



# Civil Resolution Tribunal

Date Issued: November 28, 2018

File: SC-2017-007409

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MrTaxes.ca Inc. v. Gepetto Educational Resources Inc.*

2018 BCCRT 772

**B E T W E E N :**

Gepetto Educational Resources Inc.

**APPLICANT**

**A N D :**

MrTaxes.ca Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. The applicant Gepetto Educational Resources Inc. (Gepetto) hired the respondent Mr.Taxes.ca Inc. to provide incorporation services, but says the services were not completed properly.

2. The applicant seeks a refund of the \$1,260 it paid the respondent.
3. The respondent says the applicant is not entitled to a full refund. The respondent says it provided the services, and, if there were mistakes, it should have had a chance to fix them.
4. The applicant is represented by its corporate representative, Debbie Kuan. The respondent is represented by its principal Robert Stone.
5. As a preliminary matter, the respondent questions how Ms. Kuan can be the applicant's representative when she is not a corporate director. The documents show that Ms. Kuan is Gepetto's sole director. Civil Resolution Tribunal (tribunal) rule 40 (b) requires that a corporation must act through a director. I find that Ms. Kuan is an appropriate representative of the applicant.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the Civil Resolution Tribunal Act (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons requiring an oral hearing.
8. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

10. The issues in this dispute are:
  - a. whether the respondent completed the incorporation services to a satisfactory standard and, if not, to what extent Gepetto ought to refund the applicant the \$1,260?

## **EVIDENCE AND ANALYSIS**

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. A negligence claim requires the applicant to show that the respondent had a duty of care to it, failed in that duty, and that the failure caused the loss.
12. Ms. Kuan says the respondent offered her an investment opportunity when she sought to incorporate the applicant company. As I understand it, the proposal was a tax strategy whereby the corporation would own Ms. Kuan's life insurance policy, paying premiums with corporate after-tax dollars.
13. Ms. Kuan says her primary goal was to incorporate Gepetto, a business belonging to her and her spouse, David Beckett.
14. Ms. Kuan met with Mr. Stone and his girlfriend and business associate, Michelle Lau, on September 29, 2016. Ms. Kuan's handwritten notes show they discussed incorporation, including the difference between preferred and common shares, and she suggested three corporate names. I accept these notes as evidence, created in

fall 2016, showing that the applicant was seeking incorporation services, including a defined share structure.

15. On October 31, 2016, Ms. Kuan emailed Ms. Lau a name registration document showing that Mr. Beckett had once owned the name “Gepetto Educational Resource”, without an ‘s’ at the end of “resource”.
16. On November 5, 2016, Ms. Kuan says she and Mr. Beckett met with Mr. Stone and Ms. Lau at a Tim Horton’s. Ms. Kuan says she gave Mr. Stone a cheque for \$1260, and a void cheque for “temporary life insurance.” Ms. Lau asked Ms. Kuan to sign life insurance documents.
17. Ms. Kuan says Mr. Stone told her it would take one month to set up a corporation. The respondent, in submissions, argued it completed the incorporation work before an agreed deadline of December 31, 2016.
18. On November 8, 2016, Ms. Kuan paid a \$400 premium on the life insurance policy.
19. On November 10, 2016, the respondent cashed Ms. Kuan’s cheque for \$1,260 for the incorporation services.
20. On November 29, 2016, Ms. Kuan says Ms. Lau met her again. Ms. Kuan signed what she describes as an “investment profile paper”, but Ms. Lau took it and did not give her a copy.
21. On December 5, 2016, Ms. Kuan emailed Ms. Lau asking after the certificate of incorporation. She received no reply.
22. Ms. Kuan followed up by text on December 15, 2016. Mr. Stone then registered the corporation electronically, at 2:41 p.m. that afternoon.
23. Ms. Kuan says Mr. Stone then called to make an appointment with her on December 17, 2016 to sign some paperwork.

