Civil Resolution Tribunal

Date Issued: August 5, 2022

File: SC-2021-006324

Type: Small Claims

Civil Resolution Tribunal

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B E T W E E N :

TRAVIS BROWN

APPLICANT

A N D :

VICTORIA LAMBERT and THE FAT PAINT COMPANY INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. The applicant Travis Brown undisputedly provided consultation services to the corporate respondent The Fat Paint Company Inc. (TFPC). The respondent Victoria

Lambert is TFPC's director. She undisputedly signed a March 14, 2019 promissory note agreeing to pay Mr. Brown $3,000. Mr. Brown claims the $3,000.

2. Ms. Lambert says TFPC is insolvent and ceased operations in August 2019. She argues she is not personally responsible because the debt owed to Mr. Brown was not guaranteed or secured.

3. Mr. Brown and Ms. Lambert are each self-represented. TFPC did not file a Dispute Response as required and so is in default as discussed below.

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). CRTA section 2 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. CRTA section 39 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, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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.

6. CRTA section 42 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. As noted, Ms. Lambert says TFPC "ceased business" in August 2019. She says its assets, but not the company itself, were sold to a third party corporation. A June 10, 2021 BC Company Search shows TFPC is active and is not in liquidation or receivership. Ms. Lambert is listed as a Director on that BC Company Search. While Ms. Lambert makes submissions about pursuing insolvency for TFPC, there is no evidence before me that TFPC is insolvent within the meaning of the *Bankruptcy and Insolvency Act*. So, I find Mr. Brown's claim against TFPC can proceed. For clarity, I find the sale of TFPC's assets in August 2019 is irrelevant for the purposes of this dispute. I find TFPC was properly served with the Dispute Notice and as noted is in default. More on the respondents' respective liability below.

ISSUE

9. The issue is whether either or both of the respondents owe Mr. Brown the claimed $3,000 for services he undisputedly provided to TFPC and for which he says Ms. Lambert personally guaranteed payment.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Brown must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.

The debt

11. Mr. Brown invoiced TFPC $3,000 in December 2017 for his consultation services. As noted above, TFPC is in default. Liability is generally assumed against a defaulting party. More on TFPC's liability below.

12. On March 14, 2019, Ms. Lambert signed a promissory note (Note) agreeing to repay Mr. Brown the $3,000. On the Note, the "Borrower" is listed as Ms. Lambert "c/o" TFPC at TFPC's business address, with Mr. Brown as the lender. The Note said the $3,000 would be repaid in full by August 1, 2019. It is undisputed it has not been repaid.

13. I find that in the Note Ms. Lambert agreed to be personally responsible for the $3,000 debt. I say this because she was listed as the borrower and while TFPC was also mentioned, I find it was only as Mr. Lambert's contact address. Ms. Lambert signed the Note in her personal capacity. I find TFPC was not a party to the Note, though undisputedly it was TFPC who originally owed the debt to Mr. Brown. Contrary to Ms. Lambert's assertion, in this civil dispute nothing turns on the fact the Note did not secure the debt against assets or otherwise "guarantee" it. Again, as noted above, there is no evidence before me that TFPC is insolvent. So, I find Ms. Lambert and TFPC are jointly and severally liable for the $3,000 debt, subject to the applicable limitation period.

Did Mr. Brown file his claim in time?

14. The *Limitation Act* (LA) applies to the CRT. Under the LA, there is a 2-year limitation period in BC to start a claim, running from when the claim was discovered or ought to have been discovered. Under section 24 of the LA, the limitation period will be extended if a person acknowledges liability for a claim in writing, before the limitation period expires. A partial payment can also extend the limitation period, but here this is not an issue as it is undisputed no payment has been made towards the $3,000 debt.

15. Ms. Lambert did not argue Mr. Brown's claim is out of time. However, in keeping with the CRT's flexible mandate and because the parties are lay litigants, I sought their submissions about whether Mr. Brown's claim is out of time, and in particular whether TFPC or Ms. Lambert acknowledged the debt before the limitation period expired. I also did so because the language in section 6 of the LA is mandatory, in that a claim

“must” not be commenced more than 2 years after it is “discovered”, unless extended under the LA.

16. Here, Mr. Brown filed his CRT application on August 14, 2021. So, if his claim arose before August 14, 2019, it was filed out of time, unless the limitation period was extended.

17. Ms. Lambert did not respond to the CRT’s invitation for submissions on the limitation issue. However, in her earlier submissions on the merits of the dispute, she submits that “we did everything within our means” to honour “our debt” with Mr. Brown “prior to and through to early summer, 2019”. Ms. Lambert further submits that in around September 2019 Mr. Brown was sent a letter that TFPC would not honour its non-guaranteed debts. As discussed below, Mr. Brown relies on this letter as an acknowledgement of the debt that he says extended the limitation period.

