Citation: *Stickney v. Fireweed Camps Ltd.*, 2020 YKSM 2

Date: 20201110
Docket: 19-S0064
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before Her Honour Judge Ruddy

FRANCES (JOAN) STICKNEY

Plaintiff

v.

FIREWEED CAMPS LTD.,
JESSE GIDNEY AND CODY GIDNEY

Defendants

Appearances:
Frances (Joan) Stickney — Appearing on her own behalf
Jesse Gidney and Cody Gidney — Appearing on their own behalf and on behalf of Fireweed Camps Ltd.

REASONS FOR JUDGMENT

[1] Frances (Joan) Stickney, the plaintiff, seeks damages for breach of contract in relation to an agreement between Ms. Stickney and the defendants, Fireweed Camps Ltd., Jesse Gidney and Cody Gidney. The agreement involved Ms. Stickney expediting groceries, supplies, and personnel to two separate camps established for crews conducting maintenance work on Yukon highways. At issue, is the nature of the agreement, in particular, whether the agreement was or was not subject to operational requirements.

Facts

[2] Aside from certain aspects of the agreement between the parties, the facts are largely not in dispute.

[3] At the relevant time, Fireweed Camps Ltd. held the contract to provide catering and housekeeping services to highway maintenance camps operated by the Yukon Department of Highways and Public Works, the Blanchard Camp ("Blanchard") south of Haines Junction, and the Fraser Camp ("Fraser") south of Carcross.

[4] In September 2018, Ms. Stickney met with Jesse and Cody Gidney, in Whitehorse, to discuss the possibility of her providing expediting services to the two camps, for the 2018/2019 season. While there seems to have been a general agreement that Ms. Stickney would provide the requested services, the evidence indicates that little else was expressly discussed between the parties in terms of contractual expectations.

[5] The primary focus for both parties appears to have been on reaching agreement as to the amount to be paid for each trip, with the defendant offering $470 per Blanchard trip and $290 per Fraser trip and Ms. Stickney seeking $542 for Blanchard and $360 for Fraser. By email dated December 30, 2018, Cody Gidney suggested they meet in the middle and the parties ultimately settled on a rate of $505 for Blanchard and $325 for Fraser.

[6] On September 26, 2018, Cody Gidney sent an email to Ms. Stickney with the expediting schedule for October, November, and December, 2018. In para. 2, the email

notes: “This schedule is tentative and subject to change as operational requirements and flight changes dictate”. While discussions regarding rates were ongoing, Ms. Stickney otherwise provided expediting services to both Blanchard and Fraser from October through December without issue.

[7] On December 6, 2018, Cody Gidney sent an email to a number of individuals, including Ms. Stickney, with an attachment referenced as “the updated staff and expediting schedule for Blanchard and Fraser Camps”, covering January through April, 2019.

[8] The January 8, 2019 trip to Blanchard was cancelled, as only a small amount of food was required which could be purchased in Haines Junction by onsite staff, negating the need for groceries and supplies to be expedited from Whitehorse. The January 29, 2019 trip was rescheduled to February 1, 2019.

[9] On January 29, 2019, Cody Gidney sent an email to Ms. Stickney asking her to call him. When she did, he advised her that as one of the Blanchard chefs had purchased a vehicle, there was no longer a need for a third party to deliver groceries, supplies, and staff to Blanchard. Accordingly, Ms. Stickney was not required for the remaining eight trips to Blanchard.

[10] Ms. Stickney continued to provide expediting services to Fraser with the exception of the April 20, 2019 trip, which was cancelled as no groceries, or supplies were required.

Positions of the Parties

[11] Ms. Stickney claims for breach of contract based on the cancellation of the agreement for her to provide expediting services to Blanchard. Her initial claim was for $5,375 broken down as follows:

Blanchard Camp		
Cancellations on January 8 and 29, 2019 (although the January 29 trip appears to have been rescheduled rather than cancelled)	2 @ $505	$1,010
Cancellations from February 9 to April 23, 2019	8 @ $505	$4,040
Fraser Camp		
Cancellation April 20, 2019	1 @ $325	$325

[12] At trial, Ms. Stickney indicated that she was no longer seeking compensation for the Blanchard cancellations in January, 2019 or the Fraser cancellation in April, 2019, as, in retrospect, she viewed those cancellations as reasonable. She further indicated that she was reducing her claim for the other eight cancelled Blanchard trips by a further $800, representing the fuel costs, at a rate of $100 per trip, she would have incurred had the trips proceeded. Accordingly, she therefore sought to amend her monetary claim to $3,240.

