



# Civil Resolution Tribunal

Date Issued: May 8, 2024

File: SC-2023-003910

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CYPS Hangars Inc. v. Village of Pemberton*, 2024 BCCRT 436

B E T W E E N :

CYPS HANGARS INC.

**APPLICANT**

A N D :

VILLAGE OF PEMBERTON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about legal fees for preparing a lease agreement. In April 2020 CYPS Hangars Inc. and the Village of Pemberton signed a lease for CYPS to use a portion of Pemberton's airport for an aircraft hangar.

2. CYPS says Pemberton overcharged it \$2,198.66 for legal fees it did not agree to pay. It seeks a refund of this amount.
3. Pemberton says the lease terms allowed it to charge CYPS for all legal fees it incurred to prepare the lease. It says it does not owe CYPS anything.
4. CYPS is represented by a director, and Pemberton is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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 court.
8. 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.

9. The Dispute Notice named Pemberton as “Pemberton, Village of”. However, it is clear from the evidence that parties operated on the basis that Pemberton’s correct legal name is the Village of Pemberton. So, I have exercised my discretion under CRTA section 61 to direct the use of Pemberton’s correct legal name in this dispute. Accordingly, I have amended the style of cause above.

## **ISSUE**

10. The issue in this dispute is whether CYPS is entitled to a refund of \$2,198.66.

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, CYPS must prove its claims on a balance of probabilities, which means more likely than not. I have read all the parties’ evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss CYPS’s claims.
12. In 2019, CYPS’s directors approached Pemberton about the possibility of leasing a portion of its airport for an aircraft hangar. On November 26, 2019, Pemberton told them in an email that a lease proponent would be responsible for all of Pemberton’s costs associated with the lease work. These estimated costs included “400 +/-” to register the lease at the Land Title Office (LTO), and “\$2,000 +/-” for legal fees, with a comment stating that legal fees “may vary if there is back and forth on the lease agreement”.
13. On January 21, 2020, Pemberton emailed a January 20, 2020 letter to CYPS’s directors notifying them that Pemberton’s council was supportive of their proposal. It said the council had directed Pemberton staff to start discussions with them about the lease agreement. The letter advised that one condition of the lease would require the tenant executing the lease to be responsible for all of Pemberton’s costs associated with completing the lease. The letter said Pemberton would not proceed until CYPS’s directors agreed to pay these costs. The letter estimated the total costs to be \$4,800, which included \$1,000 for Pemberton’s legal fees for negotiating the

lease and \$300 to register the lease at the LTO. Pemberton did not explain why these estimated amounts were different than its November 2019 email, and there is no evidence that CYPS's directors inquired about this.

14. CYPS was incorporated on February 27, 2020. At some point CYPS agreed to cover the estimated costs set out in Pemberton's January 20, 2020 letter, and the parties proceeded to negotiate the lease. On April 14, 2020, the parties executed the lease which granted CYPS use of a portion of Pemberton's airport for an aircraft hangar. The lease was registered with the LTO on June 8, 2020.
15. Under clause 7.6 of the lease, CYPS agreed to pay or reimburse Pemberton for "all costs associated with the preparation and registration" of the lease. Specifically included in these costs were LTO registration fees, and "all legal fees associated with the preparation and registration" of the lease.
16. On September 23, 2020, Pemberton invoiced CYPS \$5,059.65. This amount included \$2,689.77 in legal fees, \$186.04 in PST on the legal fees, and \$196.78 for Land Title and Survey Association (LTSA) filing fees. On December 30, 2022, CYPS paid \$3,234.85 towards this invoice, leaving a balance of \$1,824.80.
17. On February 16, 2023, Pemberton invoiced CYPS \$2,198.66, which included the \$1,824.80 balance of the previous invoice, plus a 10% administration fee and 12% interest on the remaining balance. CYPS paid this invoice in April 2023. It is this \$2,198.66 invoice amount that CYPS says Pemberton overcharged it, and for which it claims a refund in this dispute.

***Is CYPS entitled to a refund of the \$2,198.66 invoice amount?***

18. CYPS says it is entitled to a refund for several reasons. Its primary argument is that by agreeing to the costs set out in Pemberton's January 20, 2020 letter, the parties entered into a binding agreement that Pemberton's legal fees would not exceed \$1,000. It says the signed lease was the "end product" of this binding agreement. CYPS says 10% is the maximum reasonable overage amount it is willing to pay for estimated legal fees without prior discussion or agreement.

19. Pemberton disagrees. It relies on clause 7.6 of the lease which covers “all legal fees” Pemberton incurred to prepare and register the lease, with no monetary limit. Pemberton also relies on clause 20.4 of the lease which says,

This Lease sets forth all of the warranties, representations, covenants, promises, agreements, conditions and understandings between the parties concerning the Land and there are no warranties, representations, covenants, promises, agreements, conditions or understandings, either oral or written, express or implied, between them other than as set forth in this Lease as modified pursuant to Section 20.5.

