



Civil Resolution Tribunal

Date Issued: June 7, 2024

File: SC-2023-006476

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1053907 B.C. Ltd. v. Holman*, 2024 BCCRT 516

B E T W E E N :

1053907 B.C. LTD.

APPLICANT

A N D :

VERA HOLMAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about real estate office fees. 1053907 BC Ltd. (907 BC) says Vera Holman was a realtor at its office between November 2019 and October 2022, and left without paying various outstanding office fees. 907 BC claims payment of \$3,642.75 in outstanding office fees.

2. Ms. Holman disagrees with 907 BC's claims. She says when she licensed with 907 BC she understood she would not be charged any fees because she was acting as the branch manager. Ms. Holman also says the amount 907 BC claims was not outstanding when she left 907 BC's office, and says many of the claimed fees were charged afterwards.
3. 907 BC is represented by its owner, Bianca Myddleton. Ms. Holman is self-represented.

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.
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 court.
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.

Late submissions

8. Ms. Holman emailed CRT staff after the Tribunal Decision Plan (TDP) process was completed. The TDP process is when evidence and submissions are exchanged. The email contained what appears to be some further submissions. In the email, she acknowledged this dispute had already been moved to the adjudication phase. She did not say she was unable to provide submissions during the TDP process, and instead said she was emphasizing her position. After receiving the email, CRT staff advised her the TDP was complete, and they would advise the tribunal member of the late submissions to consider whether to accept them. Ms. Holman did not respond.
9. Here, I find Ms. Holman has already had an opportunity to provide response submissions after 907 BC provided its evidence and submissions during the TDP process, and Ms. Holman did so. Considering the CRT's mandate, which includes speed and efficiency, I find that allowing further late submissions, and an opportunity for 907 BC to respond, would unreasonably delay these proceedings. As Ms. Holman has already had the opportunity to respond to 907 BC's submissions and evidence, I find it is not procedurally unfair to proceed to decide this dispute based on the submissions already provided, and without considering Ms. Holman's late email submissions.

Limitation period

10. 907 BC's statement of account for Ms. Holman included charges going back to January 2020. So, I considered whether 907 BC's claim, or part of it, was filed outside the applicable limitation period. Section 6 of the *Limitation Act* says that a claim for debt, such as this one, must be started within 2 years of when it was "discovered". Section 8 says a claim is discovered on the first day when a person knew, or reasonably ought to have known, that a loss occurred, that it was caused or contributed to by an act or omission of the person against whom a claim could be made, and that a court or tribunal proceeding would be an appropriate way to remedy the loss.

11. 907 BC applied to the CRT on June 20, 2023, and so if any of its claims arose before June 20, 2021, those claims are out of time. 907 BC's statement of account shows charges against Ms. Holman's account between January 8, 2020, and December 11, 2023, totaling \$9,842.45. The charges between June 20, 2021, and December 11, 2023 total \$6,035.90. The statement of account noted \$5,720 in payments between February 1, 2020, and July 16, 2021. This leaves just \$4,185.15 outstanding, including contractual interest charges after this dispute was started. Given the above, I find Ms. Holman has already paid for the charges that pre-date June 20, 2021, and I find 907 BC's claim for payment of the outstanding office charges is not out of time under the *Limitation Act*.

ISSUE

12. The issue in this dispute is whether Ms. Holman must reimburse 907 BC for outstanding office fees, and if so, what amount.

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, 907 BC must prove its claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
14. 907 BC says Ms. Holman agreed to the fees in her contract with 907 BC. As noted, Ms. Holman says when she licensed with 907 BC she understood she would not be charged any fees and says the contract did not apply to her because she was acting as the branch manager. I find Ms. Holman's position is contradicted by the documentary evidence, including the parties' contracts and Ms. Holman's own emails.
15. 907 BC provided copies of a November 2019 contract and an August 2020 contract amendment. Both are signed by Ms. Holman. Among other terms, Ms. Holman agreed to pay all office fees charged, including but not limited to interest, taxes, errors

and omissions and liability insurance, advertising, licensing fees, indemnity claims by the broker and other charges including a processing charge where applicable. Ms. Holman also agreed to pay a \$50 administration fee on balances outstanding for over 5 months, and interest on any outstanding account balance at a rate of 2% per month, compounded monthly (26.8% per annum) from the date incurred, if 5 days overdue.