[13] In their reply, the defendants argue that there was no contractual agreement between the parties and that Ms. Stickney's expediter services were on an "as and when needed basis", with no guaranteed length of term or number of trips. They further argue that Ms. Stickney failed to mitigate damages, by failing to look for alternate

sources of income. Lastly, they take the position that as the defendant company, Fireweed Camps Ltd., is incorporated, Directors Jesse and Cody Gidney cannot be held personally liable for any losses suffered by Ms. Stickney should the Court find in her favour.

Issues

[14] The issues in this case are:

1. Did the defendants breach the agreement with Ms. Stickney by cancelling the remaining eight trips to Blanchard?

2. If so, can Jesse and Cody Gidney be held personally liable?

3. If a breach of contract is established on a balance of probabilities, what damages would the plaintiff be entitled to? and

4. If Ms. Stickney is entitled to damages for breach of contract, should damages be reduced for failure to mitigate?

Breach of Contract

[15] As noted, the defendants take the position that the failure of the parties to discuss and agree upon more comprehensive terms means there was no actual contract between the parties. In legal terms, they argue the contract is void for uncertainty.

[16] In *John W. Page Welding Consulting Ltd. v. Canonbie Contracting Ltd.*, 2014 ABQB 465, the Alberta Court of Queen's Bench considered the question of contractual certainty and noted at paras. 52 and 53:

> 52 Some cases suggest that a court should be reluctant to find a partially performed contract void for uncertainty: see cases cited in ***Hillview Homes*** at para 118. There is also a general rule that a court should "interpret a contract, if possible, so as to make it work": ***Hillview Homes*** at para 118. As our Court of Appeal said in ***Klemke Mining Corp v. Shell Canada Ltd***, 2008 ABCA 257 at para26, 433 AR 172, citing other appellate authorities: "courts should not seek to void agreements where the words may be applied 'to make it good'" and "'should not be too astute to hold' that there is not the requisite degree of certainty in any of an agreement's essential terms".
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> 53 Nonetheless, I must be mindful of the fact that "it is not the role of the court to invent terms and construct an agreement that the parties did not make, particularly where what the parties purported to have agreed to is so nebulous that it cannot be understood, let alone enforced": ***Swan Group Inc v. Bishop***, 2013 ABCA 29 at para 22, 542 AR 134, citing ***Hillview Homes***.

[17] The defendants themselves note in their Reply:

> We agree that an offer was made and eventually negotiated and agreed upon by both parties. We agree that both parties gave something of value in exchange. Joan offered her services in exchange for a dollar figure.
>
> …
>
> We agree that the services to be rendered and the dollar figure were mutually agreed upon. …

[18] This statement, in my view, essentially concedes the existence of a contract. To go on to suggest this does not amount to a contract because "the parties were not aware that a contractual obligation was being entered", strikes me as disingenuous in all of the circumstances, particularly for experienced businessmen like the defendants.

[19] The evidence before me satisfies me that the parties did indeed enter into an enforceable oral contract. Indeed, had there not been such a permanent change in operational requirements with the defendants' employee purchasing his own vehicle, I suspect that the contract between the parties would have completed without issue. This is reinforced by the fact that the Fraser portion of the contract did, in fact, continue without issue until season's end. In the circumstances, I simply cannot conclude that the agreement between the parties was so nebulous that it could not be understood let alone enforced.

[20] In my view, the real issue in this case is not whether there was a valid contract between the parties, but rather the interpretation of a specific term of that contract, namely whether the contract guaranteed a specific number of trips, as asserted by Ms. Stickney, or whether it was on an "as and when needed basis" subject to operational requirements, as maintained by the defendants.

[21] The burden of proof rests on the plaintiff. The standard of proof is on a balance of probabilities. As noted by the British Columbia Supreme Court in *Malaspina Coach Lines Ltd. v. Anani*, 2003 BCSC 700, at para. 6:

> The party relying on a contract must prove on a balance of probabilities the terms of the contract that it seeks to enforce. To put it another way: the party alleging a certain term of a contract, must satisfy the court that the existence of that term is more probable than not. If the judge finds that the evidence is so evenly divided, or he is not sure who to believe, then the burden of proof has not been discharged.