20. This is what is known as an “entire agreement” clause. Generally, such a clause in a contract is intended to exclude evidence of the parties’ prior negotiations or representations, so that the signed contract is the only relevant agreement between them. The effect of such a clause is a question of contractual interpretation (see *Firestar Custom Home Builders Inc. v. 1099000 B.C. Ltd.*, 2022 BCCA 324 at paragraphs 35 to 43). In the circumstances, I find there is nothing ambiguous about clause 7.6 of the lease, and so it is unnecessary to consider evidence of the parties’ prior negotiations or representations in determining what the parties agreed to.
21. I considered whether CYPS’s agreement to the January 20, 2020 letter formed a collateral contract. A collateral contract is valid and enforceable if its terms are clear and do not contradict the main contract (see *River Wind Ventures Ltd. v. British Columbia*, 2011 BCCA 79, at paragraph 14). However, I find the January 20, 2020 letter clearly states that all Pemberton’s costs, including its legal fees, were estimates, and there is nothing in that letter indicating that there was a maximum overage amount, either 10% or otherwise. I also find Pemberton clearly told CYPS’s directors in emails in November 2019 and January 2020 that if CYPS wished to discuss details of the lease or there was any “back and forth” requiring legal involvement, the legal fees would increase.
22. Even if I did find that the January 20, 2020 letter limited Pemberton’s legal fees to \$1,000, I find it would not be an enforceable collateral agreement because it

contradicts clause 7.6 in the lease which does not set a limit on Pemberton's legal fees.

23. For all of these reasons, I find CYPS has failed to establish that its acceptance of the costs set out in the January 20, 2020 letter formed a binding agreement between the parties.
24. CYPS also says Pemberton's legal fees were unreasonably high to prepare what Pemberton told them was its standard lease. It says all Pemberton had to do was "dust off" its standard airport lease and "change a few lines to reflect our names and the dates of the lease term". However, I find that is not an accurate description of what happened. The evidence shows that CYPS had many questions for and communications with Pemberton about the lease terms. On April 1, 2020, CYPS emailed Pemberton a list of detailed and substantive questions about the lease, as well as a marked-up version of the lease with more questions, comments, and suggestions. I find Pemberton's lawyer's invoice clearly shows they completed additional work in response to CYPS's questions and comments. Overall, I find CYPS has failed to establish that any of Pemberton's legal fees were unreasonable or excessive in the circumstances.
25. CYPS also says that Pemberton staff should have been "up to speed on all major points" in the lease and should not have required legal advice to answer all of CYPS's questions. CYPS cites as an example questions it asked about pollution insurance. CYPS says that before Pemberton referred any of CYPS's questions to its lawyer, it should have asked CYPS if it wanted to incur additional legal fees.
26. Pemberton denies that it unreasonably referred CYPS's questions to its lawyer, or that it should have sought CYPS's agreement before incurring legal fees. It also says it did not incur any legal fees in relation to CYPS's questions about pollution insurance.
27. I agree with Pemberton. I find there is no evidence Pemberton incurred legal fees in relation to pollution insurance. I also find there is no requirement in the lease or in

any of the documentary evidence before me requiring Pemberton to obtain CYPS's permission before incurring legal fees in relation to the lease. I also find it was not unreasonable for Pemberton staff to seek legal advice in response to many of CYPS's questions about the lease, as there would be obvious legal implications for both parties.

28. In May 2020, after CYPS had already signed the lease, CYPS told Pemberton in some emails that it would not pay Pemberton any additional legal fees. CYPS notes that some of Pemberton's legal fees were incurred after the parties signed the lease, and it says Pemberton should not have incurred these fees after it told Pemberton not to do so. Pemberton argues that CYPS cannot unilaterally amend the lease by making such a statement in an email. I agree. I also note that clause 7.6 covers Pemberton's costs "associated with the preparation and registration" of the lease. I find the evidence shows that the legal fees Pemberton incurred after April 14, 2020, were in relation to preparing and registering the lease, so I find they are covered by clause 7.6.
29. CYPS says Pemberton's lawyer's bill shows that Pemberton charged CYPS for Pemberton's surveyor's mistakes. It says Pemberton should have refused to pay for those mistakes instead of passing that bill onto CYPS. Pemberton says it was not unreasonable for it to bill CYPS for minor corrections in the LTO registration process. Pemberton says it incurred a maximum of \$147.16 in relation to these corrections. I agree with Pemberton. I find the evidence shows only a correction with respect to LTO registration. I find that minor errors and corrections are to be expected in such a process, and there is no evidence to suggest anyone was negligent in fulfilling their responsibilities.
30. CYPS also says that when it agreed to the estimated costs set out in the January 20, 2020 letter, it told Pemberton that LTO registration fees would be unnecessary because they would use their own lawyer to register the lease with the LTO. However, there is no documentary evidence of CYPS communicating this to Pemberton, and Pemberton denies agreeing to this. I find the evidence shows that it was Pemberton's

lawyer who registered the lease with the LTO, not CYPS's. I also find clause 7.6 of the lease clearly allowed Pemberton to charge CYPS for LTO registration fees. So, I find CYPS is not entitled to a refund of any LTO registration fees.

31. Throughout its submissions CYPS refers to Pemberton's redacted legal invoices and handwritten notes made on the invoices assigning its lawyer's work to either CYPS or another lease proponent. While I agree that some of Pemberton's documents in evidence are confusing, Pemberton submitted an unredacted invoice from its lawyer. I find this document sets out a detailed explanation of the legal fees Pemberton incurred to prepare and register CYPS's lease. I find these fees correspond with the amounts Pemberton charged CYPS in the invoices.
32. In conclusion, I find CYPS has failed to establish that it is entitled to a refund of the \$2,198.66 claimed. I dismiss CYPS's claims.
33. 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. Since CYPS was unsuccessful, I find it is not entitled to reimbursement of its CRT fees. Pemberton did not pay any CRT fees, and neither party claimed any dispute-related expenses.

## **ORDER**

34. I dismiss CYPS's claims and this dispute.

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Sarah Orr, Tribunal Member