24. In that call, Ms. Kuan says that Mr. Stone told her he mistakenly failed to register her as a corporate director but had registered Mr. Beckett as a director.
25. Ms. Kuan says she asked for documents showing the incorporation to be emailed to her, but Mr. Stone did not send them.
26. On December 16, 2016, Ms. Kuan asked for the incorporation documents again. Mr. Stone called her and told her she needed to decide who the directors should be, how much of a share her partner should have, and what powers her partner would have if she was not around.
27. Ms. Kuan asked Mr. Stone to email her the documents first. When Mr. Stone again failed to provide the paperwork for her to review, she decided she would not meet with Mr. Stone on December 17, as they had previously arranged.
28. On December 17, 2016, Ms. Kuan emailed Ms. Lau asking to cancel the incorporation and requesting a refund of her \$1,260.
29. On December 19, 2016, Ms. Lau emailed Ms. Kuan the certificate of incorporation and the incorporation agreement and asked her and Mr. Beckett to call Mr. Stone "ASAP" "once reviewed to change shares and directors."
30. The December 19, 2016 email was the first time Ms. Kuan was provided with the incorporation documents showing the December 15 filing.
31. While Ms. Kuan agrees that Mr. Stone registered a corporation, she says the work was not done properly because he failed to register her as a director, to keep her updated on paperwork as requested, or to provide advice on what she calls "the complexities of corporation responsibilities."
32. Because of Mr. Stone's failure to provide incorporation services as he promised, Ms. Kuan says she retained a lawyer to do the work properly.
33. Based on the evidence and in particular Ms. Kuan's handwritten notes from the September 2016 meeting, I find that it was an implied term of the verbal agreement

between the parties that the respondent would provide satisfactory incorporation services. For the reasons given below, I find that it did not.

34. The respondent agrees that Mr. Beckett was listed as the original corporate director. The parties disagree about whether this was a mistake, or intentional. Mr. Stone says making Mr. Beckett the sole director would make it easier to get the corporate name Geppetto Educational Resources approved, because Mr. Beckett was the prior owner of that company name. I disagree, because the documents show that Mr. Beckett owned the name “Gepetto Educational Resource”, without an ‘s’. As a result, I do not accept that making Mr. Beckett the sole corporate director of Gepetto Educational Resources resulted in any efficiency.
35. I also accept Ms. Kuan’s evidence about the applicant’s instructions to the respondent and find that the respondent registered only Mr. Beckett as a director, without properly obtaining instructions on the point.
36. Despite taking payment of \$1,260, the respondent made very little effort to deal with the incorporation until over a month later, while the text messages show it moved the applicant along quickly about the insurance. By contrast, the respondent only filed Gepetto’s incorporation after Ms. Kuan repeatedly inquired after the documents. Whether or not the agreed deadline was December 31 or some earlier date, the respondent failed to respond to the applicant’s requests for information.
37. As well, the respondent proceeded to file for incorporation prior to securing an incorporation agreement, contrary to the recommended process laid out by the BC Registry Services document titled “Steps to Incorporating A Company in British Columbia”, filed in evidence by the applicant, which I accept as some evidence of the standard of care of a reasonable incorporation services provider.
38. Chris Meyer, the lawyer Gepetto retained after it parted ways with the respondent, provided a February 23, 2018 letter outlining his concerns that the incorporation services did not meet the expected standard for such services. Mr. Meyer

commented that the incorporation structure used by the respondent made “little sense.” Mr. Meyer noted:

- a. no shares had been issued; and
- b. both classes of shares were designated as “non-participating”, meaning shareholders would not have a right to participate in company profits.

39. Mr. Meyer proposed that he revise the incorporation so that Ms. Kuan was the sole director and Ms. Kuan and Mr. Beckett were shareholders. He also proposed that share certificates be prepared, the share structure changed to attach special rights and restrictions to some shares, and that a proper record be created. Mr. Meyer then completed this work, having an incorporation agreement signed first and, upon return of all necessary documents, completing filings at the B.C. Registry.

40. Given Mr. Meyer’s opinion, my findings that the respondent made errors in providing incorporation services, and the fact that the incorporation had to be fundamentally re-done, I find that the respondent breached the implied condition that the services would be completed to a satisfactory standard.

41. I now turn to the question of remedy.

42. The respondent says it provided some value and asks that the value be deducted from the refund ordered. It breaks down its costs as follows:

- a. \$350.00 in registration fees for incorporation;
- b. \$30.00 name reservation fee;
- c. \$500.00 consulting fees regarding share structure; and
- d. \$320.00 “incorporation fee”.

43. I deduct the \$30.00 name reservation fee from the refund sought, since the name reservation was made and did not require correction.

44. I have found that the other services were not provided to a satisfactory standard. Therefore, a refund for these services is appropriate.
45. I order the respondent to pay Gepetto \$1,230 as a refund for the remaining corporate services, within 10 days of this decision.
46. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$14.39 in expenses for delivery of the Dispute Notice, for which it provided a receipt.

## **ORDERS**

47. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of \$1,393.96, broken down as follows:
  - a. \$1230 as reimbursement for incorporation services
  - b. \$24.65 in pre-judgment interest under the *Court Order Interest Act*, calculated from November 5, 2016, the date Ms. Kuan paid for the services, to the date of this order, and
  - c. \$125 in tribunal fees and \$14.31 for dispute-related expenses.
48. The applicant is entitled to post-judgment interest, as applicable.
49. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.



50. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Julie K. Gibson, Tribunal Member