



Civil Resolution Tribunal

Date Issued: January 25, 2022

File: SC-2021-003786

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0832958 B.C. Ltd. v. 0695949 B.C. Ltd.*, 2022 BCCRT 96

B E T W E E N :

0832958 B.C. LTD.

APPLICANT

A N D :

0695949 B.C. LTD. and FARSHAD SHARIFPOUR

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over an alleged debt under a license agreement.
2. The respondent, 0695949 B.C. Ltd., which operates as Kelowna Best Buy Auto (KBBA), licensed a yard from the applicant, 0832958 B.C. Ltd. (083), to store its vehicles. The respondent, Farshad Sharifpour, is KBBA's director. 083 claims \$3,813

from KBBA and Mr. Sharifpour for 2 months of unpaid “rent” or fees allegedly owing under the parties’ agreement.

3. The respondents agree the \$3,813 is outstanding. However, they allege that 083 failed to keep the yard secure and all of their stored vehicles were broken into causing major losses to their business. Mr. Sharifpour also says that he was hospitalized with COVID and should not be required to pay 083 anything. Neither respondent filed a counterclaim.
4. 083 is represented by its property manager and Mr. Sharifpour represents KBBA and himself in this proceeding.
5. For the reasons that follow, I find KBBA must pay 083 the claimed \$3,813 under the license agreement and I dismiss its claims against Mr. Sharifpour.

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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.
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. As a preliminary issue, the CRT records show that the CRT served Mr. Sharifpour with the Dispute Notice by mail and email and Mr. Sharifpour did not file a Dispute Response. Typically, when a respondent does not file a Dispute Response the respondent is in default and liability against them is presumed. However, I find the content of KBBA's Dispute Response shows that Mr. Sharifpour was likely responding on his own behalf as well as on behalf of KBBA. So, I find Mr. Sharifpour is not in default.

ISSUE

11. The issue in this dispute is to what extent, if any, do the respondents owe 083 the claimed \$3,813 in fees.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant 083 must prove it claims on a balance of probabilities (which means "more likely than not"). I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
13. As set out in the May 29, 2018 "Yard License Agreement", 083 licensed a yard to KBBA on a month-to-month basis to store its vehicles. KBBA agreed to pay \$1,815 per month, plus GST and a 15% administration fee, to license the yard.
14. While 083 refers to unpaid "rent", I find it means licensing and administration fees under the license agreement. The respondents do not dispute that \$3,813 remains outstanding for 2 months' fees as set out in 083's January 7, 2021 demand letter.

Claim against Mr. Sharifpour

15. KBBA is a separate legal entity from its director Mr. Sharifpour. While 083 brought this claim against Mr. Sharifpour, it did not make any submissions against him personally. I find Mr. Sharifpour signed the license agreement as KBBA's "authorized" agent and he is not a party to the agreement in his personal capacity. A corporation's owners, directors and agents are generally not liable for a corporation's actions in the absence of fraud or certain improper conduct, which are not present here. I find 083 has not established a legal basis on which Mr. Sharifpour would be personally liable to pay the license fees. So, I dismiss 083's claims against Mr. Sharifpour.

Claim against KBBA

16. Mr. Sharifpour argues that KBBA should not have to pay the outstanding fees. First, he alleges that 083 failed to provide proper security and failed to maintain the yard's fence. He says this allowed vandals to break into the yard and into KBBA's vehicles over "many nights" and allegedly steal their parts. Mr. Sharifpour says KBBA suffered financial hardship because of these incidents that happened during the COVID pandemic, so it could not pay.

17. 083 denies Mr. Sharifpour's allegations. 083 says it provided \$28,000 in security and maintenance for the yard over the term of the "tenancy". However, it says that KBBA was actually the party responsible for the yard's security under the license agreement and KBBA was also required to provide its own fencing, which KBBA never installed.

18. 083 submitted a general ledger listing its expenses for a security company and maintenance. As there is no independent evidence to the contrary, I accept that 083 provided security personnel and did some maintenance. I also agree with 083 that KBBA was responsible for its own security under the license agreement. In particular, the terms state that KBBA will comply with 083's security procedure but acknowledges that KBBA is "solely responsible" for its property's security and that 083 is not responsible for any of KBBA's vehicles or their contents. Further, the terms require KBBA to install and maintain its own fencing. Given these terms, I find 083 is

not responsible for any loss that KBBA might have suffered from vandals breaking into its vehicles. KBB also provided no evidence proving it suffered any loss from vandals. So, I find these incidents are not a basis for KBBA to withhold any fees.

19. Mr. Sharifpour says he was hospitalized for a time with COVID and KBBA should not pay for the fees during that time period. However, he does not say when he was hospitalized and submitted no medical evidence about it. 083 says Mr. Sharifpour was not hospitalized for COVID until about 2 weeks after their license ended and says it had offered payment options, which were never accepted.
20. A contract can be frustrated if its performance is rendered impossible or impracticable by an unforeseeable event for which neither party was at fault: *Wilkie v. Jeong*, 2017 BCSC 2131. To the extent that Mr. Sharifpour argues the license agreement was frustrated and KBBA is relieved of liability, I find insufficient evidence that this was the case. Mr. Sharifpour provided no independent evidence about the incidents, KBBA's alleged losses, its financial situation, his hospitalization, or the impact, if any, of the incidents, his hospitalization or COVID on its business.
21. I also find no term in the parties' license agreement that allowed KBBA to withhold its fees for an unforeseen event or because its director was hospitalized. I find KBBA was obligated to pay the fees owing to 083 under the license agreement and it failed to do so for 2 months.
22. Since the claimed \$3,813 is undisputedly still owing under the license agreement, I find that KBBA must pay 083 that amount.
23. The parties' license agreement included no interest term for late payments. So, I find the *Court Order Interest Act* applies to the debt. I find 083 is entitled to pre-judgment interest on the \$3,813 debt from January 14, 2021, the due date stated on 083's demand letter, until to the date of this decision. The interest equals \$17.72.
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 KBBA was the unsuccessful party in this dispute and must reimburse 083 a total of \$175 in paid CRT fees. 083 claimed no specific dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order KBBA to pay 083 a total of \$4,005.72, broken down as follows:
 - a. \$3,813 for license fees,
 - b. \$17.72 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
26. 083 is entitled to post-judgment interest, as applicable.
27. I dismiss 083's claims against Mr. Sharifpour.
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.
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.

Trisha Apland, Tribunal Member