



Civil Resolution Tribunal

Date Issued: April 5, 2024

File: SC-2023-003050 and
SC-CC-2023-009435

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Summit Appraisal & Consulting Ltd. v Summit Property Appraisals Limited*,
2024 BCCRT 333

B E T W E E N :

SUMMIT APPRAISAL & CONSULTING LTD.

APPLICANT

A N D :

SUMMIT PROPERTY APPRAISALS LIMITED

RESPONDENT

A N D :

SUMMIT APPRAISAL & CONSULTING LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about extra-provincial company registration. This decision relates to two linked disputes that I find collectively consist of a claim and counterclaim. So, I have issued one decision for both disputes.
2. Summit Appraisal & Consulting Ltd. (Summit BC) is a British Columbia registered company. Summit Property Appraisals Limited (Summit AB) is an Alberta registered company. Summit BC says Summit AB has been operating in BC without registering as an extra-provincial company as required by the British Columbia *Business Corporations Act* (BCA). Summit BC says Summit AB's similar name has caused client confusion and resulted in administrative costs. Summit BC also says Summit AB should be subject to fines under the BCA. Summit BC claims \$3,373 in administrative costs for dealing with incorrectly assigned appraisal orders, legal expenses and time spent.
3. Summit AB does not dispute that it failed to comply with the BCA extra-provincial registration provisions, but says it is now registered in BC as Hockett Appraisals, its trade company. Summit AB says Summit BC does not have any authority to seek payment of BCA penalties, and the CRT does not have jurisdiction over BCA registrations. Summit AB says it does not owe Summit BC any compensation.
4. Summit counterclaims for \$5,000 for its own administrative costs, legal fees and time spent, and lost revenue from files being sent to Summit BC.
5. Summit BC is represented by its owner. Summit AB is represented by its owner.

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.

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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
9. 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.
10. 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.

BCA fines

11. In the "requested resolution" field of its Dispute Notice, Summit BC collectively claimed \$5,000. It said Summit AB failed to register as an extra-provincial company as required by the BCA, and the fine for failing to do so is \$100 per day, as set out in the *Business Corporations Regulation* (BCR). Summit BC said the fine amount was "roughly \$27,000". Of the \$5,000 claimed, Summit BC claimed \$3,500 for alleged administrative costs for dealing with incorrectly assigned appraisal orders and legal expenses, but did not explain what the remaining \$1,500 claimed was for. Given Summit BC's requested resolution, the remaining \$1,500 it initially claimed could be interpreted as Summit BC seeking payment of BCA fines. However, in its submissions, Summit BC revised its claims to seek only \$3,373 as compensation for administrative costs, legal fees and time spent. Summit BC did not claim any amount for payment of any fines under the BCA. Given Summit BC's submissions, I find

Summit BC is not claiming payment of any fines under the BCA, so I have not considered any alleged BCA fines in this decision.

12. Even if Summit BC did claim against Summit AB for fines under the BCA, the CRT does not have jurisdiction over this aspect of Summit BC's claims. Under BCA section 426(1)(b), a person commits an offence when they, among other things, contravene BCA section 375(1). Section 375(1) requires a foreign entity to register as an extra-provincial company within 2 months after it begins carrying on business in BC. Under BCA section 428(3), a person who commits an offence under section 426(1)(b) is liable to a fine for each day the offence continues. BCR section 35 sets the fine amount at \$100. However, the CRT does not have jurisdiction to prosecute offences and impose fines under the above BCA provisions. BCA section 429(2) says if a person is convicted of an offence under the BCA, the court may, in addition to any penalty the court may impose for the offence, order the person to comply with the BCA provisions. The CRT is not a court, and the BCA explicitly defines "court" in section 429 as the BC Supreme Court. Therefore, I find the CRT does not have jurisdiction to prosecute offences or order any fines under the BCA, and I would refuse to resolve that portion of Summit BC's claim under CRTA section 10.

ISSUES

13. The issues in this dispute are:
 - a. Is Summit AB responsible to pay Summit BC \$3,373 for administrative costs, legal fees and time spent?
 - b. Is Summit BC responsible to pay Summit AB \$5,000 for alleged lost work, legal fees and time spent responding to Summit BC's claims?

EVIDENCE AND ANALYSIS

14. As the applicant in this civil proceeding, Summit BC must prove its claims on a balance of probabilities (meaning more likely than not). Summit AB must prove its

counterclaims to the same standard. I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.