16. The 2019 contract's schedule indicates that Ms. Holman would not be charged any fees for the first 3 months. The 2020 amendment shows that Ms. Holman agreed to a commission split plan and specific office fees, including a \$150 monthly fee and a \$40 monthly insurance fee, among others. So, although Ms. Holman takes the position that there was an agreement that she would not pay fees, I find the documentary evidence shows otherwise. Apart from the initial 3 months between November 2019 and February 2020 where the parties' agreed Ms. Holman would not be charged any fees, the signed contracts show Ms. Holman explicitly agreed to pay various office fees, including the specific monthly fees in the 2020 amendment.
17. Further, in an October 3, 2022 email where Ms. Holman told 907 BC to cancel her licence, Ms. Holman also said she would "clear her account" as soon as she received an unrelated payment. She also asked 907 BC to apply any funds from the licence cancellation to her outstanding account. The next day, 907 BC confirmed it would send in Ms. Holman's licence and provide Ms. Holman with her statement. 907 BC also cautioned Ms. Holman the statement amount would continue to climb with service changes and interest. I find the above emails support a finding that when Ms. Holman stopped working at 907 BC's office, she had agreed to the office fees and acknowledged she was responsible to pay them.
18. Ms. Holman made some submissions about her health and ability to pay. However, Ms. Holman's ability to pay does not determine whether she is responsible to do so under the parties' contracts.
19. I turn then to the outstanding office fees claimed. As noted, 907 BC submitted a statement of account that sets out all the office fees charged to Ms. Holman. Although she disputed the fees as a whole, Ms. Holman did not identify any specific fees that

she says were charged contrary to the parties' contract. I find the statement of account shows that 907 BC charged Ms. Holman for the office fees the parties contractually agreed to, including monthly office fees and insurance, as well as interest and administrative charges on Ms. Holman's overdue account.

20. I note that Ms. Holman also says the amount 907 BC claims was not outstanding when she left 907 BC's office, and says many of the claimed fees were charged afterwards. I agree that the statement of account includes charges after Ms. Holman left 907 BC's office. Specifically, 907 BC charged Ms. Holman a \$157.50 monthly office fee on November 1, 2022. However, I find 907 BC was entitled to charge this monthly office fee because under the parties' agreement, Ms. Holman was required to provide 60 days' notice prior to terminating the agreement, and Ms. Holman did not provide notice until October 2, 2022.
21. The remaining charges after Ms. Holman left 907 BC's office on October 2, 2022, are contractual interest charges on Ms. Holman's overdue account. Ms. Holman explicitly agreed to pay contractual interest in the parties' contract, so I find 907 BC was entitled to charge these amounts. I note that some of these contractual interest charges were also incurred after the Dispute Notice was issued. However, 907 BC claimed contractual interest in this dispute, so I find Ms. Holman had notice of this aspect of 907 BC's claims. I find 907 BC is entitled to reimbursement of the further contractual interest charges listed on the statement of account between June 2023 and December 11, 2023, after the Dispute Notice was issued. This means I find 907 BC is entitled to the entire outstanding \$4,185.15 listed on the statement of account in evidence.
22. 907 BC also claims contractual interest after December 2023. As noted, under the parties' contract, Ms. Holman agreed to pay 26.8% annual interest, compounded monthly on fees 5 days overdue, from the date the fee was incurred. So, I find 907 BC is also entitled to contractual interest on the \$4,185.15 outstanding fees from December 11, 2023, to the date of this decision, compounded monthly. This equals \$581.06.

23. In total, I find 907 BC is entitled to reimbursement of \$4,766.21 in office fees, including contractual interest up to the date of this decision.

CRT fees and expenses

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 find 907 BC is entitled to reimbursement of \$175 in CRT fees. 907 BC did not claim dispute-related expenses. As Ms. Holman was unsuccessful, I dismiss her claim for dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order Ms. Holman to pay 907 BC a total of \$4,941.21, broken down as follows:

- a. \$4,766.21 in debt including contractual interest,
- b. \$175 in CRT fees.

26. 907 BC is entitled to post-judgment interest, as applicable.

27. This is a validated decision and order. 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.

Leah Volkers, Tribunal Member