pile of crazies" peer into NC's windows. However, I find that the relevant paragraph of LLF's submissions indicates that he did not intend to act on the described actions, and therefore it is not a direct threat. Even if I did find that this was a threat, I find AIG has failed to explain how this threat relates to its legal fees.

31. AIG also says LLF engaged in a pattern of abusive conduct throughout this dispute. It says there was no legitimate purpose to this dispute, and that LLF brought it only to harass NC. While I agree that LLF's evidence and submissions contain personal insults and inappropriate language, the evidence before me indicates that the vast majority of this behaviour occurred before the start of this dispute. I also find that despite submitting large amounts of irrelevant evidence, LLF's submissions indicate his legal claim in this dispute was genuine.
32. Overall, while I find much of LLF's behaviour and language during this dispute was inappropriate, I do not find that it was so reprehensible that it warrants punishment. I say this because I find there is insufficient evidence of LLF making direct threats to AIG's principals in relation to this dispute. I also find that AIG has not sufficiently explained how its legal fees are connected to LLF's behaviour, particularly since most of the problematic emails were dated well before the start of this dispute. For these reasons, I dismiss AIG's claim for reimbursement of its legal fees.

ORDERS

33. I dismiss LLF's claims.
34. I dismiss AIG's claim for reimbursement of legal fees.

Sarah Orr, Tribunal Member