



Civil Resolution Tribunal

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File: SC-2021-000406

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dasmesh Transport Ltd. v. Wong*, 2021 BCCRT 829

B E T W E E N :

DASMESH TRANSPORT LTD.

APPLICANT

A N D :

BING WONG and FRASER RIVER RV PARK INC.

RESPONDENTS

A N D :

DASMESH TRANSPORT LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about issues arising from termination of a commercial property lease.
2. The applicant and respondent by counterclaim, Dasmesh Transport Ltd. (Dasmesh), leased property for truck and trailer parking from the respondent and applicant by counterclaim, Fraser River RV Park Inc. (Fraser). The other respondent, Bing Wong, I infer is a principal of Fraser.
3. Fraser and Dasmesh signed a 5-year lease in 2015, to end on November 30, 2020. Upon signing the lease, Dasmesh paid the last month's rent, \$4,410, as a deposit. Dasmesh says it vacated the property in October 2020, so it seeks \$4,410 from Fraser, representing a refund of its deposit or the last month's rent..
4. Fraser says it was entitled to keep the deposit because Dasmesh occupied the property until mid-November 2020 and paid no rent for that month. It also says Dasmesh damaged the front gate, left debris on the property, and caused Fraser to incur municipal bylaw contravention fines. In the counterclaim, Fraser seeks \$5,000 for unpaid rent, fines, legal fees, property damage, and debris removal.
5. Dasmesh is represented by a principal. Fraser is represented by business contact, BS. Mr. Wong represents himself.

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). 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.

7. 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.
8. 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.
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.
10. Fraser submitted evidence after the stated deadline. The evidence was documentation of bylaw contravention fines, which I find relevant. Given the CRT's mandate that includes flexibility, and since Dasmesh had the opportunity to respond to the late evidence, I find it admissible and where relevant I discuss it below.

ISSUES

11. The issues in this dispute are:
 - a. Is Dasmesh entitled to a refund of its \$4,410 deposit?
 - b. Is Dasmesh liable to Fraser for unpaid rent, property damage, debris removal, fines or legal fees?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil dispute, Dasmesh must prove its claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Mr. Wong did not submit any evidence, despite having the opportunity to do so.
13. On October 2, 2015, Fraser and Dasmesh signed a lease for a "commercial truck and trailer park" with a 5-year term commencing December 1, 2015 and ending November 30, 2020. I note the lease refers to Dasmesh as "Dashmesh Transport Ltd." (bold emphasis added) but I find this is a typographical error. Fraser does not dispute Dasmesh's standing to bring this claim, nor does it dispute that the lease governed its relationship with Dasmesh.
14. It is undisputed that, as required by the lease, Dasmesh paid Fraser a deposit that included the first and last month's rent. The last month's rent portion with GST was \$4,410, the amount Dasmesh claims in this dispute. Rent was payable on first day of each month.
15. The lease contained some unusual terms. One of those terms was clause 1.3, which said that if Dasmesh could not "get the required authority and licence to run a truck parking from any and all concerned authority including but not limited to City," (reproduced as written) then the lease is deemed cancelled and neither party will be liable to pay "anything to anybody." After "anybody" is hand-written "as additional rent." The parties made no submissions about the significance, if any, of this addition. Additional rent is not defined in the lease, but clause 1.1 says Dasmesh will not pay any additional rent under any circumstances. So, I find clause 1.3 means that if Dasmesh failed obtain a licence to operate, the lease was cancelled and Dasmesh was not required to continue paying rent.
16. Dasmesh says it was unable to obtain a business licence through the municipal government and so the lease ended in October 2020. Fraser does not specifically dispute this, and the evidence includes a court order issued on October 20, 2020,

prohibiting any trucks or trailer parking on the property for 1 year. I find the court order effectively ended the lease on October 20, 2020.

17. Fraser says Dasmesh occupied the property in November 2020, so it owes rent for November. Dasmesh supplied an invoice showing a third party removed 6,690 kg of waste from the property on November 2, 2020, and photos dated November 2 showing a clean property. Because I find the lease ended on October 20, 2020, I find Dasmesh was entitled to a reasonable period of time to vacate and clean the property. I find Dasmesh does not owe any rent for November 2020, the final month of the 5-year lease. It follows that Fraser was not entitled to keep Dasmesh's deposit for November's rent.
18. Dasmesh also says Mr. Wong agreed in October not to deposit Dasmesh's October rent cheque and then did so anyway. I reject the suggestion that Mr. Wong agreed that Fraser would forgo October's rent, as I find it inconsistent with the surrounding evidence about when rent was due under the lease and the parties' deteriorating relationship.
19. As for the claim against Mr. Wong, generally, principals and employees of corporations are not responsible for a corporation's contractual obligations and are not personally liable unless they committed a wrongful act independent from that of the corporation: see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121. There is no evidence Mr. Wong committed a wrongful act, so I dismiss the claim against Mr. Wong.
20. Fraser says during the lease, Dasmesh's security guard caused an electrical fire, damaging a trailer, several trucks and trees on the property. Fraser claims the cost of removing the damaged trees, which it says is \$1,800. There is no evidence before me that the trees have been removed and there is no removal cost estimate. I also note that accidental damage by fire was a specific exception to Dasmesh's liability under the lease. So, even if Fraser had proven its damages, I would find Dasmesh not liable for the accidental fire damage.