[22] The subjective views of the parties regarding the term at issue were clear on the evidence. Ms. Stickney says that she required some certainty in relation to her income

and would not have entered into the agreement if she had been told that she could be "fired" at any time. The defendants maintain that they would not have entered into a contract that was not on an "as and when needed basis" given the dynamic nature of camp life which makes it impossible to predict operational requirements in advance. However, it is important to note that the test to be applied is an objective rather than a subjective one. The law on this point was summarized by Cozens J. in *Williams v. Wildman Productions Incorporated*, 2008 YKSM 1, beginning at para. 11:

> 11 In the absence of a written agreement, the court "…must consider everything that occurred between the parties relevant to the alleged contract in order to decide the issue." ***Baynes*** v. ***Vancouver Bd. of School Trustees***, [1927] 2 D.L.R. 698 (B.C.S.C.) at p. 700; ***Carruthers Enterprises Ltd. (c.o.b. Action Press)*** v. ***Prince Edward Island Teachers' Federation***, [2002] P.E.I.J. No. 2 (S.C.) at para. 14. This approach is an objective one:
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> > Hence the requisite agreement may be established by the conduct of the parties subsequent to the alleged contract. Constantly reiterated in the judgments is the idea that the test of agreement for legal purposes is whether the parties have indicated to the outside world, in the form of the objective, reasonable bystander, their intention to contract and the terms of such contract. The law is concerned not with the parties' intentions, but with their manifested intentions. It is not what an individual party believed or understood was the meaning of what the other party said or did that is the criterion of agreement; it is whether the reasonable man in the situation of that party would have believed and understood that the other party was consenting to the identical terms. (*The Law of Contract in Canada* by G.H.L. Fridman, 4th ed. (Toronto: Carswell, 1999) at pp. 16, 17)
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> 12 The position of the objective, reasonable bystander will take into consideration factors such as the conduct of the parties, their history, and each party's level of sophistication in business matters.
>
> 13 What one particular party believes with respect to the existence of a contract is insufficient, in and of itself, to allow the court to find in favour of that party without objective supporting evidence.

[23] In terms of objective supporting evidence, Ms. Stickney relies on the fact that while the October to December, 2018 schedule was noted to be “tentative and subject to change as operational requirements and flight changes dictate”, the January to April, 2019 schedule did not include similar wording. Ms. Stickney relies on the fact that, at no time did the defendants, verbally or in writing, state that the contract was on an “as and when needed basis”. It was not until she received Jesse Gidney’s email dated June 30, 2019, that the phrase was used. Ms. Stickney seemed particularly upset by the use of this phrase, which she interpreted to mean that she could be, in her words, “offed at any time”. However, in my view, the phrase “as and when needed” in practical terms is not materially different than “subject to operational requirements”.

[24] The question then is whether the lack of the phrase “tentative and subject to operational requirements” on the January to April, 2019 schedule is sufficient objective evidence to support Ms. Stickney’s subjective belief that the agreement guaranteed her the scheduled trips in the eyes of an objective reasonable bystander.

[25] The difficulty I have in accepting Ms. Stickney’s contention is that her assertion is contradicted by her own evidence. Specifically, Ms. Stickney, when asked about the cancellation of the January 8, 2019 trip to Blanchard and the April 20, 2019 trip to Fraser, she testified that she viewed both of these cancellations as reasonable. Ms. Stickney said that she accepted that there are legitimate circumstances that would justify a cancellation, including road closures or unsafe conditions. Her sense of reasonableness was not limited to circumstances beyond the control of the parties, like weather. Both the January and April, 2019 cancellations noted above were simply because a delivery of supplies was no longer required either because the amount of

supplies needed was small enough to purchase locally or because existing supplies were sufficient, both of which clearly amount to changes in operational requirements. Ms. Stickney accepted that business efficiency made both cancellations reasonable and acceptable, and not in breach of the contractual agreement. In taking this position, Ms. Stickney is, by her own evidence, effectively conceding that the agreement was subject to operational requirements.

[26] In my view, the defendants' employee's vehicle purchase, negating the need for third party delivery of supplies to Blanchard, amounts to a similar change in operational requirements. Ms. Stickney was asked how the cancellations flowing from this change in operational requirements differed from the changes in operational requirements leading to the two other cancellations, and her response was they cost her more money. Ms. Stickney was unable to point to anything to suggest that the cancellations were not a result of legitimate changes in operational requirements.

[27] Ms. Stickney presented as a highly sympathetic individual. It was clear to me that she has experienced significant hardship, both financially and in terms of her health over the last two years. Unfortunately, the greater negative impact on Ms. Stickney does not, in and of itself, elevate these cancellations to a breach of contract. Financial impact is a question of damages, an issue which is not considered or addressed until liability has been established. In this case, I simply cannot conclude that liability has, in fact, been established.

[28] In the result, I am satisfied, on a balance of probabilities that the contract between the parties was subject to operational requirements. I am further satisfied that

the cancellations at issue resulted from a change in operational requirements. Accordingly, I am not persuaded that the defendants breached the contract by cancelling the remaining trips to Blanchard.

[29] Having determined that the plaintiff has not established a breach of contract, the remaining issues need not be addressed.

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RUDDY T.C.J.