18. Mr. Brown submitted the following in response to the limitation issue. He said the debt came due August 1, 2019 and that date passed without repayment and that the debt remains entirely unpaid. Mr. Brown says because he was aware of TFPC’s cashflow fluctuations he was not overly concerned. He says they maintained a good relationship and he “presumed … the Respondent” would surface sometime. Mr. Brown says after several unanswered calls in September 2019, he received in October 2019 a September 27, 2019 letter from TFPC’s lawyer saying TFPC had ceased operations and would not be meeting the undisputed financial obligation. Mr. Brown says he “left the matter for a while” knowing that TFPC’s insolvency was irrelevant to Ms. Lambert’s personal guarantee. Mr. Brown says there was “little point” in pursuing anything during the “COVID shutdowns”. Finally, Mr. Brown says the September 27, 2019 letter acknowledges the debt and so his claim is not out of time.

19. First, the impact of COVID on the limitation period. On March 26, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order 86/2020 (MO86) under the *Emergency Program Act*, which suspended mandatory limitation periods for court actions. The mandatory suspension did not apply to the CRT. The order said that a tribunal, such as the CRT, may waive, extend, or suspend a mandatory time period.

20. MO86 was repealed on July 10, 2020 when the *COVID-19 Related Measures Act* (CRMA) came into force. Section 3(5) and item 7 of Schedule 2 of the CRMA, confirmed the limitation period suspensions set out in MO86. For clarity, under the CRMA, the CRT's authority to extend timelines was discretionary, not mandatory. The CRMA also said the suspension of limitation periods would end 90 days after the state of emergency ended, which was on June 30, 2021. This means the CRT's discretion to waive, extend, or suspend a limitation period during the COVID-19 pandemic ended on September 28, 2021. Further, I find Mr. Brown has not established that COVID-19 prevented his filing this application sooner. So, given the above, I find the CRT no longer has the legal authority to extend the limitation period under the CRMA and I would decline to do so in any event.

21. Second, the LA section 24 says a written acknowledgement extends the limitation period if a person makes the acknowledgement before the expiry of the limitation period. Here, the September 27, 2019 letter was within the limitation period, because the limitation period otherwise expired August 1, 2021, 2 years after when Mr. Brown knew the debt had not been repaid by August 1, 2019. However, I find this applies only to the claim against TFPC, not Ms. Lambert. I say this because the lawyer's September 27, 2019 letter clearly only admits TFPC's liability and does not mention Ms. Lambert's liability nor does the letter even copy her on its face.

22. Further, the LA section 24(6) says the acknowledgement extension only applies if it is in writing, signed, and "made by the person making the acknowledgement or the person's agent". Here, while I accept the lawyer was TFPC's agent, as noted there is no evidence the lawyer was Ms. Lambert's agent. So, I find the acknowledgement does not apply to Ms. Lambert. While the language in the LA section 6 is mandatory, a limitation defence can be waived. However, there is no evidence Ms. Lambert ever expressly waived the limitation defence. This means Mr. Brown's claim against Ms. Lambert is out of time. Contrary to Mr. Brown's apparent assertion, his presumption that "the Respondent" would surface (it is unclear which respondent he referred to, but nothing turns on it), which amounts to a decision to essentially "wait and see", did not extend the limitation period.

23. In summary, TFPC is in default and the evidence also clearly shows TFPC is liable for the debt, which is undisputed apart from the "ceased operations" allegation I have addressed above. Given I have found the limitation period was extended for the claim against TFPC, I find TFPC must pay Mr. Brown the claimed $3,000. However, as noted above, I find Mr. Brown's claim against Ms. Lambert personally is out of time under the LA and so I dismiss his claim against her.

Interest, fees, & expenses

24. Mr. Brown argues he is entitled to contractual interest. He relies on the Note Ms. Lambert signed which sets out her agreement to pay 18% annual interest. I find that interest rate does not apply to TFPC as TFPC is not a party to the Note. There is no evidence before me Mr. Brown and TFPC ever agreed to a contractual interest rate at the time the services were provided. So, I make no order for contractual interest.

25. In the absence of contractual interest, the *Court Order Interest Act* (COIA) applies to the CRT. I find TFPC must pay Mr. Brown pre-judgment interest under the COIA on the $3,000. Calculated from December 31, 2017 (given Mr. Brown invoiced TFPC in December 2017) to the date of this decision, this interest equals $159.46.

26. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Brown was successful in his claim against TFPC, I find TFPC must reimburse him $175 in CRT fees. Ms. Lambert did not pay fees and no dispute-related expenses were claimed.

ORDERS

27. Within 21 days, I order TFPC to pay Mr. Brown a total of $3,334.46, broken down as follows:

    a. $3,000 in debt,

    b. $159.46 in pre-judgment interest under the COIA, and

c. $175 in CRT fees.

28. Mr. Brown is entitled to post-judgment interest, as applicable. I dismiss Mr. Brown's claim against Ms. Lambert because his claim against her is out of time under the LA.

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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Acting Chair and Vice Chair