21. Fraser says it hired its neighbour, RS, to clean up debris Dasmesh left on the property. In a letter, RS said there was scattered junk on the property, which they cleaned up and took away. They also mentioned the damage caused by the fire, and a damaged front gate. They say the “total cost of above approx. \$2,000.” It is not clear what amount relates to each of debris removal, tree damage, and gate repair. I already found that Dasmesh left the property clean on November 2, 2020. And there is no indication Fraser actually paid the neighbour \$2,000, or any amount. I give RS’ letter little weight.
22. Dasmesh disputes the allegation that it damaged the front gate. Its representative, KB, says on November 2 they locked the gate, which was in working condition. Fraser does not say when it observed the front gate damage. The only photo of the damaged gate was taken March 9, 2021. There is no evidence about how the property has been used since Dasmesh vacated it in early November 2020. Given that Fraser also took photos of debris on the property on November 1, 2020, I find that if the gate had been damaged at that time, Fraser likely would have taken a photo of it. I find Fraser has not proved that Dasmesh damaged the gate. Even if it had, there is no evidence to quantify the damages, such as a repair estimate or invoice. So, I find Fraser was not entitled to withhold any of the deposit due to damage or failure to leave the property clean.
23. I order Fraser to refund Dasmesh \$4,410, subject to any adjustment for the counterclaim.

Counterclaim

24. Turning to Fraser’s counterclaim, Fraser says in 2018 it pleaded guilty to a charge of operating a truck park without a license and was fined \$2,250. Fraser says in August 2020 it again pleaded guilty for the same charges and paid a further \$2,250. It argues that Dasmesh is responsible for these fines.
25. Under clause 2b of the lease, Dasmesh agreed to pay when due all business taxes and licences, and other taxes, rates or charges levied or assessed due to Dasmesh’s

use and occupancy of the property, its business, equipment, machinery or fixtures. It also agreed under clause 2f to comply with all federal and provincial legislation, building bylaws and other government regulations that relate to the property's use and operation.

26. Dasmesh says it had a verbal agreement with Fraser that any fines would be "paid independently". Fraser denies this. I am not persuaded that there was a verbal agreement, and in any event, the lease has an "entire agreement" clause that says there are no other agreements or conditions, express or implied, except as expressly set out in the lease, and the lease cannot be modified except in writing. So, I find the lease terms apply.
27. I find the fines were a "charge assessed" due to Dasmesh's use of the property under clause 2b. I also find Dasmesh breached clause 2f by failing to comply with all relevant legislation and regulations because it is undisputed that Dasmesh failed to obtain the required operating permit.
28. While not raised by the parties, Fraser's claim about the 2018 fine is beyond the 2-year basic limitation period set out in the *Limitation Act*. However, section 22 of the *Limitation Act* states that if a claim is started within the basic limitation period, a "related claim" such as a counterclaim can be started even if the limitation period for the counterclaim has expired. I find Fraser's counterclaim for unpaid fines is a "related claim" for the purposes of the *Limitation Act* because both claims arise under the same lease.
29. Accordingly, I find Fraser is entitled to \$4,500 for the fines.
30. Fraser also claims legal expenses, and submitted an invoice for \$16,831.67. The invoice was for services provided between August 15, 2018 and January 23, 2019. The services related to Fraser's seeking legal advice about cancelling the lease and disputing the municipality's 2018 fine. Fraser does not explain why Dasmesh should be responsible for these legal expenses. There is nothing in the lease that requires Dasmesh to pay Fraser's legal fees. Since the legal fees were incurred well before

this CRT dispute, they are not dispute-related expenses. I find Dasmesh is not responsible for Fraser's legal fees.

Conclusion

31. I have found that Fraser owes Dasmesh \$4,410 for a deposit refund, and Dasmesh owes Fraser \$4,500 for fines under the lease. The net result is that Dasmesh owes Fraser \$90.
32. The *Court Order Interest Act* applies to the CRT. Dasmesh is entitled to pre-judgment interest on the \$90 from November 1, 2020, the day after the day I find the lease ended, to the date of this decision. This equals \$0.30.
33. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Each party was successful in its claims and each party paid CRT fees, so I make no order for reimbursement of CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

34. Within 14 days of the date of this order, I order Dasmesh to pay Fraser a total of \$90.30, broken down as follows:
 - a. \$90.00 in debt
 - b. \$0.30 in pre-judgment interest under the *Court Order Interest Act*, and
35. Fraser is entitled to post-judgment interest, as applicable.
36. I dismiss the balance of Fraser's counterclaim.
37. I dismiss the claim against Mr. Wong.
38. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

39. 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.

Micah Carmody, Tribunal Member