Summit BC's claims

15. Summit BC says Summit AB marketed services in BC without complying with the BCA, which negatively impacted Summit BC. It says Summit AB's similar name caused client confusion. As noted, Summit BC's claims for \$3,373 for its alleged administrative costs dealing with "falsely assigned appraisal orders", legal fees and time spent.
16. As noted, Summit AB does not dispute that it did not initially register as an extra-provincial company in BC as required by the BCA. However, the evidence shows Summit AB has since registered as an extra-provincial company in BC on April 19, 2023, with the assumed name Hockett Appraisals Limited.
17. Summit BC says it takes issue with the time period Summit AB was operating in BC before the April 19, 2023 registration, and says Summit AB's "wilful non-compliance" with extra-provincial incorporation must come with a penalty. Summit BC says having another company operate in BC with essentially the same name has caused unnecessary stress, administrative costs, and legal costs. However, Summit BC did not explain the legal basis for its claimed \$3,373 in compensation. As noted above, I have not considered any claim for fines under the BCA.
18. I have considered whether Summit BC has established the tort (civil wrong) of "passing off". The elements of the tort are the existence of Summit BC's goodwill, Summit AB's misrepresentation causing deception of the public, and actual or potential damage to Summit BC. See *Vancouver Community College v. Vancouver Career College (Burnaby) Inc.*, 2017 BCCA 41. As described in *Greystone Capital Management Inc., v. Greystone Properties Ltd.*, 1999 CanLII 5690 (BC SC), the question to be answered is whether the respondent misrepresented to the relevant public some business association or connection with the plaintiff to take advantage of the applicant's goodwill. Goodwill can be described as the benefit and advantage

of the good name, reputation, and connections of a business. See *Visa International Service Association v. Visa Motel Co.*, 1984 CanLII 517 (BC CA).

19. Summit BC provided a screenshot of a career posting on Summit AB's website seeking appraisers for contract work in the "Edmonton and Vancouver regions". I find this does not show Summit AB was marketing its services in BC. For its part, Summit AB says it has contracts with "appraisal management companies" (AMCs) all over Canada, that assign work based on postal codes. Summit AB says it does not have a physical office in BC, but has contractors based out of the greater Vancouver area. Summit AB says it has existing contracts with AMCs, but does market or solicit the AMCs for business, and does not advertise anywhere.
20. Summit AB says, and the documentary evidence suggests, that some AMCs sent some appraisal files intended for Summit AB to Summit BC by mistake. The evidence does not show any files being sent to Summit AB by mistake. Apart from the name similarity, neither party explained how the files were confused and sent to Summit BC by mistake. In any event, based on Summit BC and Summit AB's submissions, I accept this resulted in some time spent by both Summit AB and Summit BC to clarify the confusion with the parties' respective clients. However, the documentary evidence does not show that Summit AB was marketing itself in BC, or misrepresenting any association with Summit BC to take advantage of Summit BC's goodwill. I find the evidence does not support a finding that Summit AB committed the tort of passing off. So, I find Summit BC has not proved Summit AB is responsible to compensate Summit BC for any administrative costs, legal fees or time spent on that basis. Summit BC's submissions do not suggest any other legal basis for its claims, and I find there is none. I find Summit BC has not proved Summit AB is responsible to compensate it on any basis.
21. I note that part of Summit BC's claimed compensation is for time spent on this dispute and legal fees. I note the evidence shows the legal fees were largely incurred before Summit BC started this dispute. Summit BC was unsuccessful, so I find it is not entitled to compensation for time spent or any dispute-related legal fees. Even if

Summit BC was successful, the CRT does not generally award compensation for time spent on a dispute, which is consistent with its rules against awarding reimbursement of legal fees except in extraordinary cases. This is not an extraordinary case, so even if Summit BC was successful, I would not have ordered reimbursement of any legal fees.

Summit AB's counterclaim

22. As noted, Summit AB counterclaims for \$5,000 in compensation for lost work, administrative costs, as well as legal fees and time spent responding to Summit BC's claims. Summit AB says it lost work when the AMCs sent files to Summit BC instead of Summit AB, and incurred administrative costs to work out "the issue".
23. Although Summit AB referred to legal expenses in its Dispute Notice, it did not provide any submissions or evidence to support a claim for legal expenses, so I find this aspect of its counterclaim unproven. As with Summit BC's claim for administrative costs and compensation for lost work, Summit AB has not stated a legal basis for its counterclaims. There is no evidence Summit BC committed any civil wrong, and Summit AB's own submissions indicate that its client likely sent Summit BC files by mistake. I find Summit AB has not proven that Summit BC is responsible to compensate Summit AB to sort out that mistake. I also find Summit AB has not proved it lost out on work as a result.
24. Summit AB also claimed for time spent on this dispute. Summit AB was not successful in its counterclaims, so I find it is not entitled to any reimbursement for time spent. As noted, the CRT does not generally award compensation for time spent in any event.
25. I acknowledge that there was some confusion between Summit BC and Summit AB clients. However, neither party has shown that the other is responsible to compensate them for any administrative costs, time spent on these disputes, or alleged legal expenses. I dismiss Summit BC claims and Summit AB's counterclaims.

CRT fees and expenses

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. Neither party was successful in their respective claims. So, I find neither party is entitled to reimbursement of any paid CRT fees. I have addressed the parties' respective claims for legal expenses and time spent on this dispute above. Neither party claimed any further dispute-related expenses, and I award none.

ORDER

27. I dismiss Summit BC's claims, Summit AB's counterclaims, and these disputes.

Leah Volkers, Tribunal Member