



Civil Resolution Tribunal

Date Issued: April 7, 2022

File: SC-2021-005100

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lloyds Travel & Cruises Ltd. v. Barnet*, 2022 BCCRT 393

B E T W E E N :

LLOYDS TRAVEL & CRUISES LTD.

APPLICANT

A N D :

JASON BARNET (Doing Business As JCB CONTRACTING) and
JCB CONTRACTING LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. The applicant, Lloyds Travel & Cruises Ltd. (Lloyds), manages short term cottage rentals in a strata corporation known as La Casa Cottage Resorts (the Resort). The respondent, JCB Contracting Ltd. (JCB), owns a cottage in the Resort and entered into a rental management agreement (agreement) with Lloyds. Lloyds says that JCB

breached the agreement by failing to provide adequate notice that its cottage was unavailable for rent in 2021. Lloyds claims \$5,000 for alleged lost revenue.

2. The respondent Jason Barnet is a principal of JCB. The respondents say they advised Lloyds in November 2020 not to book any rentals until further notice, which they say was permitted under the agreement. So, the respondents say they are not responsible for any lost revenue.
3. Lloyds is represented by a director, Bruce Fougner. Mr. Barnet represents himself and JCB.

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. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Did the respondents breach the parties' agreement?
 - b. If so, to what extent, if any, are the respondents responsible for Lloyds' alleged \$5,000 in lost revenue?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, Lloyds must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find necessary to explain my decision. I note that the respondents did not submit any documentary evidence and Lloyds did not provide any final reply arguments, despite the parties having the opportunity to do so.
10. At the outset, I note that all of Lloyd's evidence, JCB's Dispute Response, and JCB's BC Company Summary from the Corporate Registry show Mr. Barnett's last name is spelled "Barnett". So, below I will refer to the individual respondent as Mr. Barnett. However, for the following reasons, I find nothing turns on this spelling error in the style of cause above.
11. I find the agreement at issue in this dispute is between Lloyds and JCB. I acknowledge that the agreement says the cottage's owner is "JCB Contracting" and does not include the "Ltd." designation. However, on the agreement's last page, Mr. Barnett filled out the section designated for corporate owners, not individual owners, and he signed the agreement on JCB's behalf as its "authorized signatory". There is

no other evidence before me to suggest that Mr. Barnett contracted with JCB in his personal capacity. On balance, I find only the JCB corporation contracted with Lloyds.

12. An officer or director is generally not personally liable for a corporations' debts, even if they are the sole company shareholder (see *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 SCR 2 (CanLII) at paragraph 13). Neither are officers, directors, or employees personally liable when acting on a company's behalf, unless they committed a wrongful act independent of the company (see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121). I find Lloyds has not made any specific claims against Mr. Barnett. As I find Mr. Barnett is not a party to the agreement, I find he cannot be held personally responsible for any alleged breach of that agreement. So, I dismiss Lloyds' claim against Mr. Barnett.
13. I turn to the relevant background facts. The agreement is dated February 8, 2020. Under the agreement, JCB appointed Lloyds to manage short term vacation rentals of its strata lot cottage at the Resort.
14. The evidence shows Mr. Barnett sent Lloyds a November 19, 2020 email that stated as follows (reproduced as written): "I see that bookings are blocked off for my cottage. Due to COVID out break. Please don't book my cottage until spring or until this situation changes. I'll touch base in spring to get it back on line".
15. Lloyds responded to Mr. Barnett in a November 20, 2020 email, asking if he wanted to block off rentals until a certain date but still allow for summer bookings, or remove the unit from the system, which would mean losing any incoming reservations for the following summer. It is undisputed that Mr. Barnett did not respond.
16. Lloyds says it put a block on JCB's cottage that did not allow any rentals until April 1, 2021, in accordance with Mr. Barnett's request not to rent the cottage until spring.
17. The next email in evidence is dated March 27, 2021 from the Resort's reservations department asking Mr. Barnett when they could access the unit to prepare for a guest arriving on April 1. Mr. Barnett responded that he had taken the unit off the rental pool. Lloyds then contacted Mr. Barnett in a March 27, 2021 email confirming Mr.

Barnett had removed the cottage until spring, but there was a full season of bookings for the cottage in place, including a fully booked summer, as the unit had not been removed from the rental program. Mr. Barnett responded that he had told Lloyds the previous fall that the cottage was not available. Mr. Barnett also confirmed he did not want to rent the cottage out that year (2021).

18. Lloyds says that the agreement permitted owners to block off rentals for their own use on 180 days' notice. Lloyds argues that because Mr. Barnett only requested that rentals be put on hold until the spring, it was entitled to arrange bookings for JCB's cottage after April 1. Lloyds says that JCB is responsible for its lost revenue from the 9 families Lloyds says it had booked to rent JCB's cottage in July and August 2021.
19. I disagree with Lloyds that Mr. Barnett's November 19 email was properly interpreted as authorizing bookings as of the spring. This ignores the rest of the sentence, which says "until spring or until this situation changes" (my emphasis added). Lloyds also does not address Mr. Barnett's statement that he would touch base again in the spring about resuming rentals.
20. I acknowledge that Lloyds attempted to clarify Mr. Barnett's email and did not receive a response. However, I find Mr. Barnett's failure to respond should not have led Lloyds to conclude that it could unilaterally decide to resume bookings as of April 1. Mr. Barnett clearly did not provide Lloyds with a certain date to remove the rental block. I also find Mr. Barnett's failure to respond suggested he was content to lose out on incoming reservations for the summer.
21. I note that the agreement says owners must make their units available for at least 4 weeks during July and August each summer. However, given Lloyds' November 20 email, I find Lloyds permitted owners to remove their cottage from "the system", which I infer means taking it out of the rental pool, including over the otherwise required summer period.
22. I find a reasonable person in Lloyds' position would interpret Mr. Barnett's November 19 email and his failure to respond to Lloyds' November 20 email as confirmation that

he wanted to remove JCB's cottage from the rental pool indefinitely and until he provided notice otherwise. I find this is the only reasonable interpretation, given the uncertainty of the situation with the COVID-19 pandemic and because Mr. Barnett did not provide any confirmation about when he was willing to resume rentals, including during the peak summer season.

23. Given this conclusion, I am not satisfied that the agreement was actively in force in 2021, and so Lloyds was not permitted to book rentals of JCB's cottage. Therefore, I find Lloyds has not established that JCB breached the agreement.
24. However, even if I had found JCB breached the agreement, I would have dismissed Lloyds' claim for a failure to prove its damages. The only evidence Lloyds provided about its alleged lost revenue is a spreadsheet titled "Bookings we lost", but it did not explain the meaning and significance of each column. Perhaps most importantly, Lloyds did not say how it calculated the revenue column. There is no evidence before me about the rental rates for JCB's cottage. The agreement said only that Lloyds would charge 27.5% commission on each booking, but Lloyds provided no documentary evidence of any bookings or how its commission would be calculated based on the alleged bookings. I also note that Lloyds says it relocated as many guests as possible into other available cottages. Yet, it did not explain whether the spreadsheet showed all bookings for JCB's cottage in 2021, or only those that it was unable to relocate. In short, I find there is insufficient evidence before me to determine Lloyds' lost revenue from its inability to rent JCB's cottage.
25. For all the above reasons, I dismiss Lloyds' claims.
26. 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. Lloyds was unsuccessful and so I dismiss its claim for CRT fees. The respondents did not pay any fees, and no party claimed any dispute-related expenses, so I make no order.

ORDER

27. I dismiss Lloyds' claims, and this dispute.

Kristin Gardner, Tribunal Member